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Learning from experience: the art and science of clinical law*

Summary

Clinical law is a teaching discipline in terms of which students learn the skills, ethics and values necessary for the practice of law. Its mission is accomplished through the practical involvement of students in legal work, whether it is through simulated exercises or representing actual clients in their legal problems. Throughout this process, they are guided by teachers or supervisors who are practising lawyers within the law school. What is unique to this discipline is the employment of teaching methodologies which are experientially-based and geared towards problem solving, rather than 'academic' in nature. This contribution looks at some recent developments with regard to the regulation of the legal profession and suggests that clinical law is set to assume an even greater significance with the prospect that the period of vocational training is likely to be reduced, in terms of the draft Legal Practice Bill. Furthermore, the contribution argues that such an approach is a more effective form of teaching and learning, and that its methodologies should be integrated into other teaching disciplines. It also explores a model for implementing the notions expressed in this piece. Finally, based on the experiences of South African law clinics, it argues that clinical law can be delivered effectively even in resource-strapped situations.

Leer deur ondervinding: Die kuns en die wetenskap van kliniese regsopleiding

Kliniese regsopleiding is 'n onderrigdissipline in terme waarvan studente die nodige vaardighede, etiek en waardes aanleer om in die reg te kan praktiseer. Hierdie doelstelling (missie) word bereik deur studente prakties in regswork te betrek, of deur simulasies (gesimuleerde oefeninge) of deur werklike kliënte behulpsaam te wees (te verteenwoordig) met regsprobleme. Dwardeer die proses word hulle bygestaan deur dosente of toesighouers wat praktiserende regslui is in die regskool (regsfakulteit). Wat uniek is aan hierdie dissipline, is die aanwending van onderrigmetodes wat gegrond is op ervaring en toegespits is op probleemoplossing, eerder as om akademies van aard te wees. Hierdie bydrae is gerig op sekere onlangse ontwikkeling met betrekking tot die regulering van die regsprofessie en redeneer dat dit aanvaar kan word dat kliniese regsopleiding van groter belang sal wees as gevolg van die moontlikheid dat praktiese regsopleidig waarskynlik verminder (verkort) sal word in terme van die voorgestelde wetsontwerp op regspraktyk ("Draft Legal Practice Bill"). Verder toon die

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bydrae aan dat hierdie benadering 'n meer effektiewe wyse van onderrig en leer is en dat hierdie metodologie in ander leerdissiplines integreer behoort te word. Dit ondersoek ook 'n model om die moontlikhede wat in hierdie stuk vermeld word, te implementeer. Ten slotte, gebaseer op die ondervinding van die Suid Afrikaanse Regsklinieke, toon dit aan dat kliniese regsopleiding aangebied kan word afgesien daarvan dat klinieke nie oor voldoende hulpbronne beskik nie.

1. Introduction

A sorely neglected area of legal discourse is that of the vocational and skills training of future lawyers.¹ This is the case because the teaching of law is often based on a number of problematic assumptions such as:

- 1.1 Theoretical knowledge, in particular substantive law, is primarily what lawyers need to learn.
- 1.2 Universities can do no more than provide a sound grounding in theoretical knowledge.
- 1.3 Graduates will somehow develop the skills relevant to the practice of law, and find their own way in the profession.
- 1.4 In any event, the imparting of skills is the responsibility of the legal profession.

Some recent developments have begun to seriously challenge these assumptions. The re-curriculum of law studies has in many instances witnessed an increase in the number and content of skills-based offerings in the four-year Bachelor of Laws degree.² Furthermore, the criteria for admission to the legal profession have also come under scrutiny in the Legal Practice Bill³ currently on the legislative agenda. Over the past two years, there has been considerable debate with regard to various issues, including the period of practical training to be served after graduation. In its final form, the Bill could well result in the reduction of the time served in vocational training.⁴ This measure, intended to increase access to the profession for, in particular,

1 Over the past few decades, a significant body of literature has been developing on the South African clinical law experience. See e.g. McQuoid-Mason 1977; Maharaj 1994; Motala 1996; McQuoid-Mason 2000 & 2001. Much of this literature confirms the need for skills training in the law curriculum, and provides useful descriptive accounts of various models of legal aid delivery, public interest lawyering, street law programmes, and access to justice issues. Very little of this writing, including that on clinical legal education, deals with clinical teaching methodology, which is the main focus of this contribution.

2 Since 1998, South African law schools have been offering a standard four-year undergraduate law degree, which replaced the earlier postgraduate LLB.

3 Legal Practice Bill 2002.

4 The most recent draft submitted by the Law Society of South Africa proposes merely that a candidate has to satisfy, *inter alia*, 'all the vocational training requirements as may be prescribed by the Minister upon the advice received from the National Council'. Law Society of South Africa 2003:12. The implication is clearly that the period of vocational training may be varied from time to time.

graduates from disadvantaged backgrounds, could possibly impact negatively on the skills training requirements of prospective lawyers. Thus, the argument for comprehensive clinical teaching programmes in university law curricula becomes more compelling.

By its very nature, clinical teaching requires greater resources than conventional classroom teaching because of the intensive, supervisory nature of the teaching and training involved. Not only does this approach entail intensive one-on-one interaction and, therefore, greater contact time, but it also requires a low supervisor to student ratio.⁵ Yet such resources are not readily available, and clinicians are constantly locked in a battle to garner more resources from their institutions, outside donors or the state.⁶

Training law students for their professional roles is a unique challenge, quite unlike any other endeavour undertaken by the law school. For one, this task is linked to specific educational and vocational outcomes. Secondly, students have to be prepared for a profession with a particular history and ethos. The socialisation of lawyers and the formation of a professional identity have been extensively researched. Simply put, 'a fully socialised individual is one who is, does and believes pretty much what society asks him or her to be, do and believe'.⁷ The expectation is that such an individual would become habituated in the culture of conformity, to learn to play by the rules, in order to become a successful lawyer. Little attention is paid to critical thinking, to extending the parameters of the possible and the desirable, or to examining both positive and negative aspects of law and practice. Within this context, clinical law has a specific mission to develop law students into critical, creative problem-solvers.

This contribution attempts to locate the clinical component in the law curriculum in relation to specific needs and outcomes, paying attention, along the way, to some methodologies unique to clinical law. It also explores two distinct, but related notions which are daily reinforced by the experience of clinicians. First, that clinical teaching methodology is a much more superior form of pedagogy, and ought to be integrated into conventional classroom teaching. And second, that it is possible to implement appropriate clinical approaches in resource-poor settings.

2. The educational component: classroom and clinical

Traditionally, the practical training of lawyers was regarded as the preserve of the profession. So for example, persons wishing to qualify as attorneys were required to serve articles of clerkship of two, three or five years. All that the law school was required to do was to provide the student with a sound legal education, meaning in effect, an extensive coverage of substantive law

5 In many western countries, the norm is in the region of one teacher/supervisor to eight students. See American Bar Association 1992:250.

6 In the South African context, the ratio of clinical supervisor to student is in the region of 1:25. See also Maisel 2000.

7 Bellow & Moulton 1978:11.

courses. The practical aspect was to be handled by the principal, who would be an attorney of some seniority and experience. Over time the period of articles was shortened and with the increase of skills training in the law school curriculum, the lines between school and profession, in this regard, became blurred. Currently, all that a law graduate requires is one year of service in a law practice or legal aid institution, together with a six-month attendance at a school for legal practice operated by the law society. With the introduction of the Legal Practice Bill, this training is being further streamlined.⁸

Thus the burden is increasingly falling on law schools to provide for the skills training of future lawyers. Regrettably, this responsibility has not been accompanied by either the acknowledgement of, or the resource support for, such a role.

Most South African law schools now offer a clinical law programme which contains both a classroom and practical component. A clinical course will typically look something like this:

- 2.1 A classroom component consisting of approximately two hours per week, during which time supervisors meet with the entire class and offer instruction (through various media and methodologies) in the theory of clinical law, skills, ethics and values.
- 2.2 A practical component which involves work with live clients in a legal office environment. Here, students are put through their paces conducting interviews, drafting documents, conducting research and other legal tasks, all under the supervision of qualified lawyers.
- 2.3 Many clinics, additionally, involve their students in their community outreach programmes. These programmes frequently take the form of visits to nearby communities where advice offices are set up. This can be a valuable opportunity to develop legal and life skills, as the students interact with the clients in the environment in which they live.

3. Educational outcomes

The rigours of legal practice demand that law graduates acquire a significant level of basic as well as specialised skills in order to function in a highly competitive environment. To this end, law clinics seek to achieve the following outcomes:

- 3.1 To develop legal skills, both litigatory and non-litigatory, that are necessary for the effective and efficient practice of law.
- 3.2 To enable students to identify and demonstrate in practice, a core set of ethics and professional values.
- 3.3 To create an awareness of broader societal issues in their relation to legal problems, and to develop skills and strategies to address these issues.

8 Legal Practice Bill 2002:19-22. The Bill also makes provision for greater mobility as between the two branches of the profession namely, those of attorneys and advocates.

3.4 To develop reflective and self-critical skills that will ensure their continued growth as advocates for justice and equity.⁹

4. Clinical teaching methodology

Perhaps the most fundamental characteristic which distinguishes clinical teaching from other endeavours in the law school is the teaching methodology employed.¹⁰ This methodology is informed by certain key features, namely:

- Experiential learning.
- Problem-solving approach.
- Partnership in learning.
- Close supervision of students.
- Evaluation and feedback.

Before discussing this methodology, it is appropriate to note that traditional law school education consists, in the main, of highly formalistic classroom lectures in which the teacher delivers the content of the course with usually little or no participation from the students. Such a methodology has serious limitations in that it does not fully utilise the learning potential of students, as they are required to play a largely passive role, being confined to reading, listening and observing the instructor. Under these circumstances, students' thought processes are not optimally stimulated. Clinical teaching, on the other hand, is an active pedagogy in which students are required to perform certain tasks and draw lessons from those experiences. Such an approach seeks to enhance the learning process through action, verbalisation of thoughts, and an active engagement with ideas through consultation, discussion and feedback involving peers and supervisors. It is arguably a superior pedagogy as it attempts to integrate all the processes of learning in a holistic approach.

South Africa's education system under decades of apartheid rule hardly encouraged an active, critical approach to the pursuit of knowledge and skills. Consequently, it created generations of learners with no exposure to an alternative pedagogy. Indeed, as most clinical teachers will attest, there is often resistance on the part of students even today to take greater responsibility for their learning that the clinical approach offers. Fortunately, once students internalise the new approach, the transformation in their attitudes and responses is quite spectacular.

4.1 Experiential learning

It is an old adage that experience is the best teacher. In the clinical setting, students are encouraged, after proper instruction and briefing, to undertake

9 Such outcomes are clearly articulated in the course outlines of clinics at the former Universities of Durban-Westville, Natal (Durban) and several others. See also Association of University Legal Aid Institutions 2002.

10 Rekosh *et al* 2001:258.

legal tasks with increasing degrees of independence. Properly supervised, these students come to develop confidence in their ability to perform their roles as lawyers.

They are confronted with real life problem situations which are not discrete, pre-packaged legal problems, but messy, raw life experiences in all their concreteness and complexity. In addition to grappling with legal issues, problems, and principles, they also have to deal with all the human emotions which accompany the client.¹¹

The value of this approach is that it enables students to bring their own unique experiences and perspectives into the learning laboratory. Not only are they able to learn the generic skills of a lawyer such as interviewing, counselling, negotiations, drafting and case analysis, but they also hone their human skills through interaction with live clients, other lawyers, officials and the public at large.¹²

4.2 Problem-solving approach

Problem-solving is a highly interactive methodology whereby students and supervisors work together in solving problems. Central to this approach is the notion that students' responses to the challenges of their profession depend on their thinking of themselves as lawyers. A number of important steps are involved in the problem solving approach. These entail:

4.2.1 Problem definition

The correct definition of the legal problem will assist in identifying appropriate solutions. It also helps in identifying and defining both the goals one is seeking as well as the obstacles which prevent the resolution of a problem.

4.2.2 Option identification

This entails exploring the various options available in respect of the problem, the possibilities which they offer for a resolution of the problem, and their implications.

4.2.3 Decision-making

The next step requires an evaluation of the options and a decision in terms of priority and desirability, always maintaining flexibility once an option has been selected.

11 Amsterdam 1997:9.

12 Bloch 1997:58.

4.2.4 Implementation

The final step involves putting the chosen option(s) into effect.¹³

Central to these steps is the need to undertake a thorough factual and legal investigation; to do proper and rigorous planning and research; and to render appropriate advice and counselling. This last aspect requires that the client is fully involved in the decision-making process. The relative strengths and weaknesses of all available options and their possible consequences must be placed before the client to facilitate an informed decision.

It has been said that problem-solving skills should be made the primary goal of legal education because of their all-encompassing nature. It is argued that the reality and immediacy of the problem-solving approach can be a great motivator for students. Furthermore, by integrating such an approach with the teaching of skills (be they negotiations, counselling or advocacy) it lends greater coherence to the legal curriculum.¹⁴

4.3 Partnership in learning

Clinical teaching fosters collaborative work. As in the real world, problem-solving and the resolution of legal dilemmas are a collective rather than solitary endeavour. It involves teamwork through work meetings and discussions with colleagues, candidate attorneys, assistants, researchers and other support staff. The clinic attempts to replicate such a scenario. This allows for learning to take place through mutual enquiry. Lecturing to and directing the student to follow the supervisor's instructions are of limited value. Partnership requires more than merely working together. The teacher is responsible for turning the clinic into an effective learning environment, without undermining the students' ability to develop independently and ask questions and explore solutions on their own.

4.4 Close supervision of students

The proper implementation of the clinical methodology requires close and direct supervision of students.¹⁵ The ultimate goal of supervision is to ensure that the student is working effectively, efficiently and ethically for the client. The supervisor's task is to guide the student through experiential learning. To this end, the goal of supervision is to create a conducive learning environment for the development of the student's skills. The most appropriate supervision regimen will have to be devised for each student, depending on the student's level of experience, ability, knowledge, skill and confidence. In the final analysis, the supervisor is required to respond to the individualised learning needs of the students, or the specific requirements of the case. The ideal supervisory model is one which attains the correct balance between guidance and independence.

13 See also Hegland 1994:16-34, and Nathanson 1989:170-180.

14 Nathanson 1989:182.

15 Bloch 1997:59.

4.5 Evaluation and feedback

Learning through action alone is not enough. The clinical approach is further characterised by the extensive evaluation of, and feedback on, student performance. This task is individualised, specific and time-consuming but also the most effective means of directing students' efforts and addressing their educational and skills requirements. To be effective, it must be intensive and rigorous, analysing each step undertaken and demonstrating in what respects it was lacking, and what might be done to rectify it. Feedback needs to be constructive, to reflect an understanding of how a particular situation arose, and has to be delivered in a supportive and helpful manner.¹⁶ It is said that the true art of critique is to be helpful by being specific. Generalisations are not particularly useful as they do not pinpoint specific weaknesses nor indicate what needs to be corrected.

4.6 Assessment of student work

As most clinical work undertaken by students attracts credit towards the law degree, an efficient and equitable method of assessment is necessary. In the nature of clinical teaching and learning, much of the assessment is continuous, ongoing observation and review of student performance.

Most South African law clinics utilise the method of continuous assessment, while some include a final written examination. The examination will typically consist of problem-type legal questions requiring students to demonstrate problem-solving skills. They may also be expected to resolve ethical dilemmas of the type lawyers encounter in practice. Usually the examination component counts for a smaller percentage of the overall assessment.

Through the continuous assessment process, a student's performance is monitored over the duration of the year (or semester). Every task undertaken, whether drafting, research or counselling, is graded and a mark recorded in the student's file. The composite of all these grades is then awarded as the student's continuous assessment mark. The weighting of different tasks or exercises and the allocation of marks in respect of these may vary from one clinic to another. However, the key performance indicators are usually the core skills of interviewing, counselling, negotiations, legal research and writing, legal analysis, case management, and advocacy.

5. Role of law clinics in the LLB curriculum

The introduction, in 1998, of the new undergraduate 4-year LLB degree, heralded the reconceptualisation of the law curriculum in some important respects, among them, a growing recognition of the need for more skills-based courses.

Law clinics have much to offer law schools, both in relation to skills training, as well as with respect to the teaching methodologies employed. Ideally,

¹⁶ Rekosh *et al* 2001:277.

these methodologies might be integrated into the teaching of substantive law courses, rendering them more dynamic, interactive, problem-based disciplines. Of course, the value of clinical teaching is not universally acknowledged and accepted within the law school, and while clinical programmes may be supported in themselves, there is significant resistance to the integration of their methods and approaches in traditional law school teaching.

5.1 Compulsory, elective or voluntary courses

Without question, clinical law should be offered as a compulsory course. The real issue is whether clinics have the capacity to effectively supervise large numbers of students, without compromising the quality and objectives of clinical teaching. Sadly, as matters currently stand, they are not able to do so. Most clinics still have extremely high student to staff ratios, in many instances exceeding 25:1. For clinical teaching to be effective, a ratio of 10:1 would be optimal. Unless greater (particularly, human) resources are made available to clinics, the ideal of clinical law as a compulsory offering is unrealistic. Most South African law schools offer it as an elective and, in some instances, allocate credits equivalent to 2 elective modules.

The option of a voluntary clinical course is not desirable, especially if it will not garner academic credit points. It may not serve as sufficient motivation for students, and does not justify committing scarce resources to such an option. A voluntary clinical course may be useful where a clinic is being established for the first time, possibly as a pilot programme in order to understand what works best. In addition, it will expose students to practical training which they might otherwise not be able to access.

5.2 Credits: semester or year course

Given the increasing clamour among clinicians as well as students for a more skills-based curriculum, semesterisation does pose some problems. Particularly in live client clinics, a semester of an effective 14 to 16 weeks affords limited opportunity to develop a case from inception to a point which is reasonable in order to achieve many of the educational objectives fundamental to clinical teaching, as well as to service the client conscientiously.

Nonetheless, it is possible to teach clinical law over a single semester, but with limited results. The use of simulated exercises, as opposed to live client interaction, might be better suited to single-semester courses.

5.3 Student profiles

In order to obtain optimal results from clinical teaching, a heterogenous student population is a valuable asset. Diversity in the classroom, which transcends racial, gender, class, ethnic, religious, linguistic or cultural differences certainly enriches the learning environment. In the clinical setting, learning about identification differences and understanding their significance can only enhance

the attorney-client relationship and the attorney's effectiveness.¹⁷ Diversity can be a powerful tool in equipping students to develop an appreciation and understanding of differences, to confront their overt and latent prejudices (and those of their clients, colleagues and supervisors), and better prepare them to function in the real world.

Unfortunately, most of our law schools are still attempting to transcend the apartheid legacy of separate educational institutions for different racial and ethnic communities, but this reality is gradually changing. That notwithstanding, the coupling of the educational and service objectives in the clinical setting does expose students, who often come from relatively affluent and homogenous backgrounds, to the reality of the poor, marginalised and vulnerable sectors of society.

5.4 Student numbers

High student enrolment, together with the limited human and financial resources available to clinics, impact negatively on clinical teaching. The high ratio of student to staff means that close and intensive supervision, a hallmark of clinical teaching, cannot be sustained. The answer surely is to employ and support larger numbers of clinicians, but in the absence of movement on this front, the intake of students into clinical courses may have to be limited.

Some clinics adopt strict admission requirements for their clinical programmes, such as academic achievement, suitability for client interaction, and other criteria like racial, gender and cultural balance.

5.5 No student practice rule

Many countries, for example, the United States of America,¹⁸ permit students who have advanced sufficiently in their legal studies to represent clients, under the supervision of an experienced lawyer, in certain lower courts. South Africa does not permit this type of practice by law students.

While there are obvious advantages to the adoption of this rule, such as increased representation for indigent litigants, and practical trial advocacy experience for students, clinicians tend to have a mixed reaction to it. The ambivalence is no doubt in part due to the increased amount of supervision required for student practitioners, in circumstances where clinicians are already quite overloaded.

17 Hing 1997:195.

18 See e.g. Barnhizer 1979:80:93.

5.6 Current moves to unify the curriculum

A feature of clinical legal education in South Africa is the uneven development of clinical programmes across the country's 21 clinics,¹⁹ a reality thrust upon us by history.

Primarily through the efforts of the national Association of University Legal Aid Clinics (AULAI), a programmatic attempt has been made to bridge the gap and empower, in particular, historically-disadvantaged institutions. One of the ways in which this is being accomplished is through regular workshops. A concerted strategy to draw up a standard manual and curriculum for clinics culminated in the June 2002 Winter Workshop, out of which emerged the first draft of the Standard Manual and Standard Curriculum.²⁰ Some 70 clinicians from 20 law clinics participated in a week-long workshop to realise this landmark development. The draft has undergone a rigorous process of evaluation and feedback, and was finalised at the end of 2002. Further manuals on Student Assessment and Teaching Methodologies are being developed.

In addition, opportunities have to be created to interact with, and learn from, other clinical teaching experiences across the world.²¹

6. A model for clinical supervision

Various models have been used for clinical supervision, ranging from a highly directive, hands-on approach, where the supervisor exercises a strong guiding hand and effectively makes the important decisions, to more non-directive approaches, where the supervisor assumes a background role allowing the student to work relatively independently. As indicated earlier, the level of intervention will depend on various factors, including the student's level of ability, preparedness and confidence.²²

One model which has been found to be effective attempts to combine close supervision with a highly interactive and participatory approach. It assumes that prior to arriving at clinic, students will have had, through classroom discussion and interaction, an understanding of the basic outline, goals and techniques of interviewing clients. This model requires students to be present at clinic for an entire day during intake of clients.²³

A typical intake day follows the following routine:

19 Several universities have merged, with effect from 1 January 2004, with the result that the actual number of law clinics may vary.

20 Association of University Legal Aid Institutions 2002.

21 For example, meetings of the Global Alliance for Justice Education, the All Africa Clinical Law Colloquium, and various other regional and international workshops and conferences.

22 See Hoffman 1997:72-76.

23 This model is one developed for the University of Durban-Westville Law Clinic, and has been in operation since 1999.

- 6.1 Groups of 4 or 5 students come into the Clinic and individually interview their clients for about an hour. They are expected to obtain a statement of the client's problem, in broad outline.
- 6.2 The interview is then adjourned, and the student and supervisor have a discussion to ascertain whether the former has obtained the relevant information and identified the broad contours of the client's problem. They agree on a tentative analysis and, where applicable, identify options which may be presented to the client. If the student's summary is found to be wanting in material respects, the supervisor may require the student to return to the interview room to complete the statement of facts, or obtain additional information.
- 6.3 The client is then called in and the interview resumes in the supervisor's office. The client is counselled by either the student or supervisor, or both, and the various available options are placed before him or her, explaining the implications of each. The client is given the opportunity to ask questions and clarify any doubts he or she may have.
- 6.4 If the clinic is able to offer the client representation, an agreement is reached about the terms, and a mandate obtained. If not, the client is directed to other agencies which may be able to assist, or informed that he or she has no recourse to any legal remedies. If non-legal remedies are available, these may be discussed with the client. The interview is then concluded, and the client released after making arrangements for a follow-up consultation, if necessary.
- 6.5 The supervisor and student continue the discussion on how best to effect the client's mandate, the most appropriate strategies to be adopted, and the practical tasks arising from the interview. The student is then required to commence his or her research of the applicable law, draft some preliminary correspondence, or pursue telephonic or other enquiries.
- 6.6 A two-hour conference session, involving all 4 or 5 students and their supervisors, is held in the afternoon. This serves to review the morning's activities and takes the following form. Students have to:
 - 6.6.1 discuss their interactions with the client, after which their colleagues and supervisors comment on and critique the interview;
 - 6.6.2 discuss their interactions with the supervisors, and whether they encountered any problems; and
 - 6.6.3 provide a concise outline of the case, and to clarify the facts through questions.
- 6.7 The supervisors then proceed to engage the students in a problem-solving exercise through questions and discussion. The supervisors routinely present alternative scenarios, in order to ascertain how they would respond to different situations. All present participate in generating solutions to the problems identified in the interviews.
- 6.8 Finally the students are set a written take-home assignment, based on their interviews, which they are required to hand in within 2 weeks. The

assignment may take the form of a simple descriptive interview summary, or a more complex legal analysis and case planning exercise.

7. Some Lessons from the Model

Throughout the discourse on clinical legal education in South Africa, a number of recurrent themes emerge as weaknesses in our pedagogy. They are: the fact that university training has been largely 'academic';²⁴ the lack of instruction in the lawyering process and the paucity of skills courses;²⁵ the somewhat arbitrary distinction between the academic and practical aspects of law;²⁶ and the fact that the 'traditional lecture' is still the preferred mode of delivery.²⁷

The model described here attempts to respond to the needs expressed by educators by integrating clinical teaching methodologies and skills training in the live-client clinic setting. Some of the positive lessons to emerge from this experience are:

- 7.1 The mid-stream consultation between supervisor and student (immediately after the initial client interview and before the counselling session in the supervisor's office) serves as an early warning system for the identification of weaknesses on the part of the student, and is useful in re-directing the student. It also enables the clinical team to identify and manage any conflict-of-interest situations or, if the case is one outside the ambit of the clinic, to recommend referral to another agency.
- 7.2 The conference session further reinforces the principle of problem-solving in action where students are engaged and supported in their quest for solutions. They participate also in finding solutions to the problems raised in the interviews conducted by their colleagues and, in this way, are exposed to a wide variety of legal issues.
- 7.3 The interactions and tasks during the day spent at the clinic are designed to develop the skill of legal analysis, challenging the student to probe deeper into given situations and to approach the problems from different angles and perspectives.
- 7.4 The take-home assignment is designed to shore up a significant need in the law curriculum, namely, to develop better writing among students. A common criticism is that very little attention is paid to formal instruction in legal writing.²⁸ Combined with extensive and constructive feedback, these focused writing assignments can raise the level of legal writing in the law school.
- 7.5 The actual engagement with, and discussion around, issues of diversity and differences lend themselves to a critical understanding of these issues.

24 McQuoid-Mason 1977.

25 Motala 1996.

26 Maharaj 1994.

27 Woolman *et al* 1997.

28 See e.g. Motala 1996.

Given the diversity of our student population, the afternoon conference sessions enable an authentic cross-cultural exchange between students and supervisors.²⁹

The adoption of this methodology and its attendant strategies has significantly enhanced the skills of students enrolled in the clinical programme. Our observations are that, as a general rule, they develop greater confidence in handling legal tasks, express themselves more clearly on legal issues, and reflect a deeper understanding of the reality experienced by their clients. An assessment conducted by the Office of Quality Assurance and Development at this University during 2003 returned a 'strongly positive assessment' for the clinical law module. In particular, the report states:

We feel that the high rating for '9' (stimulates students to think independently) is of especial importance, since this is central to one of the primary purposes of higher education: the development and nurturing of critical intellectuals who are creative and independent thinkers.³⁰

8. What about resource-poor settings?

It is sometimes suggested that the methodology and model outlined here are appropriate primarily to 'first world' environments because of the demand on resources, and that they do not work in resource-poor settings, for all the obvious reasons. Who, as it turns out, are the usual suspects? Large class sizes?³¹ Overworked and overwrought teachers? Poor classroom and training facilities? Unmotivated and even 'lazy' students?

Recent experience is increasingly pointing to little miracles taking place in our clinics, even in so-called historically disadvantaged institutions. Clinical teaching methodologies, far from being the preserve of an 'elite' teaching and training corps, are daily being adapted and modified to suit less than ideal conditions. While, for example, large class size represents a challenge at various levels, this is not an insurmountable problem. Classroom acoustics can be improved through simple measures such as the introduction of a pick-up microphone. Handling a huge, vociferous class will require particularly good facilitation skills on the part of the teacher. And the apparent 'wide variance in student ability'³² is an inevitability of our heterogenous and diverse community, which has to be addressed creatively.

The following suggestions and innovations could go a long way in designing an effective clinical programme:

29 Baker 2003:154.

30 Quality Assurance 2003:4.

31 See e.g. Woolman *et al* 1997:43. The authors also cite the lack of general academic skills and the failure of students to accept responsibility for their learning as significant problems encountered in teaching South African law students.

32 These are among the concerns raised by e.g. Woolman *et al*.

8.1 The lack of resources is a challenge, not merely an insurmountable problem

Ideally, students should have access to extensive reference materials and a well-resourced library with relevant texts. This is usually not readily available, particularly in the developing world context. The clinician is therefore forced to improvise. He or she will have to innovate, develop his or her own materials, or draw on what is available. Collaborating with other clinicians and sharing materials are some options. As most law schools have photocopiers, relevant materials can be duplicated and circulated more widely than appears possible.

8.2 The challenge of a poorly-developed culture of reading has to be addressed

One legacy of apartheid education is the often poor level of literacy existent across the schooling system, and the resultant underdeveloped culture of reading. This is, of course, in addition to the fundamental problem that the majority of South African students do not have English as their first language. Yet, reading is essential to the work of lawyers. Students have to be encouraged and supported in their reading habits, both in order to obtain information as well as to develop their own ideas and thinking. Among the support mechanisms which may be instituted are: individualised reading and comprehension exercises; reading and discussion groups wherein mutual support and guidance are available to students; and peer support and mentoring, whereby 'more advanced' students tutor those encountering difficulties interacting with texts, particularly complex legal writing.

8.3 Students can be excellent teachers

Peer support and supervision has been accepted as an established teaching practice. Students often learn best from their age and social peers. In our context, peer teaching is used primarily as an informal method of instruction, and refers to the relationship between learners. Because of the greater opportunities for empathy on the part of the peer teacher and the lesser need for deference from the peer learner, students view themselves as partners in the learning process.³³ Where resources permit, a more formal or structured approach may be adopted, and graduate or student assistants may be hired to assist clinical supervisors. Even under conditions of scarce resources, students can be recruited into the teaching process. Assistantships may be rewarded with, for example, extra credits. Special care needs to be taken in the allocation of students into working groups, in order to achieve various balances, in particular between 'fast' and 'slow' learners, or between 'strong' and 'weak' readers.

33 Glesner Fines 2000:2.

8.4 An effective learning environment does not require elaborate resources

The basic ingredient is the willingness of the client, student and supervisor. Each brings an important element to the learning laboratory: the client with the legal or other problem and often a wealth of life experience; the student with some theoretical knowledge and loads of enthusiasm; and the supervisor with knowledge, skills and patience.

- 8.4.1 Experiential learning generates its own resources: experiences, actions, reflections, questions, dialogue, options and solutions.
- 8.4.2 The problem-solving approach with its interactive methodology involves all the participants in the process every step of the way.
- 8.4.3 The collaborative nature of clinical teaching and learning develops trust, confidence and partnership in learning and resolving issues.
- 8.4.4 The supervisor's hands-on and direct role ensures that clients are well advised, and students provided with proper guidance.
- 8.4.5 Constructive and specific feedback enables the student to identify areas of weakness and remedy them in the course of actual work on a case.

8.5 The education must be socially-relevant and justice-oriented

Our clinics, students, and indeed our lawyers do not operate in a vacuum. The realities of legal problems, of clients and their communities have all been shaped by their socio-political environment, whether it is slavery, apartheid, colonialism or globalisation. The lessons to be learned are best demonstrated in the field, so to speak. The clinical context provides ample opportunity to identify, analyse and explore these issues in their fullest ramifications. Thus, a vital component of legal problem-solving is a thoroughgoing critique of society, followed by an exploration of options for systemic reform. Serving poor clients, as all law clinics do, forces us to confront issues of poverty, exploitation and power. Lawyers can thus become key agents for social change.

8.6 We must embrace the diversity and multi-culturalism in our society

Co-existing in a multicultural environment requires more than mere lip service to issues of diversity in our immediate and broader community. It entails actively seeking out and exploring issues of difference and commonality, of developing a broader understanding, and building a community premised on that understanding. There is possibly no better place to attempt this than the university, and no better place to start than the clinic.³⁴ Once again, students, clients and supervisors provide the material. Race, ethnicity, class, gender or culture-specific notions may be examined and debated, as well as our

34 Vawda 2003:4.

respective responses to these. For example, a legal problem relating to the Zulu custom of *lobolo* (loosely, dowry or 'bride-price') may raise a variety of questions about the gendered nature of this practice; about comparable practices within Indian and western traditions; or about the historical role occupied by such practices within 'traditional' societies. The supervisor can choose to either evade the issue, or confront it with sensitivity and understanding. Above all, the student needs to hear that it is acceptable to question such practices and subject them to clinical discourse; that tradition and culture must be viewed not as sacred cows, but as contextually appropriate or inappropriate practices; and that their impact on oppression and power relations must be acknowledged and understood.³⁵

9. Conclusion

South Africa's law clinics are blazing their own trail in the art and science of clinical law. A number of conclusions may be drawn from their experiences:

- 9.1 That clinical teaching is a highly effective form of education, which brings out the best in our students.
- 9.2 That quality teaching and learning are possible in resource-poor environments.
- 9.3 To be effective, it requires innovation, creativity and commitment.
- 9.4 It is essential to establish local, national, regional and international networks to learn from and support one another.
- 9.5 People are our best, most enduring resources.

At the beginning of the twenty-first century, the demands on the legal profession, of transformation, of globalisation, and of the imperative to become relevant to the developing constitutional order, increasingly point to the need for greater vocational training within the law school. Legal educationists have been grappling with this issue for some time. As this contribution has suggested, the solution is staring us in the face. Clinical law stands ready to meet this challenge.

35 Again, much of the discourse around clinical teaching and learning has skirted the complex and often controversial issues raised by living and working in a multi-cultural environment.

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