CLINICAL LEGAL EXPERIENCE: THE BENEFITS OF PRACTICAL TRAINING IN TEACHING — STUDENT PERSPECTIVES

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I ABSTRACT

The use of clinical legal education has expanded in recent years. Many universities have formed partnerships with community legal centres to provide students with clinical legal experience. The authors conducted a pilot survey to test whether students volunteering in a community legal centre made a significant difference to their learning of the law. They surveyed student volunteers and their supervisors at Macarthur Legal Centre, a community legal centre in South West Sydney. Their survey indicates that students perceived a greater understanding of their legal and ethical obligations, enhanced client communication skills and growth in confidence. The experience also motivated students to consider pro-bono work in their professional life. However, students were unable to articulate the specific benefits of the experience to their legal studies, highlighting the need for a greater connection between theory and practice. Furthermore, the externship model of clinical training comes at a significant cost to the centre which can detract resources from the primary functions of serving community interests.

II INTRODUCTION

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There is a good reason why the doing of law is called practising: we are engaged in a craft. Like all craftspeople, we learn through experience. Clients present with multi-faceted problems that do not conform to the teaching silos of law schools. There is so much to learn in the “real world” of practice for which the academy is often insufficient preparation. How much better to integrate practice with theory in the law schools?

Our proposal is that clinical and practice based learning (“PBL”) be built into the curriculum of legal training— not as an optional extra— but as a properly designed education process involving real clients and real problems. There are strong connections between clinical learning, simulations and PBL. PBL involves students being “presented with a problem situation before any subject-matter knowledge is acquired”.3 Students analyse the problem and “identify resources for learning to solve it”.4 The objective of the instructor is to provide guidance whilst enabling the students to learn independently. Clinical simulations are often used to advance similar objectives.5 Live-client clinics have been recognised as aligning well with PBL.6 Clinical experiences can complement the classroom-based coverage of many basic subject matters, thereby addressing limitations of the traditional doctrinal law curriculum.7

Clinical programs offer students the opportunity to apply doctrinal learning to specific problems posed by real clients. In such a way, clinical legal education, serves as a half-way house, moving students away from the classroom to experience real problems and clients (but still outside the full

4 Cruickshank, n 3.
responsibilities of practice without supervision). The integration of clinical methodologies with the law curriculum provides opportunities to extend student insights and understanding of the law.\(^8\)

Current scholarship supports the need to integrate academic learning with practical training.\(^9\) In recent years, clinical legal education has come to the forefront of legal education in Australia. In a book published earlier this year on the best practice of clinical programs, the authors aptly state: “Australian law schools without a reputable clinical presence are fast becoming an anachronism. But as more and more law schools dip their toes into clinical experimentation, we see potential for superficial courses and lower-quality educational outcomes.”\(^10\)

Some Australian law schools have over time developed in-house clinical programs, however in recent times a number of law schools have relied on external placements in community legal centres or internships rather than utilising an in-house model.\(^11\) Half of all clinical placements in Australia are now administered as “externships.”\(^12\) By contrast, most law schools in the United States of America (“USA”) have clinical education programs administered by the university.\(^13\)

Our pilot study tested the effectiveness of one clinical externship/practice based learning program at Macarthur Legal Centre (“MLC”), a community legal centre (“CLC”), based in Campbelltown in South West Sydney by surveying student volunteers and their supervisors. The aim was to

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\(^8\) Giddings, n 5, 52.
\(^10\) Adrian Evans et al, Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School (ANU Press, 1st ed, 2017) ix.
\(^12\) Evans et al, n 10, 107.
understand the benefits of the program from the students’ perspective and to analyse the associated costs to the legal centre itself.

The students were positive about their experience at MLC. They experienced most benefit from the high levels of supervision from the legal staff at the Centre. They felt that their experience prepared them for the complexity of practice and enhanced their self-confidence.

There are, however, limits to what a community legal centre can offer. Provision of this type of training comes at a cost to the CLC and potentially diverts it from its core work. Our study also suggests that better outcomes may be achieved if clinical placements/ externships were integrated and combined with doctrinal teaching and that this may require substantial funding and redesign of course structures.

This paper will first examine what constitutes clinical and practice based learning and the perceived benefits such learning has for students. We will then examine the results of our study in detail before suggesting possible opportunities for further research and developments.

III THE IMPORTANCE OF PBL AND CLINICAL EDUCATION/ PLACEMENTS

The impetus for the recent growth in clinical student placements comes from research in Australia and overseas, particularly the USA, which suggests that the predominant paradigm of legal education gives only casual attention to teaching students how to use doctrine in the complexity of
actual practice. Unlike other professional education, most notably medical school, legal education pays relatively little attention to direct training in professional practice.\(^{14}\)

The traditional doctrine/skills dichotomy practiced in law school teaching is arguably artificial and problematic from an effective learning perspective. A number of courses, for example Dispute Resolution and Civil Practice, which naturally cover both doctrine based learning and professional skills, would particularly benefit from transition to a greater emphasis on PBL and clinical model methods. Consistent with adult learning theory, high order understanding requires active or experiential learning methods.\(^{15}\) Internationally, a return to the apprenticeship mode of teaching is gaining ground both in the United Kingdom and the USA as universities add greater clinical offerings and externships to their programs.\(^{16}\)

Contemporary major reviews of clinical legal education in the United States and United Kingdom have identified clinical education as a key strategy in strengthening graduates’ professional capabilities.\(^{17}\) Clinical legal education involves a small group learning experience in which students take responsibility for legal or law related work for a client in collaboration with a supervisor. Students can receive feedback on their contributions from supervisors and learn from that feedback as well as their experience through self-reflection and client interaction.\(^{18}\)

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\(^{15}\) Jessica Erickson, ‘Experiential Education in the Lecture Hall’ (2013) 6(1) Northeastern University Law Journal 89.

\(^{16}\) The UK law firm, Eversheds, has introduced an apprenticeship aimed at A-level school leavers which allows them to qualify as a solicitor after six years; Jane Croft, Law school is no longer the only path into legal world (21 November 2016) Financial Times <im.ft-static.com/content/images/4b343322-ad54-11e6-9cb3-bb8207902122.pdf>. The University of Notre Dame Illinois College now offers semester long externships.

\(^{17}\) Evans et al, n 10, 2.

\(^{18}\) Giddings, n 5, 2.
therefore “learning by doing and reflecting” and is recognised as important to both the academic and educational dimensions of legal education.19

In Australia, law schools still predominantly follow the classical positive law method for teaching law.20 This approach requires students to focus on studying legislation and case law and applying it to material facts in final exams. The doctrine/skills dichotomy found in the course curriculum is of course artificial. The classic case and doctrinal method of study does not address or only casually focuses on the need to teach students experientially so that they can develop skills necessary for professional practice.21 Critics of this method have argued that as theory, by definition, seeks to explain practice, teaching theory in the absence of practice may leave theory devoid of anything to explain.22 For this reason some have said that legal theory is inseparable from practice as it involves interaction with the world of experience.23

In the USA, prominent and respected authorities on legal education, including the Carnegie Foundation for the Advancement of Teaching, recommended significant curricular and pedagogical changes to address the criticism that law schools fail to prepare students for the practice of law.24 Australian education has suffered the same criticisms. The Pearce Report criticised Australian law schools for their lack of focus on practical skills.25 The Australian Law Reform Commission

21 Collins, n 20.
Cognitive science emphasises the importance of experiential learning. Situated cognition, the notion that learning must be situated within context has been central to educational theory for the last thirty years. The teaching of doctrine as distinct from skills discourages the type of integration proposed by the Carnegie Report. Among the reasons supporting integration is the established learning theory showing that higher-order understanding requires active or experiential learning. The ALRC too has recommended a greater emphasis on professional skills at university, recognising the importance of academics in shaping the future of the profession. As Gutman, McCormack and Riddle states— we must ensure that “learners are provided with a rich active learning environment instead of dull, inert lecture halls and tutorial rooms”. The movement towards the flipped classroom is an example of this— with lectures replaced by in-class practical exercises that focus on integrating doctrine with practical skills. Experience allows students a deeper engagement with doctrinal material. Active participation in the learning process can range from role-plays which help contextualise learning and keep students engaged to classroom simulations, moot court completions, externships or in-house or external clinics. 

29 Sullivan et al, n 14, 99. The report called for re-examination of the way in which law schools have segregated conceptual learning from the apprenticeship of practice.
30 Erickson, n 15, 87.
32 Gutman, McCormack and Riddle, n 9, 190.
education has the potential to make substantial contribution to legal education “through integrating practical insights and theoretical understanding in order to transcend the current doctrinal focus”.\textsuperscript{35}

Current legal scholarship supports the need to integrate academic scholarship with practical training.\textsuperscript{36} The American Bar Association Task Force Report on the Future of Legal Education argues that although law curriculum have been updated to include more experiential training, further steps should be taken towards up-skilling students for professional legal practice.\textsuperscript{37} Teaching and learning theory endorse a clinical education model as it moves students from merely declarative knowledge of the law to functional or professional knowledge.\textsuperscript{38}

Functional knowledge differs from declarative knowledge as it goes beyond content that can be declared by lectures and tested in case-theory exams and is focused on performance.\textsuperscript{39} It is this type of functional knowledge that is unfortunately lacking from university education and to which clinical education is aimed at. There is growing acknowledgement that clinical skills are valuable and best learnt in a “hands on” environment.\textsuperscript{40} This teaching and learning philosophy recognises that learning by doing in a situated learning environment adds depth to students’ learning and prepares them for professional practice.\textsuperscript{41} Erickson has argued that experimental learning is not just appropriate for a few skills courses but is the best way is “to teach all material in law school, including doctrine. Students must be able to use the law to craft legal arguments, draft legal

\textsuperscript{35} Evans et al, n 10, 14.
\textsuperscript{36} Gutman, McCormack and Riddle, n 9, 102.
\textsuperscript{39} Gutman, McCormack and Riddle, n 9, 189.
\textsuperscript{40} Mary Anne Noone and Judith Dickson, 'Teaching Towards a New Professionalism: Challenging Law Students to Become Ethical Lawyers' (2001) 4(2) \textit{Legal Ethics} 127.
documents and shape legal strategy. A student who has memorised the rules but cannot apply them does not know the law in a satisfactory way”.42

As students learn best by experiencing, the Dean of the University of California, Erwin Chemerinsky rightly proclaimed “there is no better way to prepare students to be lawyers than for them to participate in clinical education”.43

A The Rise of Clinical Legal Education and Associated Benefits

The aim of clinical legal education is to foster development of students away from just “thinking like a lawyer” to development of the necessary practical skills to serve clients effectively.44 Clinical education involves more than mere skills training; it gives students training in effective techniques for learning law from the experience of practising law.45 This method is also considered by students as helpful for making the transition to practice.46 Legal clinical education can also foster students’ commitment to justice and raise awareness of how the law impacts people, in such a way it can arguably be a more comprehensive pedagogy but comes at the cost of intensive student supervision.47

42 Erickson, n 15, 88.
45 Chemerinsky, n 43, 35-41.
46 Rebecca Sandefur and Jeffrey Selbin, 'The Clinic Effect' (2009) 16(1) Clinical Law Review 87. A 2009 study of law graduates in the USA confirmed that those with law school experiences that involved the use of and training in skills that practising lawyers use for their work are the experiences that new lawyers rated as the most helpful for making the transition into practice.
47 Evans et al, n 10, 20.
The growth of the clinical education movement in the USA was inspired by the concerns that academic instruction alone failed to develop professional competence. The clinic-based courses started in the 1940s and were focused on carrying out legal aid work. By 1960, a strong clinical law movement emerged with 494 clinical programs in USA law schools by 1976.\(^\text{48}\) This trend has continued with clinical education now an accepted part of many law schools’ curriculum in the USA, including at Harvard, Yale, Stanford and Columbia.\(^\text{49}\) Practical skills training is a requirement of accreditation of law schools by the American Bar Association.\(^\text{50}\) In the last 50 years, the American clinical education program has become deeply embedded in the core course curriculum, and has been recognised for the training it provides lawyers and its ability to combine theory and practical skills.

However, clinical programs in Australia are both different and significantly fewer than their American counterparts. In a recent report on Australian clinical legal education the authors acknowledged that there is a “long way to go” to go until the integrative potential of clinical education is harnessed in Australia. Stating further that until this time, “clinics are unlikely to feature prominently in professional admission requirements in the standard set for law schools”.\(^\text{51}\) In contrast to the USA, none of the major assessment and reviews of Australian legal education have made strong claims for clinical legal education.\(^\text{52}\) The 1987 Report of the Pearce Committee Review of Australian Legal Education\(^\text{53}\) was described as “oddly ambivalent about clinical programs…


\(^{51}\) Evans et al, n 10, 13.

\(^{52}\) Giddings, n 5, 10.

\(^{53}\) Pearce, Campbell and Harding, n 25.
expressing concerns about expense involved and doubt about the academic content and value of such programs”.\textsuperscript{54} The first Australian clinical program commenced at Monash University in 1975 and was followed by programs at La Trobe University in 1978 and the University of New South Wales in 1981. A further decade passed before further programs were developed.\textsuperscript{55} Over the last four decades small clinical programs have emerged in law schools across the country. The trend, however, is that law schools are no longer developing clinical programs through establishing their own clinic sites but are rather grafting placements onto existing community and government agencies.\textsuperscript{56} In an effort to reduce costs numerous law schools are relying on unpaid and unsupported external supervisors. In its 2007 submission to the ‘Review of the Impact of the Higher Education Support Act 2003: Funding Cluster Mechanism’, The Council of Australian Law Deans stated:

It is now widely accepted that legal education should have a clinical or industry placement component, with students having hands-on experience with real clients: yet clinical programs are so expensive that only a handful of law schools have been able to fund them adequately, usually with substantial support, to which many law schools do not have easy access.\textsuperscript{57}

Clinical legal pedagogy requires a process of reflection, self-critique and supervisory feedback.\textsuperscript{58} The clinical education literature emphasises the importance of effective supervision. A number of clinical models exist in Australia. These include in-house live client clinics which are defined as being “on campus, wholly or substantially funded and controlled by the law school for student education”.\textsuperscript{59} A key benefit of wholly law school controlled clinics is the focus on clinical teaching and the primary goal of meeting specific learning objectives.\textsuperscript{60} Although these clinics have the

\textsuperscript{54} David Weisbrot, \textit{Australian Lawyers}, (Longman Cheshire Melbourne, 1990) 134.
\textsuperscript{55} Giddings, n 5, 9.
\textsuperscript{56} Giddings, n 5, 10.
\textsuperscript{58} Evans et al, n 10, 41.
\textsuperscript{59} Evans et al, n 10, 50. These models have high supervision component- Kingsford Legal Centre and Newcastle University Legal Centre.
\textsuperscript{60} Evans et al, n 10, 51.
additional function of providing legal services to their community their primary focus is the educational objectives of the program. In contrast, in an external clinic, “students’ learning has to be negotiated in the context of the external agency’s priorities”. 61 External or agency clinics are another option used by Australian universities. The university has limited control over the programs but a law school academic/legal practitioner provides supervision of students onsite in the organisation. 62 Agencies, like community legal centres have high levels of demands and the “educational aspect of the program is often viewed as secondary” to the work of the agency. 63 Finally and of great relevance to this study are the externship and placement programs that are offered to students. The most significant growth in clinical legal education has been in this area. 64 Of all the universities in Australia which have clinical legal education courses, over half of those are externships and placement programs. 65

Many externship placements sites are community legal centres, maintaining the historical relationship with clinical legal education. 66 The distinguishing feature of these programs is that student supervision is the primary responsibility of the host organisation. Externships have also been criticised as an inferior form of clinical education because they are “not rigorously designed with clearly identified learning outcomes”. 67

The number of externship programs is increasing in Australian law schools because they are much less resource intensive then in-house programs, do not require establishing infrastructure and

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61 Evans et al, n 10, 53.
63 Evans et al, n 10, 56.
64 Evans et al, n 10, 56. Referring to Best Practices survey.
65 Evans et al, n 10, 107.
66 Brayne, Duncan and Grimes, n 19, 2. Regional Reports for Victoria and Tasmania, New South Wales and Australian Capital Territory, Queensland, Northern New South Wales, Western Australia and Northern Territory and South Australia; Evans et al, n 10, 107.
67 Giddings, n 5, 89.
clinical supervision is contracted out. However, the result is that law schools have less control over the students’ learning experience and accordingly the quality of the educational experience may be compromised. Academics have expressed concerns that these newer programs may be underperforming in any effort to inculcate a justice focus in their students.\textsuperscript{68} Arguably, the greater use of clinical teaching methods in Australia is not always supported by strong pedagogical methods required to maximise this teaching method.\textsuperscript{69}

Given that many externship placements in Australia are in community legal centres which are severely under-resourced there are concerns that students will not receive appropriate levels of supervision or be able to reflect on their learning to appreciate the benefits of the experience fully.\textsuperscript{70}

The resource limitations of legal centres along with a focus on serving community needs rather than addressing pedagogical ones may limit the attention paid to fostering awareness of client-focus practices or providing sufficient opportunities for student self-reflection. The benefits of a clinical environment may be lost or diluted if supervision is not focused on facilitating student learning or controlling case work.\textsuperscript{71} The practice of outsourcing clinical legal education to legal centres, therefore, raises a number of questions and concerns. Namely, how significant are the costs to the legal centre and the supervisory staff, how beneficial is the experience to the students and are students sufficiently able to link their doctrinal studies to their experience at the legal centre. MLC was selected as a pilot study to address these questions.

IV MACARTHUR LEGAL CENTRE STUDY

\textsuperscript{68} Evans et al, n 10, 17.
\textsuperscript{69} Evans et al, n 10, 5.
\textsuperscript{70} Evans et al, n 10, 61.
\textsuperscript{71} Giddings, n 5, 68. Referring to interviews conducted which demonstrated that clinicians had limited understanding of the complexities of student supervision before becoming supervisors.
MLC was established in 1987. It has a legal practice comprising a Principal Solicitor and five employed solicitors. The legal practice provides free legal advice to people living in the Campbelltown, Camden, Wingecarribee and Wollondilly Local Government Areas. The legal practice recently established an outreach in Goulburn. MLC has a Women’s Domestic Violence Court Advocacy Service that works with female victims of domestic violence in the Camden, Picton and Campbelltown Local Courts. It also has a Tenants Advice and Advocacy Service that provides advice and advocacy for tenants in South West Sydney from Fairfield to Macarthur.

The legal practice is based at Campbelltown. It also conducts 14 outreach services in its huge catchment area. MLC provides legal advice at these outreaches monthly, fortnightly or weekly depending on demand.

Its clients are overwhelmingly financially disadvantaged. Apart from financial disadvantage, MLC identified that in 2015-2016: 72

1. 14% of its clients reported having a disability;
2. 29% of its clients were from culturally and linguistically diverse backgrounds;
3. 16% of its clients identified as Aboriginal and Torres Strait Islander background; and
4. 71% of its clients were women.

During the same period, the main areas of practice at MLC were as follows: 73

<table>
<thead>
<tr>
<th>Matter type</th>
<th>Percentage (%)</th>
</tr>
</thead>
</table>

73 Ibid.
MLC works closely with its Domestic Violence and Tenancy services to provide holistic support to clients who often present with complex and interrelated problems. A victim of domestic violence, for example, will often be trying to get out of a violent relationship. She may need urgent housing and access to many other support services such as mental health services and financial counselling.74

MLC, like all community legal centres, relies heavily on volunteers from the legal profession and law students who make regular commitments to work there. MLC’s student volunteer program is run by one of its senior solicitors under the supervision of the Principal Solicitor.

The student volunteers begin their training at MLC by working on reception and taking telephone calls. Working in reception and fielding the first telephone calls from clients, students learn:

1. the importance of recording the client’s story and information correctly;

2. to undertake conflict checks;

74 Ibid, 6, 13.
3. how to deal with clients who may be angry and confused; and

4. how to use office systems such as databases.

They do this under the supervision of the senior solicitor responsible for the program, MLC’s receptionist or students who have worked at MLC for some time and are confident in dealing with these tasks.

Students who can commit to weekly attendances at MLC may be allocated to work with a solicitor as a paralegal or given a project. These students draft file notes, conduct research, prepare briefs and bundles of documents for Court and Tribunal hearings and for victims’ support applications. Students with specific expertise are sometimes allocated tasks that build on their skill set.

Many of the students work at MLC for two, three of four years while they are completing their studies. Their work is supervised by the lawyers who often provide informal mentoring and career advice to the students.

The two surveys that constitute this study were conducted with ethics approval from the University of Notre Dame, Australia. First, we sent out a quantitative and qualitative survey by email to fifteen past and present student volunteers of MLC. Fourteen students responded to the survey. The second survey was a qualitative survey of current MLC staff responsible for the supervision of the student volunteers. Eight staff were invited to take part and six staff members completed the survey. The questions sent to the supervisors were designed to find out what their experience of the student program was, what growth they see in the students over time and the costs and benefits to MLC of conducting the student volunteer program.
A Results and Discussion

1 Student Survey

Although this pilot study had a limited response rate,\textsuperscript{75} thematic analysis revealed that students did benefit from the clinical experience but that these benefits were enlarged when participating in certain tasks or working closely with a supervisor.

Surveyed students participated in the following tasks during their time at MLC:

<table>
<thead>
<tr>
<th>Activities and tasks assigned to students</th>
<th>Response Percent (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Front desk (answering phones, welcoming clients and enquirers)/reception</td>
<td>92.9</td>
</tr>
<tr>
<td>Day student volunteering with direct supervision by an assigned MLC senior solicitor</td>
<td>42.9</td>
</tr>
<tr>
<td>Focused on preparing a case for Court or a Tribunal</td>
<td>28.6</td>
</tr>
<tr>
<td>Drafting legal documents, general correspondence, forms</td>
<td>42.9</td>
</tr>
<tr>
<td>Assisting with casework (e.g. Typing up file notes, contacting client and other services, making appointments)</td>
<td>50.0</td>
</tr>
<tr>
<td>Research tasks</td>
<td>35.7</td>
</tr>
</tbody>
</table>

(a) Enhanced an understanding of the law

The importance of bringing the law office, with its “direct atmosphere of daily professional life” have been recognised as a benefit of clinical experience.\textsuperscript{76} Clinics are an important opportunity for

\textsuperscript{75} Response rate for all data is 14 students and 9 Supervisors

students to obtain practical legal skills in the course of their theoretical legal studies. A growing emphasis on “work-integrated learning” and the importance attached to providing capstone experience are linked to university interests in developing graduate attributes and employability skills. In a study measuring the benefits of clinical education, Sandefur and Selbin found that 62% of USA new attorneys surveyed rated clinical courses as being ‘helpful to extremely helpful’ as part of their preparation to becoming a practitioner. By contrast, only 48% rated their upper level doctrinal classes this way and less than 37% rated first–year courses in that manner. The present study, students where asked whether these tasks and activities, in their view, enhanced their understanding of the law and the practices of a legal office.

Student perception of how specific activities enhanced their understanding of law

<table>
<thead>
<tr>
<th>Task</th>
<th>Not applicable</th>
<th>Outstanding/ A lot</th>
<th>Very good/ A bit</th>
<th>Satisfactory/ Not much</th>
<th>Not at all</th>
<th>Waste of time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Front desk/reception</td>
<td>7.1%</td>
<td>28.6%</td>
<td>42.9%</td>
<td>14.3%</td>
<td>7.1%</td>
<td>0%</td>
</tr>
<tr>
<td>Working under direct supervision of an assigned MLC senior solicitor</td>
<td>38.5%</td>
<td>46.2%</td>
<td>15.4%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Working in preparation for a case in a court or tribunal</td>
<td>61.5%</td>
<td>23.5%</td>
<td>15.4%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Writing letters of advice or legal correspondence</td>
<td>53.8%</td>
<td>30.8%</td>
<td>15.4%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Preparation of file notes</td>
<td>35.7%</td>
<td>21.4%</td>
<td>35.7%</td>
<td>7.1%</td>
<td>0%</td>
<td>0%</td>
</tr>
</tbody>
</table>

Discounting students who did not engage in the specific activities, the results indicate that most students found significant benefit to their understanding of law and legal practice from the clinical experience. Unsurprisingly, and consistent with the academic literature on the importance of

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77 Pain, n 48, 108.
79 Sandefur and Selbin, n 46, 85-86, 94-95.
supervision, students learnt most from working under direct supervision of an assigned solicitor and engaging in more rigorous legal work including preparing for court or preparing letters of advice.

In the free-word responses provided by students, the findings demonstrated the effectiveness of clinical experience in bridging the gap between theoretical learning and practice. In particular, despite the differences in tasks that students undertook, students reported an increased understanding of clients’ needs and the importance of clear communication.

**Student free-word responses to designated tasks**

<table>
<thead>
<tr>
<th>Task</th>
<th>Selected Student response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Front desk/reception</td>
<td>“It showed the diversity that comes with working in a legal office and helped me more thoroughly understand different elements of the law and how we are confronted with the law in every-day life.”</td>
</tr>
<tr>
<td></td>
<td>“It helped me in learning how to speak to clients and perform legal triage to figure out what the issues were in a case”</td>
</tr>
<tr>
<td></td>
<td>“It highlighted the practical realities of working within a legal centre/environment”</td>
</tr>
<tr>
<td>Working under direct supervision of an assigned MLC senior solicitor</td>
<td>“It gave me a good understanding of the practicalities of work in a law office compared to the theory of university”</td>
</tr>
<tr>
<td></td>
<td>“It helped me to understand how to interact with clients and how to be meticulous when listening and receiving information from clients.”</td>
</tr>
<tr>
<td>Working in preparation for a case in a court or tribunal</td>
<td>“It helped me with assessing evidence and the procedural steps for court cases”</td>
</tr>
<tr>
<td>Writing letters of advice or legal correspondence</td>
<td>“It taught me a lot about drafting and communicating yourself effectively to a non-lawyer”</td>
</tr>
<tr>
<td></td>
<td>“It helped me understand the language necessary when corresponding with clients”</td>
</tr>
</tbody>
</table>
Preparation of file notes | “It reinforced the importance to timely, precise and relevant file notes.”

(b) Greater understanding of ethical and professional obligations

Importantly, clinical programs provide law students with opportunities for community service, ethical reflection and a stage on which to promote awareness of social justice and commitment to pro-bono values. It has been argued that clinic experience can encourage students to undertake pro-bono work and can orientate students towards a greater interest in social welfare law. Clinical experience, particularly in community legal centres, can facilitate a student’s understanding about the limitations of the law and legal process and highlight the importance of access to justice. Clinical methods can move legal education beyond an understanding of legal rules towards a focus on issues of justice. The literature on clinical legal education also emphasises the suitability of practice contexts for fostering ethics-related learning.

Decades of pedagogical experimentation in clinical legal teaching, the example of other professional schools and contemporary learning theory all point toward the value of clinical legal education as the site for developing not only intellectual understanding and complex skills of practice but also the dispositions crucial for legal professionalism.

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80 Evans et al, n 10, 13.
81 Jane Harris Aiken, ‘Striving to Teach Justice, Fairness and Morality’ (1997) 4 Clinical Law Review 50.
82 Giddings, n 5, 3.
A clinic in a social justice setting “offers rich opportunity for the study of legal ethics, professional responsibility and models of lawyering”. A pedagogical advantage that a clinic has over legal practice in teaching ethics is that “spontaneous ethical issues-or the unnoticed ones” are more easily identified and managed in a supportive environment. Of the prescribed legal rules, those concerning confidentiality and conflict of interest often arise in a clinic.

A key part of the induction of student volunteers is ensuring they understand the importance of avoiding conflicts of interest. This is standard fare in all ethics training for law students. However, nothing teaches the necessity of avoiding conflicts more concretely than being made aware of the risk of damage that can occur when much of MLC’s work involves domestic violence and care and protection matters. Learning how to conduct the necessary searches of a MLC’s database gives the volunteers practical understanding of the importance of avoiding conflicts and the lengths that practices have to go to make sure they do not arise.

**Student response: Has work at MLC enhanced your understanding of ethical or professional obligations that lawyers owe their clients?**

<table>
<thead>
<tr>
<th>Ethical obligation</th>
<th>A lot</th>
<th>A bit</th>
<th>Not much</th>
<th>Not at all</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obligations of Confidentiality</td>
<td>78.6%</td>
<td>14.3%</td>
<td>0%</td>
<td>0%</td>
<td>7.1%</td>
</tr>
<tr>
<td>Avoiding conflicts of interest</td>
<td>100%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Client Legal Privilege</td>
<td>64.3%</td>
<td>14.3%</td>
<td>7.1%</td>
<td>0%</td>
<td>14.3%</td>
</tr>
</tbody>
</table>

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84 Evans et al, n 10, 111. La Trobe University offered a legal ethics course through its external, live client clinical courses in partnership with Victoria Legal Aid Office and West Heidelberg Community Legal Service. Mary Anne Noone, Judith Dickson and Liz Curran, ‘Pushing the Boundaries or Preserving the Status Quo?’ Designing Clinical Programs to Teach Law Students A Deep Understanding of Ethical Practice’ (2005) 8 *International Journal of Clinical Education* 104.

85 Mary Anne Noone, Judith Dickson and Liz Curran ‘Pushing the Boundaries or Preserving the Status Quo?’ Designing Clinical Programs to Teach Law Students A Deep Understanding of Ethical Practice’ (2005) 8 *International Journal of Clinical Education* 104.

86 Evans et al, n 10, 115.
Our findings supported this hypothesis. Importantly almost all respondent students obtained a greater understanding of their ethical obligations and legal duties of confidentiality as well as legal professional privilege. Students were asked whether their work at MLC enhanced their understanding of the obligations of confidentiality that legal practitioners owe to their clients, duties of client legal professional privilege and duties to avoid conflicts of interest. Almost all students reported an enhanced understanding of these obligations.

Across all categories, on average, the responses indicate that despite a doctrinal focus on ethics and professional responsibility, work at MLC had a significant impact on student’s understanding of these areas. Accordingly, it seems that clinical legal education and clinical placements are a fertile teaching ground for both ethics and professional responsibility.

(c) Building student confidence

The experience had the additional benefit of increasing student confidence in their abilities to enter the legal profession. Students were asked whether the experience has made them more confident in dealing with clients in legal matters as well as their ability to work in a team.

**Student response: Student self-confidence**

<table>
<thead>
<tr>
<th>Question</th>
<th>A lot</th>
<th>A bit</th>
<th>Not much</th>
<th>Not at all</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Has the experience enhanced your confidence in dealing with clients in legal matters</td>
<td>78.6%</td>
<td>14.3%</td>
<td>7.1%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Has the experience enhanced your confidence in your ability to work in an office as part of a team</td>
<td>50%</td>
<td>28.6%</td>
<td>21.4%</td>
<td>0%</td>
<td>0%</td>
</tr>
</tbody>
</table>
Our findings on student confidence support the potential of clinical education to improve the well-being of law students and their self-esteem. This is particularly important in light of recent literature which recognises the damaging impact of legal studies on students’ mental health. Clinic-based experiences, with their developmental focus and emphasis on supervision and collaboration, clearly have valuable contribution to make to improving understanding of models of positive lawyering and reducing students’ levels of stress and anxiety by ensuring that students feel greater confidence in their ability to practice law.

(d) Importance of reflection and supervision

Despite the identified benefits of volunteering at MLC, students were not unequivocal in relation to their views as to how the experience of volunteering benefitted their legal education. When asked whether their work at MLC as a student volunteer changed their academic results in their legal studies—the responses were almost evenly split with almost as many students answering that question in the negative. Importantly, even when students did respond in a positive way to the question they were unable to articulate the ways in which their experience at MLC contributed to their results in other doctrinal courses. At best, one student stated that their experience was beneficial because they were better “able to decipher through irrelevant facts and get straight to the key legal issues that need to be addressed”.

Student response – impact of volunteering on legal study results

87 Evans et al, n 10, 29. The 2009 ‘Courting for the Blues’ project reported that 35 percent of Australian law students recorded elevated levels of psychological distress as compared to 13 percent of the general population. Almost 40% of those students with high or very high levels of psychological distress reported distress severe enough to warrant medical or clinical intervention; Norm Kelk et al, ‘Courting the Blues: Attitudes Towards Depression in Australian Law Students and Lawyers’ (Research Report, Brain and Mind Research Institute, January 2009).

88 Evans et al, n 10, 31.
Do you think that your work at MLC as a student volunteer has changed your results in your legal studies? | Response Percent
---|---
Yes | 42.9%
No | 57.1%

It is a longstanding assertion of clinical legal education proponents that one of the most important elements of a good clinical education program is reflection. Milstein, states that the ultimate aim of clinical teaching is to develop reflective practitioners and lifelong learners. These results demonstrate the importance of self-reflection and the fact that student self-awareness must be fostered through a combination of clinical work and discussion. Although valuable, experience in legal centres cannot sufficiently address the need to teach and assess students using an integrative approach to doctrinal and skill based pedagogy whilst at university. The benefits of a clinical environment may be lost or diluted if supervision is not focused on facilitating student learning but is rather only incidentally emphasised or assumed. In this way, our data supports the recommendation that it is best practice for clinics to have a classroom component that enables students to examine the broader context of the law and apply it to their experience. Students should be expected to read, analyse and use academic, professional and practical material to encourage broad and contextual analysis of the law. Supervisors must take a purposeful approach to enabling students to “learn how to learn from their experience”. This approach should include working closely with students to foster structured reflection and enable students to become life-long learners. Clinical methods will not achieve their potential without effective supervision. Our data

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91 Evans et al, n 10, 90.
92 Evans et al, n 10, 90.
93 Evans et al, n 10, 247.
supports the concern that this reflective supervision is not always available in external placements. It may also be important to consider how law students most constructively learn from their respective placement experiences and give greater focus to the classroom component of clinical education.

(e) Pro-bono effect

Clinical legal education in Australia has many connections with social justice. In Australia clinics have been in a ‘symbiotic relationship [with] legal aid agencies, in particular legal community legal centres…with commitment to access to justice’. 94 Founders of the clinical legal movement had previously worked in and with community legal centres. 95 Students placed in community legal centres are exposed to the casework of the legal centre which focuses on assisting disadvantaged clients and communities. The most significant finding of this study was the unequivocal impact that the experience had on students’ interest and willingness to undertake pro-bono and community work. Although alluded to in earlier research, the results demonstrate that following their experience at MLC all students reported a greater willingness to engage in voluntary work, community work or pro-bono work. Students were also asked if their experience at MLC has influenced their decisions about their careers. In this category, overwhelmingly, respondents highlighted their desire to engage in community or pro-bono work.

**Students attitude to future pro-bono work**

“It is one of the most rewarding things I have done as a law student”.

“I think it is imperative to undertake community/pro-bono work as a way to ‘give back’ to society”.

“I would be more inclined to do volunteer work in a community center as I found the work rewarding to help those in need”.

“It has made me consider pursuing non for profit legal careers”.

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95 Evans et al, n 10, 102; Mary Anne Noone, ‘Community in legal centres: Autonomous and alternative’ in Mary Anne Noone and Steven Tomsen (eds), *Lawyers in Conflict: Australian Lawyers and Legal Aid* (The Federation Press, 2006).
“This experience has allowed me to realise that law is really what I want to do with my career”.  
“It's really given me a passion to want to help others”.

These comments suggest that the CLC experience enhanced the students’ understanding of the social justice possibilities of legal practice. They are consistent with earlier findings that students who participate in clinical legal education have an increased commitment to community and pro-bono work.

2 Supervisor Survey

Supervisors were also asked to comment on their experience as supervisors of students at MLC. The respondents all had extensive experience in supervising students at MLC ranging from 3-10 years with an average of 5.5 years of experience.

(a) Skills training for students

All supervisors acknowledged the educational benefits for students. Specifically, they emphasised skills based training including the expectations of a professional environment, communication with clients and the importance of client confidentiality as well as the application of theoretical knowledge to specific real life questions.

Supervisors’ attitude to the impact of volunteering in a CLC

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96 Six respondents participated in the survey.
<table>
<thead>
<tr>
<th>Supervisor A</th>
<th>“I believe it helps them to understand the complex dynamics with clients who present for legal support, shows that a client may not just have &quot;one issue&quot;.”</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supervisor B</td>
<td>“Engages students with the reality of the practice of law and how the theoretical issues that arise are resolved in practice. Skill development”.</td>
</tr>
<tr>
<td>Supervisor C</td>
<td>“Skills and experience gained by students include:- legal practice experience- confidence-ability to work with broad client base- communication skills- community focus, and respect in client work- effective team work skills- one-on-one mentoring with experienced practitioners”.</td>
</tr>
<tr>
<td>Supervisor D</td>
<td>“[Students] have theoretical knowledge and no way of translating this into a real life situation or how it can be used in a relevant way, as well as how the various &quot;subjects&quot; at university inter relate in real life”.</td>
</tr>
</tbody>
</table>

Most supervisors emphasised that attendance and prolonged commitment to MLC were necessary conditions for students to benefit from the program. In particular, most supervisors felt that a period of 6-12 months was necessary for students to obtain benefits. As one supervisor noted: “Regular and continuing attendance is absolutely necessary of there to be any benefit to the student (and to the Legal Centre-as this all takes my time as well)”.

(b) Mutually beneficial experience

Supervisors at MLC acknowledged that student placements at MLC can be mutually beneficial for both supervisors and MLC. In particular, supervisors noted that the assistance with solicitor case work, administration duties and research improved the performance of MLC and allowed for MLC’s increased capacity of workload and support services. The additional staffing resources as
well as the opportunity to mentor students were seen as personal benefits to supervisors and to MLC.

(c) Significant cost burden

However, the results from this study indicate that such programs place heavy burden on both supervisors and MLC. The costs incurred by MLC included both the administrative costs of the program itself, including review of student applications, the preparation of orientation/induction packs for new students and the time to conduct an orientation/induction sessions for each volunteer, drafting training material and preparation of timetables and rosters. Supervisor time was also occupied with training students in the procedures and processes of MLC as well as the ongoing supervision of students. Supervisors reported that this supervision burden included providing ongoing feedback to volunteer students, answering questions, general email correspondence and organising review sessions. Some supervisors felt that the resource intensive nature of the supervisory role was too burdensome and negatively impacted MLC.

**Supervisors’ attitude to the impact of volunteering in a CLC**

| Supervisor C | “It is time consuming to train and mentor students and this is inversely a drain on the resources of the centre”.
| Supervisor D | “[The process] is resource intensive - this is ONLY worthwhile if students are committed to regular attendance (otherwise the energy/time/resources are essentially wasted). Clinical placement students were just a drain on resources (one week placement, with no real student commitment)”.

Supervisors also recognised the financial burden that is placed on the limited resources of MLC and expressed concerns that without appropriate university funding, legal centres are being hampered in their primary role to service the legal needs of the community.

**Supervisor’s attitude to the impact of volunteering in a CLC**

| Supervisor E | “Lots of time and resources to assist in taking on a student. I would suggest there is a significant financial burden on a legal centre to do this role. I would also suggest that if a University is seeking placements, they should consider giving money to support that because otherwise it is very difficult. I believe that Universities are well placed to make a contribution to having their student’s access appropriate and highly valuable placements”.
 |

Our survey supported the concerns that external placements raise concerns in terms of balancing the needs of the host organisation with those of its clients and participating students. With the workload that supervisors are expected to carry it is unreasonable to expect in-depth supervision tailored to each student.

These costs may be offset by the contribution made by students. However, as noted by most supervisors in this study, students need to commit to longer term placements and maintain a relationship with the legal centre for at least 6-12 months. This sentiment was recognised by one supervisor who stated: “The only ‘cost’ from my perspective is the time I take to train and educate, however, this is offset should they prove to be a good student and take over basic tasks”.

97 Evans et al, n 10, 123.
98 Evans et al, n 10, 125.
Therefore, calls to expand such programs should be reconsidered in light of the student experience and supervisor feedback obtained in this pilot study. Specifically, short term placements are of little value to the students and may be too costly for legal centres to administer and should either be funded by universities or run entirely by university-funded clinics.

3 Recommendations

This pilot study demonstrated that student experience at MLC contributed to students gaining an enhanced understanding of the law and the practical realities of working in a legal environment. The results demonstrated that this enhanced understanding was linked to skills training and was increased where students were closely supervised and engaged in practical legal tasks. Students also overwhelmingly reported greater appreciation of their ethical obligations in relation to conflicts of interest and legal duties of confidentiality as well as legal professional privilege. The clinical experience had the additional benefit of boosting student confidence in dealing with clients and engaging in team work. Finally, the study’s findings confirmed a theoretical hypothesis that participation in clinical work unequivocally increases students’ desire to engage in pro-bono and community work in the future.

Although some students found the experience highly beneficial to their university studies and doctrinal learning others found it did not greatly enhance their formal learning. It is possible that students were not able to sufficiently link the doctrinal knowledge they had accumulated at university with the every-day practice experienced at MLC. Furthermore, the supervisor survey and data on costs revealed the significant burden that student supervision and clinical programs place on legal centres.
It cannot be denied that law, practice and procedure are intertwined and that academic instruction and teaching would be better if it were provided simultaneously with legal experience. However, short-term externships and placements in legal centres cannot replace university run legal clinics. Law students must be able to put into practice what they “know” and legal education must teach them to “do” what their professional roles actually require. However, it may not be appropriate for universities to outsource teaching to legal centres, especially where the cost of the program may detract from the much needed and already stretched centre resources. Furthermore, legal centres may not be in the best position to provide the necessary time students require to reflect on their learning so as to ensure optimal linkages are made between skill training and doctrinal teaching. Threshold learning outcomes (“TLOs”) require universities to ensure that graduates understand and are able to do certain things as a result of learning. Clinical legal education is in a unique position to offer several TLOs at a time and to a much greater degree. Practical education in the law school will ultimately lead to improvements in teaching and learning.

It is suggested that a further review of clinical programs in Australia is conducted and that specialist clinical programs that incorporate the doctrine and skills of a number of pre-existing subjects such as Civil Procedure, Dispute Resolution, Advocacy and Legal Writing be introduced in law schools. Where resources permit, such clinical programs should be run “in-house” and avoid outsourcing and partnering with legal centres which can detract resources from already burdened centres and may not benefit students as clinical programs can.

The incorporation of Alternative Dispute Resolution (“ADR”) and Civil Procedure into clinical teaching has been proposed by a number of academics. Osborne suggested that clinical legal education in ADR can focus on the student as a future practitioner—drawing on skills recognised as

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99 Batagol and Hyams, n 26, 185.
central to practice, including communication techniques, legal drafting, negotiation and practical legal research.\textsuperscript{100} Menkel-Meadow, a legal scholar and teacher of ADR, has also advocated for the adoption of an interdisciplinary, contextualised, problem-solving curriculum.\textsuperscript{101} In particular she has stated that skills teaching using clinical methods actually teaches students different behaviours than they are taught in the rest of their legal education including: openness to clients, receptivity, reasoning, creativity, listening, discretion and judgment.\textsuperscript{102} As she has aptly put:

Modern legal education may need to address different types of problems in different ways and allow our students to learn theoretically, doctrinally, creatively and experientially to ultimately work in many different settings. The classic case and doctrinal method of study may not be appropriate for all forms of legal problem solving. It is clearly not the only sufficient means of a modern legal education.\textsuperscript{103}

There is a strong correlation between the type of skills students develop in clinical education programs and the skills required by ADR practitioners and litigators. It is for this reason that the authors suggest that ADR and Civil Procedure be taught using a clinical or problem based approach but be administered by the universities. Effective litigators are problem solvers and as stated by Morton, a competent problem solver must have “an awareness of the skills of legal analysis, legal writing, negotiation, client counselling and mediation…the ambiguous situations of law practice require more original though than is taught through appellate cases”.\textsuperscript{104} It is clear that there is a role for both clinical education and its application to ADR and Civil Procedure in broadening and improving the education of tomorrow’s lawyers.

\textsuperscript{100} Matthew Osborne, ‘Alternative Dispute Resolution and Clinical Education in Australian Law Schools: Convergent, Antagonistic or Running in Parallel?’ (1996) 14(1) \textit{Journal of Professional Legal Education} 97.


\textsuperscript{103} Carrie Menkel-Meadow, ‘Crisis in Legal Education or the Other Things Law Students Should be Learning and Doing’ (2014) 45(1) \textit{McGeorge Law Review} 135.

ADR courses and Civil Procedure are courses particularly adept at teaching legal skills required for practice along with substantive doctrine. According to Mayer, communication is at the heart of conflict and its resolution.\textsuperscript{105} Whilst teaching ADR skills of active listening, reframing, appropriate questioning and summarising, students are also encouraged to recognise the value of empathetic understanding and to develop greater emotional intelligence. These skills will no doubt improve students’ ability to practice as effective lawyers. Furthermore, they address the criticism that the prolonged system of higher education has been said to stifle emotional competence.

Legal education has arguably underemphasised the role of cultural awareness and communication skills. Cultural awareness can be taught and learned in a clinical context and the importance of teaching diversity cannot be understated where many lawyers will work in other jurisdictions or will advise cross-border clients.\textsuperscript{106} The benefit of clinical education includes not only a greater appreciation for the practical operation of the law but the development of social skills, problem solving skills, sound practical judgement, ability to work in teams particularly with non-lawyers, effective communication, ability to manage risk and greater understanding of professional obligations and cross cultural competence.

V CONCLUSION

The notion that law schools should produce practice-ready graduates is not new, nor is the argument that the development of practical skills is needed in the law curriculum. As the number of law

\textsuperscript{105} Bernard Mayer, \textit{The Dynamics of Conflict Resolution} (Jossey-Bass, 2000) 3.
graduates increases, the industry and job market becomes more competitive. Employers and clients “increasingly look to law school to do the initial practical training that once occurred in the law firms themselves”.107 In today’s cramped market place, with growing automation of legal tasks, law schools must provide superior educational value in order to ensure that their students have a real chance at prospering in the future. Law schools must also teach interdisciplinary skills and knowledge to enable graduates to seek employment outside of traditional legal roles. The globalisation of educational practices such as clinical teaching and engagement with the legal profession is something Australian law schools must pay greater attention to. By blending doctrinal pedagogy with experiential legal education, Australian law schools can enhance the educational experience offered to our students. Vocational instruction will hopefully produce graduates who are ready for practice which is a requirement that is growing in importance.

However, while experiential learning opportunities have become more prominent in some law schools, the pedagogy informing these programs requires further development. The growth in external placement clinics should be closely monitored to ensure that academic standards are met and that students’ learning objectives are prioritised.

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