

CLINICAL LEGAL EDUCATION'S CONTRIBUTION TO BUILDING CONSTITUTIONALISM AND DEMOCRACY IN SOUTH AFRICA: PAST, PRESENT, AND FUTURE

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INTRODUCTION

South Africa witnessed the inception of clinical legal education (CLE) programmes in the late 1960's early 1970s.¹ Considering the political dynamic in the country at the time these programmes were incepted primarily as a means to address the injustices of an oppressive political system.² Over the years, CLE programmes were established at all universities in South Africa.³ Today, there are 17 university law clinics around the country, members of the South African University Law Clinic Association (SAULCA).

However the question that remains is: Some forty years later, having witnessed a transition to democracy, how have CLE programmes in South Africa affected change or been affected by change? This paper analyses the role of South African Law Clinics in building democracy in South Africa over the past twenty years and changes that are needed to contribute to building constitutionalism and democracy in South Africa in the future.

There are five sections. In part one, we present a historical overview of clinical legal education programmes in South Africa. Part two discusses the present status of the CLE programmes, including the results of a survey that the authors conducted on the current trends in the various CLE programmes. We ask how South African law schools and legal clinics might undertake more systemic law reform and community representation and, in the process, engage South African law students on how to think strategically about the larger legal problems confronting their clients and South African society? Part three addresses the

¹ Shaheda Hassim Mahomed, *Critical Evaluation of Practical Legal Studies Programme at the University of the Witwatersrand*, PhD thesis (2014) pg 72. When we use the term CLE we mean the university based law clinics that were established in the law faculties of universities to provide free legal services. Law students advise clients either on a pro bono or a credit basis under the supervision of attorneys. At most universities students are enrolled simultaneously in a CLE course often called Practical Legal Studies or Legal Aide. The original clinic at the University of Cape Town was started by students. Today, the law clinics serve for the most part as the site for teaching law students legal skills while working with clients as part of a formal course

² Shaheda Mahomed & Philippa Kruger, *Teaching legal writing at the University of the Witwatersrand Clinic* 3 *John Marshall L. J.* 105 (2009).

³ Willem De Klerk, *University Law Clinics in South Africa*, 122(4) *SALJ* 929 (2005).

challenges and barriers that CLE programmes experience and proposes some solutions including ideas on how CLE programmes in South Africa could advance beyond what is already in place through greater integration in the curriculum and greater experimentation with new areas of focus. The authors suggest that there are at least three proposed reforms to CLE that could bring it in line with transformative constitutionalism: (1) an integration of CLE into the LLB, (2) mandatory community service for law students, and (3) an inclusion of a public interest focus within CLE programme. Part four compares the status of CLE programmes in the United States and South Africa, particularly in relation to advancing social justice and law reform, and part five draws conclusions.

I. HISTORICAL BACKGROUND

Prior to the 1970s, legal education in South Africa concentrated on advancing private law as opposed to public law.⁴ A distinct impediment towards establishing CLE programmes was the fact that most law schools offered only part-time study programmes. This made it difficult for students who worked during the day to participate in other activities. As law schools began to introduce full time legal programmes and as some progressive academics began responding to social equality the seeds for the inception of legal aid clinics were planted.⁵

In South Africa a number of universities established legal-aid clinical programmes in the 1970's, first at the University of Cape Town (UCT) and soon thereafter faculty initiated programmes at the University of the Witwatersrand, University of Natal and Rhodes University.⁶

In 1973, after a conference sponsored by the Ford Foundation, a number of legal-aid programmes were started at law schools.⁷ By 1981, fourteen universities had established law clinics, including “Cape Town (1972), the University of the Witwatersrand (1973), Natal(Durban) (1973), Port Elizabeth (1974), Natal (Pietermaritzburg) (1974), Western Cape

⁴ C.J.R Dugard, *A Review of South African Legal Education, Legal Aid in South Africa* Published by the Faculty of Law University of Natal, Durban, South Africa, 160 (1974).

⁵ Mahomed PhD thesis op cite note 1 at 72.

⁶ De Klerk, supra note 2, at 930. See also Peggy Maisel, *Expanding and Sustaining Clinical Legal Education in Developing Countries: What We Can Learn from South Africa*, 30 Fordham Int'l L. J. 374, 377-380 (2009).

⁷ David McQuoid –Mason, Ojukwu & Wachira, *Clinical Legal Education in Africa Legal Education and Community Service*, The Global Clinical Movement 25 (Frank Bloch, ed. 2011).

(1975), Stellenbosch (1975), Durban-Westville (1978), Zululand (1978), Rhodes (1979), the North (1980), Pretoria (1980), South Africa (1981), and Rand Afrikaans University (1981).”⁸

These clinical programmes were established primarily in order to increase the access to legal services for the poor and vulnerable.⁹ As indicated by Professor Kentridge, this period was marked by very little commitment by the State towards providing legal aid for disadvantaged persons; of course, this was largely motivated by the political circumstances at the time.¹⁰ Therefore, with a lack of government commitment for access to justice programmes, university students, particularly law students, took it upon themselves to bridge the gap. By 1986, at least sixteen universities had established university law clinics. The increase in legal aid programmes in the 1990s was motivated by a number of factors, including an increase in the development of state legal aid systems; the accreditation of law clinics by the South African Law Society; funding received by universities from the Attorneys Fidelity Fund (AFF), specifically for the educational development of clinical programmes, and the establishment of the Association of University Legal Aid Institutes (AULAI) whose primary objective remains to promote clinical programmes in South Africa.¹¹ By 1997 every law school in South Africa had a clinic.¹²

II. PRESENT STATUS: Law Clinics and Transformative Democracy

One question this paper seeks to address is what impact South African university based law school clinics are having on transformative constitutionalism twenty years after democracy and a new Constitution. Are South African law students through the CLE courses being exposed to thinking strategically about the systemic legal problems confronting their clients and South African society? We conducted a recent survey to ask what type of CLE courses South African law schools are currently undertaking and what legal work the students and law clinics are doing. We also inquired whether the law faculty wants to engage in more law reform work, and, if so, what are the barriers to engaging in more systemic, as opposed to individual, case work. The responses show a mixed picture.

⁸ Ibid

⁹ David McQuoid-Mason, *Clinical Legal Education: It's Future in SA*, 40 *THRHR* 352 (1977). See also Franciscus Haupt, *Some aspects regarding the origin, development and present position of the University of Pretoria Law Clinic* 2 *De Jure* 229 (2009).

¹⁰ F.N.Kentridge, *Lead – in Address*, in David McQuoid – Mason *Legal Aid in South Africa* (1974) 87-89.

¹¹ Mahomed PhD thesis op cit note 1 at 75. The name AULAI has subsequently been replaced by the name SAULCA – South African University Law Clinics Association.

¹² De Kerk op cit note 2 at 931.

In the past decade there has been a merger of some universities so that there are now seventeen South African public universities. All of these universities have law faculties and each law faculty has a law clinic. However, as was true before the mergers, the law clinics at different universities differ substantially as to their number of faculty members and staff, the classroom component of their clinical course, whether students must participate in the law clinic for graduation, and the types of legal work they undertake. It is beyond the scope of this paper to analyse what is currently happening at all of the South African law school clinics.

The results of our recent survey are attached as an appendix. While a survey was sent to every law clinic, responses were received from only seven schools out of 17: Rhodes, University of Witwatersrand, University of Pretoria, University of Stellenbosch, North-West University Potchefstroom, University of Johannesburg, and the University of Cape Town. These seven law schools during apartheid were all historically white universities, either English or Afrikaans, with more resources than any of the historically black Universities. North-west University, which merged with Potchefstroom, was a historically black university but it had a history of a stable law clinic, with a major focus on Street Law that had been developed for many years during apartheid, and was led by a faculty member who now directs the Rhodes Clinic. The point is the current survey responses do not elucidate the issues and barriers facing the historically black South African universities or others that did not respond. These university law clinics are most likely facing even greater resource and other constraints than those experienced by the seven university law clinic directors who completed the survey. The respondents are law clinic directors who are faculty or staff members at their respective universities and have directed their legal clinics, in some cases, for many years. These law clinics are relatively stable, with university support for all of them as well as outside funding. Even so the survey reflects the substantial challenges facing the clinics in both their legal work and education of the students.

Since the Interim and then final Constitution were enacted in 1994 and 1996, the South African Legal Aid Board has worked hard to meet the Constitutional mandate of providing legal counsel to unrepresented South Africans accused of serious crimes. The focus of the Board's resources is necessarily on criminal cases. While some University Law Clinics handle criminal cases, particularly a few at the historically black universities, for the most part the law clinics have provided civil legal services to the poor.

While the law school clinics have differed on the focus and scope of this civil legal work, they have mostly seen their mission as providing access to justice for individual South Africans in civil cases who cannot afford an attorney and need legal advice and representation. Individual cases also provide law students the opportunity to develop new legal skills, such as how to interview clients, develop facts, research and apply the law, and counsel clients, by working on matters where they can be in the lead role. These are all skills for the most part not learned in other law school courses.

Changes in the legal work undertaken by law clinics since democracy

The survey asked the law clinics about the work/thematic areas undertaken by each clinic and how or why the nature of the legal work has changed. The responses indicate some change over the past two decades particularly in delivery models. However, the overall focus of the law students' work continues to be on individual civil cases, with many private law matters.¹³

In terms of change in delivery system and focus, there seems to be a small trend towards more specialization in legal work. Some law clinics now have different units with different supervisors. The law clinic at the University of Witwatersrand has for many years been structured in different clinics, each with its own supervisor and specialization. However, the University of the Northwest – Potchefstroom reports opening a new clinic in 2011 after the Children's Act 38 of 2005 was promulgated in 2010. The University of Cape Town developed a speciality in representing migrants, which has since been separated into a separate clinic. The University of Pretoria has done extensive policy work in the area of consumer debt, although with specialized staff rather than law students. Such specialization may be the result of grants from funders seeking to bring more resources to particular types of legal problems or it may be restructuring and focus on the part of the law clinic faculty. Such specialization often allows for more impact or law reform work because of the expertise that is built by the faculty in a particular subject area and the opportunity to see more legal

¹³ Private law matters historically were distinguished from public law matters in that they concerned areas of law pertaining to relationships between individuals, as opposed to individuals and the state. Armed with a new Constitution, however, these distinctions have, in theory, collapsed, as the Constitution applies both vertically and horizontally to all relationships – whether with the state or with another individual or with a corporation – in South Africa. Nevertheless, we use the terminology here because despite the constitutional changes, much of the legal profession continues to make this distinction, including law faculties. This is, in fact, a symptom of the broader challenge identified in this paper – that the manner in which the legal profession and CLE have developed have continued to remain somewhat static in relation to the dynamic ways in which the legal framework of the country has changed.

problems of the same type allowing the development of strategies and solutions to solve similar problems.

A second development since democracy is the opening of offices serving particular low-income communities, where staff and students from the law school travel to provide legal services to the community. This has been a particularly important development in reaching rural areas where legal services were historically not available. In addition, the law schools lend their expertise in education to provide training to paralegals, attorneys and administrative staff in small law firms or advice offices. Some of this work started when specific law schools received grants to provide backup legal services and training to paralegal advice offices. The University of Rhodes law school clinic provides services to 45 advice offices in the Eastern Cape. The University of the Northwest-Potchefstroom services a cluster of paralegal advice offices in the North-West Province and in Mpumalanga Province. It also provides training to paralegals, attorneys & administrative staff working at law firms. Rhodes University Law Clinic opened an office in Queenstown in 2002 to serve the primarily rural communities. Rhodes reports that moving legal services off-campus and into the community provides for “more meaningful and wider impact in providing access to justice”¹⁴.

Finally, several of the Clinics report moving from a low budget student initiative to a more fully fledged law practice since democracy (WITS). The University of Johannesburg said “years ago the focus was not so much in rendering assistance with litigation but more focused on giving advice. The current aim is not only to advise but also court representation and the clinic’s focus has not really shifted since the advent of democracy”.¹⁵

Four of the seven law schools report no change in the focus of the legal work in their clinics. The University of Pretoria, Johannesburg, Stellenbosch and Cape Town provide a general practice related to the civil legal needs of individual clients seeking legal assistance. Many of these cases are family law matters or evictions with a large number of private law matters.

Law Reform Work

We also asked the directors whether their clinics engage in law reform work, either through (1) class action or impact litigation; (2) through Legislative or media advocacy, such as

¹⁴ See Survey question 4

¹⁵ Survey question 4.

involving students in drafting parliamentary submissions; or (3) Community education and advocacy, such as involving students in educating/representing large communities on mass evictions, mining or other matters.

(1) Impact Litigation

Three of the Universities reported doing some impact litigation and four did none. The University of Stellenbosch completed one Constitutional Court Case and Wits engages in impact litigation through its speciality units. Rhodes University said that it lacks resources to take on class action litigation in the Clinic. However, it is very committed to impact work and engages in two strategies to maximize its impact. First, the Rhodes Clinic partners with the Legal Resources Centre, a public interest law firm in Grahamstown where Rhodes is located. The Clinic has provided clients for some class actions and cases involving applications to the Competition Tribunal. The second method has been to represent a large group of clients from the Jourbertine community who were all defrauded by a micro-finance company. The Clinic developed the facts and referred these 22 clients to the National Credit Regulator (NCR), resulting in the business closing and arrest of its staff.

Recently, the University of Stellenbosch's Legal Aid Clinic has launched an "unprecedented legal challenge" against the justice and trade ministries, the National Credit Regulator, 13 micro lenders, and a law firm in a case that could put an end to the microlending system that has crippled thousands of consumers.

(2) Legislative, Media or Policy Advocacy

None of the law schools reported currently engaging with their law students in legislative or media advocacy as a strategy. The University of Cape Town Director said the Clinic used to make parliamentary submissions and use policy and legislative strategy in working with refugees, but this work stopped when the a prior clinic Director left who had led these efforts.

The University of Pretoria Clinic has done extensive research and policy advocacy in the area of consumer credit. They helped draft national consumer legislation and trained many people who implement the Act. The clinic organized an international conference on consumer indebtedness and has been a leader on ending unfair consumer debt practices. This work, however, is carried out through grants and consultancies to government. The law students are not engaged in the policy advocacy.

(3) *Community Education and Advocacy*

Five of the seven clinics reported using community education strategies as a major component of their human rights and social justice advocacy. There has been a separate Street Law programme in many South African law schools since the 1980's through which law students facilitate workshops regarding legal rights and responsibilities to high school learners, in schools in the community and to community groups. Street Law and its approach to community legal education now seems to have been incorporated as a strategy in some of the law clinics also representing individual clients.

The University of Stellenbosch reports using community education to work with groups on evictions and debt counselling. At the University of Northwest – Potchefstroom, the law clinic students assist at the local Magistrate's Court in the domestic violence, maintenance, divorce and small claims court offices by providing education and assisting clients to complete the necessary application forms. Rhodes University has an extensive community education programme. The Clinic provides a training programme for paralegals throughout the Eastern Cape. It also offers training in community facilitation skills to students, NGO's and paralegals, so they may successfully organise community education sessions.

Challenges to Shifting CLE Programmes – Educational Challenges

The clinical Directors were asked to identify barriers to their clinic's work and what changes they would like to make, if any, to further the impact of their clinics. Three of the clinics stated they were satisfied with the current work. The other clinics identified a lack of resources as the major obstacle. For example, there is a need for professional staff to have time and support to further their academic qualifications and engage in research. A lack of a career path for clinical faculty, resistance to adequately staffing the Law Clinic from the University as well as a resistance to properly remunerating the clinic staff were identified as other problems¹⁶.

All of these barriers were identified in an article written by one of the authors looking at the university law clinics ten years after the transition to democracy¹⁷ The article outlined the

¹⁶ Response to survey question 6.

¹⁷ Peggy Maisel, *Expanding and Sustaining Clinical legal Education In Developing Countries: What We Can Learn From South Africa*, 30 *Fordham Int. L.J.* 2, 374.

barriers to expanding and sustaining clinical legal education and suggested five objectives, three related to improving legal education for students and two related to providing assistance to disadvantaged groups. The 2014 survey indicates that many of these barriers remain.

Undertaking systemic law reform work is very challenging and resource intensive. As our survey shows, very few clinics are undertaking complex cases or litigation. For the most part, the clinic legal work involves the representation of individual clients. Some clinics are also doing community education work, with students informing the public about their legal rights and responsibilities. It is certainly possible for such individual legal work and community education to lead to systematic law reform. For example, the Rhodes Clinic does this through working in partnership with the Legal Resources Centre. However, the law clinics do not seem to regularly take this next step. The survey indicates that many law school clinical faculty members do not see it as a goal, or their purpose, to prepare students to undertake systemic law reform. Rather, the Clinics currently prioritize individual representation of clients and teaching students limited legal skills needed to advise clients facing similar legal problems.

In order for law school clinics to undertake more law reform work, it would be necessary for the clinical program to make this a primary goal and design its clinical course to accomplish this objective. If there were multiple clinics at a particular law school, such as at Wits, specific clinics might be designated to focus on law reform work. In addition, the clinical law faculty would need to design their classroom components to meet this goal of teaching students how to engage in transformative legal work. The survey shows the classroom components are not designed to accomplish this goal, for the most part, as discussed in the next section.

Education

Two educational objectives identified for clinical courses in 2005 were to teach students about the legal problems confronting economically disadvantaged citizens and communities and second, to teach students some of the skills needed to address these problems.¹⁸ The final question on the 2014 survey asked if the law school clinics require a compulsory classroom course. All of the universities responding now have a mandatory final year clinical course, which is a significant increase since democracy and over the past ten years.

¹⁸ Ibid. at 375. .

The survey asked if the classroom component was geared to teach the students about law reform, public interest lawyering, human rights and social justice. The question sought to elicit whether students are being prepared with the knowledge and skills to undertake work to help build South African constitutionalism and democracy.

The survey shows the clinical courses are offered in the final year of the LLB degree and require students to complete a classroom component, often with a written exam, and then work in the clinic on client matters. The University of Cape Town course, for instance, is a compulsory lecture component. “The first semester comprises on civil procedure lectures. The second semester programme involves a lecture component given by professionals from various law firms who are invited by the clinic to talk on wills, CPA, Family Advocates Office, etc.”¹⁹ In addition, the courses sometimes include an introduction to legal skills such as how to interview and counsel clients. At the University of Witwatersrand students enrol in the course known as Practical Legal Studies and are exposed to trial advocacy and other legal skills in a classroom setting. Again, these skills may be taught through lectures. The skills practice comes from students interviewing clients coming to the legal clinic and then working on their cases.

These courses may expose students to some of the problems facing low-income individuals and communities in areas of law not covered in the other parts of the law school curriculum. The Rhodes Clinic says its course of weekly 90 minute lectures, includes “public interest lawyering, social justice and social justice-oriented lawyering” woven into the teaching curriculum.²⁰ However, these lecture courses, as currently structured, cannot accomplish the goal of preparing students to develop strategies for solving complicated individual and group legal problems and the legal skills to implement solutions. One university says its compulsory final year course, Applied Legal Studies, of which the law clinic forms a part, has no time to address any of the aspects of law reform, social justice lawyering or human rights. “The course and the Law Clinic are aimed at remedying and enhancing students’ basic skills, which seem to be decreasing annually”.²¹

¹⁹ Response to survey question 7.

²⁰ Response to survey question 7.

²¹ Response to survey question 7

III. A WAY FORWARD

Embracing Transformative Constitutionalism²²

Given the foundational role played by legal education within the continuum of legal training, and the opportunities provided to employ and mentor candidate attorneys in university law clinics, the reform of legal education within the LLB curriculum is key to achieving transformation in the profession. Professor Geo Quinot identifies that a theoretical framework of “transformative legal education” must be established in order to achieve the broader societal objective of “transformative constitutionalism.”²³ In this vision of legal education, the new constitutional dispensation requires a shift from the formalistic parameters of legal education and the legal profession to a more substantive one, which considers moral and political values and the social context in which law operates. This model of legal education requires a shift both in terms of what law faculties teach, as well as the methodology by which they teach. Indeed, Professor Karl Klare calls for the need to radically change our legal culture from being “a highly conservative one” to one “that embraces the normative framework put forward by the Constitution in its methodology” and that encourages creativity in the national project to use law to achieve social transformation.²⁴ The role and responsibility of law teachers, in this regard, is critical because their approach to teaching law has great influence on driving students to think about becoming “innovators under the Constitution.”²⁵

The structure and pedagogy of university law clinics, we submit, should be examined and expanded, as they promote access to justice and access to the legal profession through their emphasis on “learning by doing.”²⁶ Indeed, clinics play a dual role of providing opportunities to aspirant legal practitioners and candidate attorneys to fulfil community service, as well as offering a dynamic pedagogy that will develop more prepared law graduates and practitioners. University law clinics engage in a variety of legal services,

²² Excerpt taken from Submission of Constitutional Literacy and Service Initiative (CLASI) to the then Department of Justice and Constitutional Development on the Draft Legal Practice Bill, 2012.

²³ Inaugural Lecture, Stellenbosch University, September 2011 at 5.

²⁴ KE Klare “Legal Culture and Transformative Constitutionalism” (1998) 14:1 South African Journal on Human Rights 146–157

²⁵ Quinot at 7.

²⁶ See generally Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907 (1933); Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 *Fordham Law Review* 1929 (2001); Willem de Klerk, *University Law Clinics in South Africa*, 122 *South African Law Journal* 930 (2005); Ajay Pandey, *Promoting Human Rights in India Through Law School Human Rights Clinics*, 28-29 *Delhi Law Review* 67 (2007).

ranging from legal aid, back-up legal services to paralegal advice offices, constitutional and impact litigation, developmental assistance, advocacy, lobbying and reform, and community legal education. “What distinguishes clinical education from any other method of practical skills training is a methodology that uses actual experiences of the legal process as the educational core.”²⁷

Clinics can “become a means”, as Professor David McQuoid-Mason articulates, “to improve the quality of the legal profession generally.”²⁸ “Student activities in legal aid clinics expose them on a regular basis to social justice issues in the new South Africa.” Further, these experiences expose students to a high standard of lawyering, as stated by Professor Willem de Klerk of Witwatersrand University Legal Aid Clinic, “A good clinical lawyer should ... practice law in a manner that is conducive to reflection on the values and obligations of legal practitioners in society.”²⁹ As former Justice Chaskalson noted in 1983, “I do not believe that there is any profession other than the law in which students leave university as ill-equipped as this to pursue their chosen career.”³⁰

The authors submit that there are at least three proposed reforms to CLE that could bring it in line with transformative constitutionalism: (1) an integration of CLE into the LLB, (2) mandatory community service for law students, and (3) an inclusion of a public interest focus within CLE programmes. Each of these proposals will be examined in turn.

Towards Integration

The integration of clinical methodology throughout the law school curricula in South African law schools can happen at a number of levels and would enhance both the breadth of legal education and the development of more competent law graduates. First, integration can take the format of introducing simulation exercises into non-clinical courses, beginning in the first year, that help students learn a range of fundamental lawyering skills. Second, integration can take place by engaging the students in externship opportunities, which rarely if ever occur in South African law schools. Third, integration can involve student’s engagement in

²⁷ Elsabe Steebhuisen, “The goals of clinical legal education” in P Stilwell (ed) in *Clinical Law in South Africa* (2004) 1 at 2.

²⁸ Combining Learning and Legal Aid: Clinics in Africa, Report on the First All-African Colloquium on Clinical Legal Education, 23-28 June 2003, OSJI October 2003, at 5-6.

²⁹ Unity in Adversity: Reflections on the Clinical Movement in South Africa, Willem de Klerk, 2007 *International Journal of Clinical Legal Education* 95, 98-99 (2007).

³⁰ See A Chaskalson, “Responsibility for practical legal training” 1985 (March) *De Rebus* 116.

live-client clinics that are tied to a progression of courses and serve as the culmination or cornerstone for a student's legal education.³¹

All of the above formulae of integration pose a number of benefits, as well as challenges, that South African law schools should consider. The benefits include financial sustainability for clinical programmes, faculty integration, and a sustained programmatic curriculum for student engagement and preparation for practice. Challenges include institutional buy-in, professional commitment, class sizes, resource commitments, and curriculum design. Each of these will be respectively discussed.³²

Indeed, one of the most immediate benefits of integration is the cost saving to law schools in general. Stand-alone clinical programmes can prove to be very costly to sustain. Most clinical programmes receive little or no financial support from the Law School faculty. As a result, many programmes are forced to fundraise in order to sustain cost, diverting scarce teaching and management resources.

Of course, with funding commitments come other obligations, including meeting the needs of the funders. This then evolves into a vicious circle of concentrating on meeting funders needs, as opposed to focusing on educational needs of the student. Integration of the clinical methodology into the mainstream law school will allow for costs to be absorbed into Law School budgets, thus ensuring the sustainability of the clinical methodology.³³ As noted by Professors Hall and Kerrigan: "Integration of clinic with the core curriculum reveals its value as a teaching methodology and enhances its prospects of surviving and prospering in the long-term."³⁴

A second benefit is faculty integration and thus greater sustainability of clinical programmes. To achieve this, clinicians would have to be employed as academic staff members — and not as administrators. To date, a number of university law clinics continue to employ clinicians, including the Director, in the capacity as administrative staff as opposed to academic members. Furthermore, salaries for clinical staff are mostly dependant on grant funding received. As a result, job security poses a major risk to the success of the programme.

³¹ Jonny Hall & Kevin Kerrigan, *Clinic and Wider Law Curriculum*, Int'l J. Clin. Legal Educ. 31 (2011). See also Willem De Klerk, *Integrating Clinical Education into the Law Degree: Thoughts on an Alternative Model* 39(2) *De Jure* 247 (2005).

³² *Id.*

³³ Mahomed, *supra* note 1, at 192-193.

³⁴ Jonny Hall & Kevin Kerrigan, *Clinic for All* 30 (2006) (unpublished copy with author).

Clinical staff employed as administrators do not receive the same employment benefits as academic staff, particularly in relation to promotions and sabbatical opportunity. Without integration, clinical teachers continue to be considered as part of the lower end of the spectrum of academic teaching, particularly because the research output from clinical staff is generally limited. Most importantly, they are not an integral part of the development of the overall law school curriculum.

The few clinical faculty members who do enjoy academic positions have not received the time and latitude to concentrate on both educational output and clinical teaching/access to justice. Therefore, aside from having defined goals, curricula and assessments processes, clinicians must engage in research and publication. Integration will allow for a more unified faculty — benefiting both academics as well as students. Hall and Kerrigan refer to this form of benefit as creating an environment of inclusivity.³⁵

A third benefit is addressing students' educational and professional development needs. As already noted above, integration promotes positive learning along a programmatic curriculum, therefore, addressing a wide range of students' needs. From a legal education perspective students' needs may include (but are not limited to) legal research, legal writing, analytical ability, oral communication, client relationships, and practical implementation.

Whilst traditional teaching methodology addresses some of these educational needs (especially legal analysis), a gap remains, particularly in areas of oral communication, client relationships, and practical skills (including fundamental litigation, legislation, transactional, and administrative practice skills). CLE as a learning methodology promotes the acquisition of knowledge through a variety of pedagogical methods — the delivery of theory, practical application, and reflection. Through this process, various learning and professional development needs of students can be addressed. Integral to the methodology is the promotion of a range of skills including life-long learning skills and values' orientation.³⁶

The benefits discussed are, of course, balanced against a range of challenges to the project of integration of CLE into the mainstream of law schools in South Africa. These challenges include those of professional commitment, class sizes, and curriculum design.

In terms of professional commitment, finding the right lecturer within a law school to advocate this methodology can be a challenge. In order to give effect to the clinical

³⁵ *Id.*

³⁶ Mahomed PhD thesis, *supra* note 1, at 193-194.

methodology, lecturers across the law school must understand how to implement the methodology — and the commitment of lecturers towards the methodology must be affirmed.

Some may argue that the clinical methodology may be a model suited only for teaching smaller classes and that this thus poses a challenge for the project of integration. Indeed, the teaching of larger classes may actually benefit from the engagement of more simulated exercises. However, even this may prove challenging, should the class size be larger than between eighty–hundred students.

Finally, designing an appropriate curriculum as well as appropriate assessment tools may prove to be challenging, especially if one does not understand the methodology. Over the past few years a number of universities have overcome this challenge by being at least to some degree explicitly reflective in engaging in a process of curriculum design. This article continues by discussing how law schools have responded (if at all) and/ or continue to respond to curriculum change particularly in light of the need to increase skills teaching into the curriculum.

In South Africa, several universities have submitted that their curricula are now increasingly skills-driven. Some universities go so far as to note that skills curricula were implemented as far back as in 1998. Thus, one cannot help but question why is there a disjuncture between the needs of the profession and legal education? Surely if we were all engaging in skills teaching, our students would be adequately prepared for the different professional careers they engage in? Is it that we are not articulating the concept of skills teaching clearly or is it that we would like to believe that we are teaching skills when in fact we are not?

What follows is a discussion on skills teaching offered at five South African Universities.

At the University of the Western Cape there are four skills courses taught during every year of the curriculum. In the first year, Introduction to Legal Studies, in the second year: Critical Legal Analysis, in the third year, Introduction to Advocacy, and in the fourth year, Preparing for Legal Practice. The aim of teaching these courses is to provide skills training including analytical and critical thinking skills, drafting and advocacy skills. Although these courses are designed as skills courses they are considered “academically substantive and equivalent to the traditional law courses”. All other modules are encouraged to incorporate skills teaching.

At the University of Cape Town (UCT), in a document titled Programmes in the Faculty it is noted that their LLB degree facilitates for the teaching of generic practical skills “such as

problem solving, analysis, research, and communication skills, as well as practical legal skills such as drafting of particular kinds of legal documents and legal arguments, both written and verbal. Law students are required in the Intermediate Level to make constructive use of knowledge and skills they acquire by contributing to the community through Legal Aid, Community Services, Shawco, Rape Crisis, Parliamentary Monitoring Group or similar outreach activities.”³⁷

At Rhodes University students participating in their third year are required to engage in Legal Skills and Legal Practice. Legal skills incorporate the teaching of research skills, legal ethics, writing skills, numeracy skills, applied logic and critical reasoning, structure and delivery of legal argument. In Legal Practice students participate in the Law Clinic. They engage with real clients and participate in file and case management, consultation interviewing, communication and drafting skills. The aim of this course is to apply the legal knowledge acquired in academic studies. Other skills driven courses include Negotiation and Mediation, Arbitration.

At the University of the Free State skills teaching is administered by the Department of Procedural Law. The Legal Practice module is offered in all four years of study.

At the University of Pretoria two courses were introduced since 1998; these include Legal Studies 110, Legal Studies 120 and a compulsory Essay component in their final year of study. In the new proposed curriculum which will be introduced in 2013, Jurisprudence 110 and Jurisprudence 120 (which will integrate introduction to law, legal history and legal skills) will be introduced in the first year of study. In the second year Legal Practice 210 and 220 will be introduced and in the third year Research Methodology 320 will be introduced.

Towards Mandatory Community Service³⁸

On 22 September 2014, the Legal Practice Act was enacted into law. For more than a decade preceding, various iterations of the Bill had been considered and debated within the legal profession quite vigorously. In the current iteration of the Act, section 3 lays out the purpose of the Act to:

³⁷ http://www.uct.ac.za/downloads/uct.ac.za/apply/handbook/fac_law_2012.pdf accessed on 20 July 2013.

³⁸ Excerpt taken from Submission of Constitutional Literacy and Service Initiative (CLASI) to the then Department of Justice and Constitutional Development on the Draft Legal Practice Bill, 2012.

- (a) provide a legislative framework for the transformation and restructuring of the legal profession that embraces the values underpinning the Constitution and ensures that the rule of law is upheld;
- (b) broaden access to justice by putting in place—
 - (i) a mechanism to determine fees chargeable by legal practitioners for legal services rendered that are within the reach of the citizenry;
 - (ii) measures to provide for the rendering of community service by candidate legal practitioners and practising legal practitioners.

Section 6(5) of the Act, gives the council established in terms of this act a discretion to advise the Council on Higher Education on the desirability of including a form of community service within the LLB curriculum for all law students. This provision is quite broadly phrased, so it has the potential to be quite an influential tool for the council to use that could have an enormous impact on the LLB curriculum and broadening access to justice for all South Africans.

Section 29 of the Act contains community service provisions. This section places an obligation on the minister to prescribe requirements for community service after consultation with the Council. This may include community service as a part of practical vocational training for candidate legal practitioners or a minimum period of community service for practising legal practitioners. This section continues to set out where community service could take place, but does not give a closed list, so it leaves room for community service by legal practitioners to take place in other ways as well. Finally, Section 94 makes provision for regulations to be made by the Minister, amongst other things, related to legal education and training in section 6(5) (f) and community service in section 29(1).

What this means, of course, is that the Act has left open the possibility of whether community service will become a mandatory feature of the LLB. Of the submissions presented to the DOJ on the draft Bill, only AULAI (the Association of University Legal Aid Institutions), not SAULCA, the Constitutional Literacy and Service Initiative (CLASI) and the Wits Law Clinic made submissions specifically encouraging inclusion of law students in these provisions. At present, it is only compulsory at the University of Cape Town, where admittedly there have been challenges to its implementation. Nevertheless, the authors believe the Act's vision of a legislated programme of community service has the potential to

build a culture of service that can lead to true transformation and the advancement of equality in South Africa, both within the legal profession and beyond.

In order to make the vision of access to justice a reality, the state should work together with the legal profession to supply resources to a national programme of community service, and by doing so, to open the doors to the legal profession for aspirants. Existing pro bono initiatives should not be swept away in the face of a legislated mandate for the legal profession to serve the community.

Section 29 should specify that candidate legal practitioners be remunerated for the community service they perform, as is the case with medical school graduates entering the medical profession, and as has been stipulated in previous drafts of the Bill. If, however, the community service requirement is structured in a manner in which at least part of it may be completed at university level, by way of fulfilling a pre-determined number of hours at a university law clinic, or a legal education and rights awareness programme such as Street Law or CLASI, the need for remuneration by the State will become less onerous. In this regard, we draw the attention of the Committee to the Student Practice Rules, applicable to law students working in Clinics.³⁹ Aspirant legal practitioners who engage in community service programmes during the course of their legal studies would not need to be compensated, although they would receive academic credit. The idea of requiring law students to perform legal community service as part of their academic qualification can be justified by the fact that the State already subsidises a considerable portion of the funding required for a legal education. Community service initiatives at university level should not replace, but rather, complement and build upon the foundation that has already been established at a number of institutions, and would, of course, also not negate their life-long pro bono requirements.

As a national programme of community service is progressively realised, it may be necessary to combine hours spent during the LLB with further service after graduation. The most practical approach may require a short-term strategy in terms of which participation in community service initiatives at university level becomes a prerequisite for obtaining the

³⁹ See (2008) 41 De Jure 580-595.

LLB, while building up to a full year of remunerated post-graduate community service over time as resources are allocated to provide opportunities for placement and to build the necessary capacity.

Any programme of community service for aspirant and candidate legal practitioners must be properly supervised, in order to ensure the high quality of legal services rendered, as well as the achievement of the Bill's stated objective of developing adequate training programmes for candidate legal practitioners. It is submitted that this dual objective can be achieved by harnessing the skills, experience, and capacity of practicing legal practitioners to supervise and train candidates in their respective fields of expertise. This model would provide an opportunity for practicing lawyers to fulfil their community service obligations, whilst effectively increasing access to justice and assisting aspirant legal practitioners to build their skills and work experience.

By engaging with members of disadvantaged communities in this way, legal practitioners and aspirant legal practitioners are given an invaluable experiential learning opportunity in relating to the issues that affect a large number of South Africans. In doing so, we believe that there exists a strong possibility that they would gain a deeper perspective of the challenges facing the country as a whole. This would provide an opportunity for not only in-depth training, but personal and professional growth as well. Ideally, this type of personal development would be complemented by a structured debriefing process by which participants are encouraged to reflect on the meaning, context and importance of the work in which they are engaged.

The authors understand that a specialised working group will be established under the auspices of the Council to deal particularly with all matters relating to community service. We submit this is a rich opportunity for the CLE community within South Africa to provide input into the design of community service in the country. Such service initiatives, if planned and administered properly, will help disenfranchised South Africans to realise their constitutional rights, will contribute to the much-needed transformation of the legal profession, and will build a social justice ethos on the part of young graduates, while strengthening their practical skills.

Towards a Public Interest Focus

The authors submit that although South African universities have a longstanding tradition of clinical legal education, the time is now ripe for university law clinics, and law faculties, working together to expand the vision of CLE programmes and to offer clinical opportunities that bring university legal education and training in line with the broader public interest legal sector. Indeed, university law clinics have not, as of yet, been included within the ambit of the public interest legal services sector. Although Legal Aid South Africa has a relationship with several university law clinics, most organisations do not have any such formal relationship. In part, this is also due to the fact that university law clinics do not view themselves necessarily as part of the public interest legal services sector. To be fair, though, it is also symptomatic of a public interest legal services sector that views university law clinics as solely engaged in the provision of direct legal services. In this sense, the clear demarcation that has developed within South Africa between “access to justice” and “public interest” has contributed to this context where university law clinics operate in parallel, for the most part, to the public interest legal services sector.

The backdrop of transformative constitutionalism creates an opportunity now for this landscape to shift. In a legal profession, however, that is beleaguered by conservatism, in respect of briefing patterns and transformation at the Bar, and in terms of so-called elite NGO capture of social justice issues, and in a society that has yet to taste the fruits of its globally celebrated Constitution, exposing law students whilst in university to the sector could build a pipeline from tertiary education to a transformed legal profession.

Both past and present, there have seen examples of CLE programmes moving in this direction, so our proposal is not as radical as it may seem. For example, the Wits Law Clinic used to inform the organisation about systemic problems emerging in the Johannesburg Maintenance Court, and through this a Maintenance Forum was formed in which paralegals, court personnel, gender activists, the law clinic, and public interest lawyers would regularly convene to further discuss the trends observed in routine matters in court. Moreover, the Wits Law Clinic has brought many impact litigation cases, some of which have resulted in Constitutional Court judgments.⁴⁰ At Stellenbosch University, the Legal Aid Clinic handled the *Hattingh v Juta* case concerning ESTA that went to the Constitutional Court. Although the case resulted in an adverse judgment for the Legal Aid Clinic’s clients, when the Clinic was handling the case and struggling with capacity issues, academics, public interest legal

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organisations, and the Clinic convened strategic workshops to explore innovative strategies for utilising ESTA.⁴¹ The Clinic has many contacts in rural areas, and therefore had invaluable insight and opportunities to make a large impact. More recently, Stellenbosch's Legal Aid Clinic has taken on unprecedented class action litigation in respect of unfair microlending practices and garnishee orders that has the potential to affect every individual who takes loans from banks in South Africa. Finally, the Rhodes Clinic partners with the Legal Resources Centre, a public interest law firm in Grahamstown where Rhodes is located. The Clinic has provided clients for some class actions and cases involving applications to the Competition Tribunal. The Rhodes Law Clinic has also represented a large group of clients from the Jourbertine community who were all defrauded by a micro-finance company. The Clinic developed the facts and referred these 22 clients to the National Credit Regulator (NCR), resulting in the business closing and arrest of its staff.

Though CLE programmes themselves have ventured in the direction of law reform and human rights work, what has not occurred concurrently is the integration of law students into this work. For example, the University of Pretoria has done extensive policy work in the area of consumer debt, although with specialized staff rather than law students. Usually, specialised attorneys or academics are brought in to supervise, advise and/or handle the matter, and much of this work is outside the reach of the law student enrolled in the clinic. The authors of this paper encourage university law clinics to consider the integration of law students into this work.

There is great potential for coordination between the profession and university law clinics, particularly in relation to matters that overburden organisations. Given the pedagogical imperative of university law clinics "to teach from doing," law students may assist organisations with matters they cannot handle or perform research or collect statements to assist them with developing matters. An advocacy officer within a non-litigating NGO, identified a gap in the sector for opportunities for law graduates to receive training during their legal education in civil society organisations. Further, course modules could be developed to engage students in this work in proper training and reflection about their public interest legal services work. Indeed, the university law clinic space could become a place to teach these important skills, for example, as well as many other skills inherent to public interest legal work to the next generation of public interest lawyers.

⁴¹ Ibid.

One of the challenges in the South African context, of course, is that the distinction between the terms “human rights”, “constitutional,” is “public interest” are contested. Some argue that within the ambit of the new Constitution, all areas of law can appropriately be labelled as “constitutional” and that unlike many other jurisdictions, many South African constitutional provisions reflect national human rights commitments. Indeed, while the authors agree that a university law clinic’s existing work could and should be considered as “human rights” or “constitutional,” we argue that there are different dimensions of this work. One side of the continuum is individually-based work, which appropriately is entitled “access to justice” and has historically constituted the bulk of university law clinic work. On the other end of the continuum is group or community-based work, which would be closer to “public interest” work because of its impact or significance for a larger group or community of people. Of course, the lines are often blurred between these categories, but it is our argument that university law clinics could start to move further along the continuum towards group or community-based work, or on the other hand, impact litigation challenging pervasive patterns or practices.

One of the authors to this paper⁴² has started to design a pilot clinical module based exclusively on public interest legal work. Whilst at the Centre for Applied Legal Studies (CALs), she designed a curriculum based on “community lawyering” to bring in six students from the Wits Law Clinic to undertake cases and projects with CALs over the course of a year in which they worked together with groups or communities of clients/partners. The proposal was for students to engage in law reform, community education or litigation work with a broader focus than an individual. The author had proposed that CALs would supervise the fieldwork for the students, and would provide readings and assessments for those students that aligned with what they were encountering in their casework. So that the students did not lose out on important basic skills important for all attorneys, however, the proposal specified that these students would continue to attend the seminars that others students in the Wits Law Clinic attended on how to calculate costs, interviewing, counselling, etc. The idea was for the pilot clinic to be an incremental step towards experimentation with a new kind of clinic model that, if successful, could be broadened in future years. That

⁴² Meetal Jain was a Senior Researcher at CALs from March 2013 through May 2014. She is now a Senior Researcher with the Centre for Human Rights at the University of Pretoria.

proposal unfortunately was not adopted, however, mostly because of the lack of institutional will to make it a reality.

The author, now based at the Centre for Human Rights at the University of Pretoria, has been implementing some of these classroom modules in respect of the LLM Course on Human Rights and Democratisation. The focus of this programme is to equip students from around the world, but primarily from the African continent, to become seasoned academics and practitioners within the African human rights system. The author facilitates simulations and debates centred on issues such as media advocacy, interviewing and counselling, community engagement/lawyering, and ethics in human rights practice. In the LLM programme, students select one of nine clinical groups in which to be based throughout the first semester, within a broad range of human rights issues. The author co-supervised students in 2014 in the Business and Human Rights and Litigation clinical groups. Clinical groups meet bi-weekly and work on a range of projects throughout the semester. Additionally, they conduct fact-finding in Southern African countries mid-way through the semester. The classroom modules therefore aim to equip them with practical skills to work on their projects and assignments.

Many possibilities exist for the direction in which university law clinics could experiment in South Africa, but what is clear is that the time is now ripe for clinics to align themselves to the project of “transformative constitutionalism.”

VI. COMPARATIVE UNITED STATES AND SA LAW SCHOOL CURRICULA

It is difficult to compare law reform or public interest clinics in the United States and in South Africa, since historically such clinics have not existed in the same manner in South Africa. Nevertheless, it is useful to examine how these clinics have developed in their different contexts, since the evolution reflects differences in the contexts in which CLE exists.

United States⁴³

⁴³ Excerpts taken from Bettinger-Lopez, Finger Jain, Newman, Paoletti, and Weissman, *Redefining Human Rights Lawyering Through the Lens of Critical Theory: Lessons for Pedagogy and Practice* Georgetown Journal on Poverty Law & Policy Volume XVIII, Number 3, Symposium Issue 2011]

Since they came into existence in the 1990s, human rights clinics in the United States have traditionally focused the majority of their work on human rights problems outside of the United States.⁴⁴ Clinic projects varied from representation of individuals before human rights bodies (regional commissions, international courts, ad hoc international tribunals, United Nations treaty bodies), to writing human rights reports in the style of (and sometimes in collaboration with) Human Rights Watch, Amnesty International, and others, to representing foreign-born individuals in asylum claims before U.S. immigration courts or in Alien Tort Claims Act (ATCA) cases against foreign dictators, corporations, and other “human rights bad guys” before U.S. federal courts. Periodically, human rights clinics dabbled in cases and projects oriented toward the enforcement of human rights against the United States,⁴⁵ but historically, clinical instructors usually eschewed such initiatives, in light of the United States’ failure to ratify most international human rights treaties and its refusal to subject itself to scrutiny before international human rights bodies.⁴⁶

While human rights clinicians may have felt constrained geographically, many, in contrast to clinicians in other areas of the law, populated their dockets with cases and projects that might be characterized by a lack of normative constraints. The aspirational nature of the human rights norms expressed in the International Bill of Rights and other more recently drafted international and regional human rights instruments made for meaty clinic projects. As recent conceptual developments, the treaty provisions needed analysis and application. Human rights clinics routinely seized the opportunities to take on cases of first impression, and to push for expansive interpretations of principles that incorporated language far more progressive, in many circumstances, than U.S. law. Human rights clinicians enthusiastically pursued developing a set of norms under international law, and indeed had notable success.⁴⁷

⁴⁴ Arturo J. Carillo, *Bringing International Law Home: The Innovative Role of Human Rights Clinics in the Transnational Legal Process*, 35 COLUM. HUM. RTS. L. REV. 527 (2004); Deena R. Hurwitz, *Lawyering for Justice and the Inevitability of International Human Rights Clinics*, 28 YALE J. INT’L L. 505, 526 (2003). For an overview of the structure and methodology of the first human rights clinic in the United States (the International Human Rights Law Clinic at American University Washington College of Law), see Richard J. Wilson, *Clinical Legal Education for Human Rights Advocates*, in HUMAN RIGHTS EDUCATION FOR THE TWENTY-FIRST CENTURY 261-277 (George Andreopoulos & Richard Pierre Claude eds., 1997).

⁴⁵ See, e.g., BRANDT GOLDSTEIN, *STORMING THE COURT: HOW A BAND OF YALE LAW STUDENTS SUED THE PRESIDENT—AND WON* (2005) (describing a case brought by Yale’s Lowenstein International Human Rights Clinic on behalf of Haitian asylum seekers; the case was brought on constitutional law grounds but infused with human rights principles).

⁴⁶ Cynthia Soohoo, *Human Rights and the Transformation of the ‘Civil Rights’ and ‘Civil Liberties’ Lawyer*, in 2 BRINGING HUMAN RIGHTS HOME 71-93 (Cynthia Soohoo, Catherine Albisa & Martha F. Davis eds., 2008).

⁴⁷ See, e.g., Hurwitz, *supra* note 132, at 539-48 (2003); Richard J. Wilson et al., *The Work of the International Human Rights Law Clinic at American University: Twelve Years of Operation*, AM. UNIV. WASH. COLL. LAW (May 2002), http://www.wcl.american.edu/clinical/annual_2002.pdf?rd_1.

This group of clinicians focused on addressing an urgent set of problems with an exciting new set of tools that, for many, reflected their own moral and political codes.

In contrast, poverty law clinics emerged as the dominant clinic law school model in the United States during the 1970s.⁴⁸ They were created to provide students with a broad range of practical legal experiences and skills, as well as provide students with a chance to learn social justice concepts while providing much-needed legal services to poor clients who lacked access to justice.⁴⁹ These clinics endeavored to provide services in a holistic manner.⁵⁰

The law school clinical model, with a heavy focus on poverty law clinics, continued to develop while traditional legal services organizations experienced increasing limitations on allowable practice and access to funding. Receptive federal courts, together with a growing body of civil rights laws and associated, enforceable remedies, fueled the development of the clinical movement.

As these dynamics have shifted and restrictions have grown, social justice and poverty law clinics and practitioners are increasingly incorporating human rights language, strategies, and claims in their work with poor clients and community organizations. As lawyers operating in the domestic realm, poverty law clinicians are attracted to the “newness” of the human rights approach and the exciting opportunities it provides for reframing what had previously been considered civil rights and domestic issues, particularly as domestic courts and legal rhetoric have become increasingly inhospitable to many claims advanced by the most vulnerable among us—persons displaced by catastrophe, undocumented domestic workers, the disabled and uninsured, and others. As with international and transnational focused clinical projects, however, the incorporation of a human rights framework has not necessarily led to a more client-centered, non- hierarchical lawyering approach. Indeed, the challenges chronicled above apply with equal force to this new area of poverty law practice.

South Africa

In much the same way as poverty clinics in the United States have started to incorporate human rights strategies into their day to day work on indigent issues, South African

⁴⁸ Kimberly E. O’Leary, *Clinical Law Offices and Local Social Justice Strategies: Case Selection and Quality Assessment as an Integral Part of the Social Justice Agenda of Clinics*, 11 CLINICAL L. REV. 335, 337 n.8 (citing Antoinette Sedillo Lopez).

⁴⁹ Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLINICAL L. REV. 37, 38 (1995).

⁵⁰ Antoinette Sedillo Lopez, *Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training*, 7 CLINICAL L. REV. 307, 317 (2001).

university law clinics have a timeous opportunity to experiment with the dominant model of “poverty law clinics” or “access to justice” clinics. As earlier stated, in the South African context, this may not be so much an experiment with the law used (although there could be further engagement with the African human rights system and international law) as with the move from individual representation to community/group representation and/or impact litigation. In all cases, however, it is not only for the clinics to pursue these changes with specialised attorneys, but to deliberately think through the possibilities, and limitations, of incorporating and exposing the law students to this exciting work.

V. CONCLUSION

Clinical legal education programmes in South Africa have developed and grown since 1994, but the authors submit that a more intentional approach is needed if clinical courses are to prepare students for the project of transformative constitutionalism. Many possibilities exist for experimentation, Although CLE programmes have ventured in the direction of law reform and human rights work, what has not occurred concurrently is the integration of law students into this work. Further, little has been done to integrate clinical pedagogy throughout the curriculum and little progress has been made to move existing clinical programmes from handling individual cases toward utilising creative means to address more systemic law reform and social justice issues, either through impact litigation or community lawyering. Twenty years after democracy, CLE programmes must begin to work more closely with others organizations in the public interest legal community to prepare the current and future generations of law students to address the problems facing South Africa.

APPENDIX

During 2014 a survey was conducted on the present clinical programmes in South Africa. The survey contained the following questions:

1. Name of responder(s):

Rhodes	Prof Jobst Bobenstein
University of Witwatersrand	Daven Dass
University of Pretoria	Prof Frans Haupt
University of Stellenbosch	Kruger Van Der Walt
North- West University Potchefstroom	Schalk Meyer
University of Johannesburg	Eddie Hanekom
University of Cape Town	Y S Moodley

2. Names and dates when clinic(s) established at your institution:

Rhodes	1979
University of Witwatersrand	1969/1973
University of Pretoria	1980
University of Stellenbosch	1979
North –West University Potchefstroom	1986/1987
University of Johannesburg	1981(RAU) 2005(UJ)
University of Cape Town	1970/1972/3

3. Sources of funding for your clinic(s):

Rhodes	University /Outside funding
University of Witwatersrand	University/ Outside funding
University of Pretoria	University / Outside funding
University of Stellenbosch	University / Outside funding

North –West University Potchefstroom	University / Outside funding
University of Johannesburg	University
University of Cape Town	University/ Outside funding

4. Brief description of the work/thematic areas undertaken by your clinic(s). How/why has the nature of that work changed through the years? In particular, has the focus of clinic work shifted since the advent of our democracy?

Rhodes	<p>CLE, legal services to indigent, support to some 45 advice offices in the Eastern Cape (back-up legal & administrative support & training of paralegals)</p> <p>Yes, in 2002 opened an office in Queenstown, serving a primarily rural communities & also started the advice office programme</p> <p>Reasons- more meaningful & wider impact in providing access to justice</p>
University of Witwatersrand	<p>The clinic which started as a low budget student initiative to assist marginalized members of the community has developed into a fully fledged practice with specialized units to render a broader range of legal assistance.</p>
University of Pretoria	<p>Students work in the general practice supervised by clinicians dedicated to attend to students: classes, supervising, assessing. The lobbying, drafting of policy documents and reports compiled do not include any student involvement. The policy work is done exclusively by</p>

	<p>other staff members attached to specialised research and short course section.</p>
University of Stellenbosch	<p>Practical legal training of final year law students and rendering legal services to the poor. No, nothing changed</p>
North –West University Potchefstroom	<p>Legal Services to the public</p> <p>Student training (final year LLB degree students)</p> <p>Child Justice Unit – established in July 2011 after the new Children’s Act 38 of 2005 were promulgated in 2010.</p> <p>NWAJC – Cluster in North-West Province</p> <p>MAJC – Cluster in Mpumalanga Province</p> <p>Other Training – paralegals, attorneys & administrative staff working at law firms</p>
University of Johannesburg	<p>The work undertaken is for indigent individuals and mostly Family Law, Property Law, delict contract and debt related. 99% of the litigation work is done in the Magistrates’ Courts.</p> <p>Years ago the focus was not so much in rendering assistance with litigation but more focused on giving advice. The current aim is to not only advise but also court representation and the clinic’s focus has not really shifted since the advent of democracy</p>

University of Cape Town	The work is dependant on the needs of the respective communities. The clinic does many divorces and eviction with the rest being a host of other civil claims. The clinic has always involved itself with private law matters.
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5. Does your clinic engage in law reform work, such as the following (please describe):

5a) Class action / impact litigation, e.g, involving students in constitutional litigation

Rhodes	The Clinic lacks the resources to formally go this route-however, the Clinic has, over the years, been assisting the Legal Resource Centre in Grahamstown – mainly by providing examples of cases involving applications to the Competition Tribunal and also some class actions Although not a class action-In 2013 the Clinic assisted the community of Joubertina in taking on a micro-finance company engaged in illegal activities. The Clinic took 22 clients and referred the matter to the NCR, resulting in the closure of the business and the arrest of its staff.
University of Witwatersrand	Yes
University of Pretoria	No
University of Stellenbosch	Yes - one Constitutional court case to date
North-West University Potchefstroom	No
University of Johannesburg	No
University of Cape Town	No

5b) Legislative/media advocacy, e.g., involving students in drafting parliamentary submissions, engaging with media etc.

Rhodes	CLE being a compulsory one-semester course, it is a major challenge to engage students beyond generic legal practice skills
University of Witwatersrand	No
University of Pretoria	No
University of Stellenbosch	No
North-West University Potchestroom	No
University of Johannesburg	No
University of Cape Town	No

5c) Community education and advocacy, e.g., involving students in educating/representing large communities on mass evictions, mining matters, etc.

Rhodes	<p>Yes: community legal and human rights education are an important part of the RULAC's strategy in assisting communities in achieving social justice. This is achieved by means of the following:</p> <ul style="list-style-type: none"> • The Clinic has a close link with the Rhodes Student Activist Society, training its members in facilitation skills, assisting the Society in gaining access to communities through the Clinic's extensive network and assisting students in drafting workshop materials • The Clinic has an extensive training programme for paralegals throughout the Eastern Cape- aimed at empowering community-based advice offices as being important bulwarks against the human rights
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	<p>abuses and developing skills of paralegals to use a wide range of measures in addressing socio-economic problems</p> <ul style="list-style-type: none"> The Clinic offers training in community workshop facilitation skills using the critical-participative Street Law methodology; during the past year these 1 ½ day workshops were held for students, NGO's as well as for paralegals in Grahamstown, Queenstown, the Karoo and the former Transkei
University of Witwatersrand	Yes – paia clinic
University of Pretoria	Indirectly
University of Stellenbosch	Yes on debt counselling and eviction matters
North- West University Potchestroom	<p>Streetlaw projects. Streetlaw projects.</p> <p>Students assist at the local Magistrate's Court in the domestic violence, maintenance, divorce and small claims court offices by consulting and assisting clients to complete the necessary application forms.</p> <p>Student “shadow” either a candidate attorney from Legal Aid South Africa or a Public Prosecutor working at the local Magistrate's Court.</p>
University of Johannesburg	No
University of Cape Town	No

5d) Other?

University of Cape Town	<p>Prior to Bev Bird the clinic was involved in going to parliament and making reps but this stopped. The refugee rights project was initially part of the Clinic and a lot was done</p>
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	in terms of public interest but this stopped once the Project separated from the Clinic
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6. What, if any, changes would you like to institute into your clinical programme that might further democracy and law reform? What challenges would/have you encounter(ed) in instituting these changes?

Rhodes	As already indicated, there is little room for adding further components to an already full programme. The Clinic is however constantly striving to include issues of law reform and the role of a transformed legal profession within a constitutional state, in the teaching and supervision within the CLE programme
University of Witwatersrand	Perhaps some form of advocacy for students can be introduced although funding might be a problem as well as the human resource aspect
University of Pretoria	N/A
University of Stellenbosch	None
North-West University Potchefstroom	N/A
University of Johannesburg	We would like time and support for our professional staff to further our academic qualifications and do research which then could help us to go. Involved in aspects mentioned in 5a) to 5c) above. Resistance to adequately staff the Law

	Clinic from the University as well as a resistance to properly remunerate the staff. There is also no career path for the staff.
University of Cape Town	Having recently taken over I have a few ideas but am awaiting recommendation of an internal review and monies from a funding proposal so really at the moment cannot comment

7. Does your clinic offer a classroom course that is compulsory for the students? If so, are any of the clinic course seminars geared towards law reform, public interest lawyering, human rights, social justice?

Rhodes	Yes, the programme includes weekly 90 minute lectures. Public interest lawyering, social justice and social justice-orientated lawyering are woven into the teaching curriculum; “Diversity and bias” are covered during one of the lectures
University of Witwatersrand	Yes. Students attend the compulsory full year credit bearing course known as Practical Legal Studies
University of Pretoria	N/A
University of Stellenbosch	Yes
North-West University Potchefstroom	Our clinic offers two compulsory courses for all final year law students

	<p>at the Potchefstroom Campus (JURI 312 & JURI 322). The courses offered are based on legal practice. The clinic believes that students should be involved in community engagement as part of their preparation for the legal profession and therefore students take part in various community engagement projects on a voluntary basis.</p>
University of Johannesburg	<p>Yes the Law Clinic forms part of a final year subject, Applied Legal Studies. There is absolutely no time to address any of the aspects mentioned in question 7, as the course and the Law Clinic is aimed at remedying and enhancing students' basic skills, which seems to be decreasing annually</p>
University of Cape Town	<p>There is a lecture component that is compulsory. The first semester comprises on civil procedure lectures. The second semester programme involves a lecture component given by professionals from various law firms who are invited by the clinic to talk on wills, CPA; Family Advocates Office etc.</p>