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Clinical Legal Education in Hong Kong: A Time to Move Forward

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COMMENT

CLINICAL LEGAL EDUCATION IN HONG KONG: A TIME TO MOVE FORWARD

Introduction

Clinical education has taken root and flourished in law schools throughout the world. Although initially a United States phenomenon, universities in countries as far-flung as India, South Africa, Chile, Australia, Poland, Scotland, Cambodia, Mexico, and China have established and nurtured clinical programmes. Despite different legal systems and different institutional structures, law faculties in these disparate countries all share a respect for the potential of clinical legal education. They recognise that clinical programmes can teach law students the skills and values of the profession while contributing vital services to individuals and communities and fostering social justice goals. The priorities of clinical programmes may differ from school to school, and the organisation and ambitions of their respective programmes may vary, yet law schools throughout the world have found common ground in the basic characteristics that define clinical legal education.

Law schools in Hong Kong have no clinical programmes – yet. This situation may change as a result of a recent initiative by the Faculty of Law at Hong Kong University (HKU). In early 2006, after researching programmes in other schools and speaking with educators from other countries without much progress, the law school made a serious commitment to examine whether clinical education could be adapted to Hong Kong and to make recommendations to the Dean and the law faculty. The law school's decision to import a consultant with experience in designing, teaching and administering clinical programmes to assist their deliberations and planning happily coincided with my sabbatical leave from directing the clinical legal education programme at Brooklyn Law School. With the mission of evaluating clinical education prospects in Hong Kong, I spent almost two months studying its legal system, attending classes, meeting faculty members, talking with members of the profession and the judiciary, conferring with representatives of the legislature and NGOs, and learning very quickly about the institutional context in which I was expected to make my recommendations. This fact-finding mission was facilitated by the enormous openness and cooperation of the many people in Hong Kong who so generously devoted time and thought to this project.

This endeavour was prompted by several factors. First and foremost, comments in the recent comprehensive consultant's report about legal education in Hong Kong commend clinical legal education as a means of

teaching legal skills and values.¹ Second, the resulting decision to expand the LLB programme to four years provides some flexibility in the curriculum for new courses and a commitment of new resources. Finally, since clinical legal education is becoming standard in the curriculum of law schools internationally, HKU seems to be out of step in comparison. In sum, the time had arrived to determine whether this form of legal education can be introduced at HKU.

This essay attempts to synthesise everything I knew before I came to Hong Kong with everything I learned about the law school and the legal system during my intensive visit. As a long-time clinical professor, I quite naturally am an adherent of this pedagogy and a regular witness to the stimulation and active learning taking place in clinical programmes. In this essay I describe a path to introduce clinical legal education to the LLB programme at the HKU Faculty of Law.

During my time in Hong Kong, I heard a great deal of support for the abstract concept of clinical legal education, particularly as it might alleviate concerns about unrepresented individuals whose legal needs are not being served adequately. I also heard scepticism about the concrete reality that undergraduate students can provide effective legal assistance, even if carefully supervised. Some people also questioned the need to learn skills while at the university in light of the traditional routes of professional training courses and apprenticeships. My undertaking, therefore, was to investigate whether there are settings and circumstances which would allow students both to gain experience and to help others despite these reservations. I conclude that there is room in the HKU curriculum for a range of diverse clinical courses. Moreover, in Hong Kong there are venues and situations in which properly supervised and trained HKU students, with all of the energy, enthusiasm and commitment beginning advocates bring to representing their first clients, can tackle and master basic lawyering skills and can render truly valuable and well appreciated assistance to both the client and the system.

What is Clinical Legal Education?

Clinical legal education is a form of pedagogy in which students are exposed to problems that lawyers might confront in practice. Students assume the responsibility to solve these problems, both non-contentious and contentious, in the role of lawyer or advocate. Through this process, they learn the lawyering

¹ Paul Redmond and Christopher Roper, *Legal Education and Training in Hong Kong: Report (2001)*, (hereinafter "Consultant's Report"), paras 7.6.6–7, 14.3.3–4, pp 165–66, 305–308. Available at http://www.hklawsoc.org.hk/pub_e/news/societypupdates/20010813a.asp.

skills and values to deal with the immediate situation, and also acquire the ability to apply these lessons to future endeavours. While assisting clients, students are supervised intensively by a qualified attorney who not only teaches the requisite skills but also assures that the client is competently and ethically represented. In their most sophisticated iteration, clinical programmes teach theories of law practice that better equip graduates to be thoughtful and independent professionals.

Clinical legal education in the USA generally has several major goals. The most customarily articulated objectives are to:

- Provide an opportunity to observe, experience, and improve client representation;
- Teach transferable skills;
- Teach how to apply legal theories to factual contexts;
- Engage in thoughtful critique of legal institutions as observed or experienced;
- Develop team work and collaboration skills;
- Increase legal services to unrepresented individuals or groups who lack access to the legal system; and
- Inculcate a *pro bono* ethos and nurture a long-term commitment to service

Because clinical legal education takes place in a variety of different contexts, some law schools may give higher priority to certain of these goals. For example, in a country with emerging and evolving legal systems, the development of a social justice agenda to provide access to legal representation using students as a resource may be much more important than teaching lawyering skills.

A Brief History of Clinical Education in the United States

Clinical education in the USA took root and thrived in a context in which law is a post-graduate degree and most law students expect to practice law upon earning their JD. Students study private and public law equally after completing a first year required curriculum of Torts, Contracts, Criminal Law, Civil Procedure, Property, Constitutional Law and Legal Writing. There are no tracks for barristers, solicitors, judges, notaries or other legal career path. Very few JD graduates continue their studies to earn LLM or SJD degrees unless they aspire to an academic position, and even in academia advanced law degrees are rare.

Ever since law schools became the dominant method of qualification for the bar around the turn of the twentieth century, formal legal education in the USA has struggled with its identity. For almost a century, as law schools strived to replace the apprentice system, they had to offer a form of education that could be differentiated from what would occur at a law office. To establish the academy's primacy over the apprenticeship, many law schools eschewed

practical training. They preferred to mould legal education on the university model that emphasises theoretical knowledge of the law, not practical skills.² This effort was never wholly successful since law school is intended to prepare students for a particular vocation and career so that the study of doctrine, statutes, rules, and precedents had the definite purpose of developing the legal analytical skills needed in law practice. When it came to skills involving real people and their legal problems, however, law school instruction remained abstract and theoretical, teaching from edited versions of appellate decisions rather than the messy world of facts, emotions, and indeterminacy.

An early generation of law school clinics in the 1940s and 1950s exposed students to legal aid offices or enrolled them in “practice court” courses. Such programmes were not widespread, with no more than 35 in existence at the end of the 1950s, yet they were motivated by the same forces that drive clinical education today: the need for some practical experience before qualifying for the bar, and the desire to increase access to legal services.³

Clinical education expanded and gained acceptance from the 1960s to the 1980s. Two forces were largely responsible for insuring this growth. The first and loudest was the student demand for a greater connection between the classroom and the real world, a voice that was particularly strong during this era when social justice objectives often were attained by using law as an instrument for securing rights. The second was the criticism by the profession, and particularly the judiciary, about the lack of preparedness of law graduates to represent clients and do the work of lawyers competently.

During these years, more and more schools hired clinical teachers who in turn developed teaching methods and wrote books and articles that initiated a new field of clinical legal scholarship.⁴ Clinical teaching evolved into a professional track for aspiring academics. At the same time, law schools struggled with the cost of this form of teaching. Government and private funds often supported the expansion of clinics. If outside funding was withdrawn, some schools faced the difficult decision of whether to discontinue a viable, popular programme or to fund it from their own budgets. Often the schools assumed the costs, recognising that clinics had become a well-established part of legal education.

² See Robert Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* (Chapel Hill and London: University of North Carolina Press, 1983); Anthony Chase, “The Birth of the Modern Law School”, (1979) 23 *Am J Legal Hist* 329.

³ For an excellent discussion of the three “waves” of clinical education, see Margaret Martin Barry, Jon C. Dubin and Peter A. Joy, “Clinical Education in This Millennium: The Third Wave”, (2000) 7 *Clin L Rev* 1.

⁴ There are two major periodicals dedicated to clinical legal scholarship: the USA-based *Clinical Law Review* and the UK-based *International Journal of Clinical Legal Education*. For an anthology of clinical scholarship see the Online Annotated Bibliography of Clinical Legal Education available at <http://faculty.cua.edu/oglivy/Index1.htm>.

The American Bar Association, the national accreditation body, exerted substantial pressure on law schools to establish high quality programmes by enacting standards governing the availability of clinics, the quality of supervision, and the status of clinical instructors. These regulations imposed responsibilities on individual schools that resulted in even greater entrenchment of clinics. While specific clinical programmes might terminate, schools were required to offer some clinical learning opportunities.⁵

Today's US law students graduate with substantial practical experience, much of it gained from clinics and paid employment. A handful of schools even mandate a clinical course to receive the JD degree. Modern clinics have grown far beyond their early poverty law / legal services origins to focus on small business and enterprise formation, community development, technology, international human rights, estate and end-of-life planning, and alternative dispute resolution. Some clinics are interdisciplinary, taught in coordination with faculty and students from other disciplines such as social work, business, journalism, or public health.

Models of Clinical Legal Education

There are three basic models of clinical legal education: live-client, externship, and simulation.⁶ The method of instruction is fundamentally the same in all three models, at least in principle, although resources may dictate some differences. Each model places the student in positions of responsibility for the actual legal work on behalf of the client, real or hypothetical. Often this idea is referred to as "ownership of the case." Each requires continual, attentive and dedicated supervision of the students by a licensed, experienced attorney. Each strives to teach the students to engage actively with people, with the law and with legal institutions. Each places students in the position to examine ethical principles and social justice values in law practice.

Any clinical programme tries to teach students to work with facts and law logically, analytically, critically, independently, and creatively in a real-world setting that enhances their intellectual, personal and moral development. This educational experience teaches life-long skills of problem-solving, strategic planning and decision making that are particularly valuable in law, regardless of specialty, and are also transferable to any profession or career. In

⁵ The American Bar Association accreditation standard relating to curriculum requirements states that: "A law school shall offer substantial opportunities for: (1) live-client or other real-life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and the development of one's ability to assess his or her performance and level of competence." ABA Standards for Approval of Law Schools, Standard 302 (b).

⁶ See Elliott S. Milstein, "Clinical Legal Education in the United States: In-house Clinics, Externships, and Simulations", (2001) 51 *J Legal Educ* 375.

the undergraduate setting where not every student enters the legal profession, even the students who enter other fields benefit from the analytical skills developed in an experiential learning course.

There are several key distinctions between the three varieties of clinical programmes, however. The first relates to the amount of personal responsibility a student assumes for the legal work. The second concerns the relationship of the supervising attorney to the law school. Another is whether the legal work occurs in a real or hypothetical setting.

Live-client

Students directly represent clients and take on the responsibilities and tasks of lawyers under the direct supervision of a lawyer / faculty member who is usually an employee of the law school. As the attorney of record, the clinic represents individuals, groups, and entities. The subject matter of a live-client clinic could be criminal defence, consumer, employment, immigration, family, small business, government benefits, international human rights, or intellectual property, to name only a few. A clinic might be designed to serve a particular group or community, handle a certain type of case, or be a general practice programme.

The skills taught include interviewing, counselling, negotiation, fact investigation, drafting (pleadings, briefs, agreements, contracts), oral advocacy (hearings, trials, arguments on motions), and legal research, analysis and writing. Students also have the opportunity to learn judgment, be creative, and take initiative.

Students in live-client clinics appear in administrative tribunals and trial-level or appellate courts in both state and federal systems. They also engage in transactional work.

Externship (also known as field placement or internship)

Students are assigned to law offices, agencies, or judicial chambers as interns to work on cases. Most host offices are government or non-profit although a few law schools permit students to earn credit for work at a private law firm. Students work on assigned tasks but are not the attorney of record. Supervision is provided by outside agency lawyers rather than faculty members although an instructor usually teaches a classroom component to complement the field work experience.

The skills learned depend on the work of the host office, the type and amount of responsibility delegated to the student, the efficacy of the supervision, and other variables outside the control of the law school.

Simulation

Students simulate legal problems by role playing in hypothetical exercises that recreate legal problems. The subject matter is limitless and the skills taught vary. The exercises are based on prepared materials (commercially

published or created by instructor) that require the students to perform tasks according to a structured curriculum but without actual clients, opposing counsel, or adjudicators. Appellate mooting is an example of a simulation course, but other classes might focus on trial advocacy, negotiation, pre-trial litigation, or mediation. Some courses might further limit the scope of the simulation by focusing on a particular area of practice and its associated skills.

Simulation courses have some notable advantages. They teach a wide range of skills and assure a degree of uniformity and predictability to the student work, but are much less resource-intensive than live-client clinics. They do not require cooperation from outside agencies, courts or professional bodies. Nor do the participants need professional indemnity insurance.

Despite the temptation to take a path of least resistance and avoid live-client clinics, the majority of US law schools offer a range of these courses, including a live-client clinic where the reality factor is such an important stimulus to learning and where students actually help people. Since the live-client clinic is unquestionably the most expensive version to operate due to the low student-faculty ratio, however, an individual law school usually will offer only a limited number of these programmes.⁷ The externship, relying on outside supervision provided by practicing lawyers is still fairly economical and placement opportunities are often limitless, particularly in a city that is a legal hub. Simulation courses also are quite cost-effective because they usually rely heavily on adjunct instructors with specialised skills.

Often the models are taught in sequence or are combined. Law schools sometimes require an externship to precede a live-client experience. In other schools, externships follow a live-client experience so that students can build upon the skills learned in the more closely supervised clinic in real-time, real world practice. Also, both live-client and externship clinics rely on simulation exercises for the classroom component. The most fully developed clinical programme, therefore, will offer instruction in all three models. The extent of each model would depend on resources within and without the law school.

The International Experience

The US version of clinical legal education cannot simply be superimposed on other countries. Nevertheless, law schools all over the world have implemented and embraced clinical legal education as an important instrument of social justice and reform, as well as a source of skills training and client assistance. Most programmes have examined and learned from the US experience and

⁷ A "best practices" student-faculty ratio of 8–10:1 comes from the widely cited "Report of the Committee on the Future of the In-House Clinic", (1992) 42 *J Legal Educ* 508.

then made contextual adaptations. In differing degrees, many countries have introduced some kind of live-client clinical education into either the undergraduate or professional training curriculum. Some law schools send students to established community law offices or centres in a version of an externship. There students observe the work of lawyers and sometimes assist them. In others, the law school has its own clinical law office where students handle cases. In some programmes, supervising attorneys are faculty members while in others, students work directly with local lawyers. In some “advice-only” programmes, students give information and advice about legal matters generally, but do not provide actual legal assistance.

Clinical legal education is particularly well developed in Australia⁸ and Canada.⁹ Many law schools and some professional training programmes in England and Scotland also have clinical options.¹⁰ Clinics are prevalent throughout Eastern Europe and countries in the former Soviet Union where US funding has been instrumental.¹¹ Clinical education can be found throughout mainland China.¹² Other countries with clinical programmes are too numerous and widespread to mention individually but are as diverse as India, South Africa, Chile, and Cambodia. There are also several local, regional and international organisations that support the development of clinical education through workshops, journals, and conferences that focus on curriculum, teaching methods, assessment and other educational issues. These organisations contribute to the growth of clinical legal education by bringing together clinical legal educators to formulate standards, share knowledge about

⁸ *Clinical Education Guide: Your Guide to CLE Courses Offered in Australia, 2005–2006* available at http://www.law.unsw.edu.au/centres/klc/doc/ClinicalLegalEducationGuide_200_06.pdf.

⁹ See, for example, Downtown Legal Services, University of Toronto, available at <http://www.dls.utoronto.ca/student.htm>; Osgoode Hall of York University, Toronto, available at <http://www.yorku.ca/osgoode/intensives.htm>.

¹⁰ See Richard Grimes, *Law Schools and Pro Bono Work: The Public Service and Educational Potential* (2003), available at <http://www.ukcle.ac.uk/resources/clinic/grimes.html>; Philip Plowden, *Clinical Legal Education: Theory, Practice and Possibilities* (Northumbria University, 2004), available at <http://www.ukcle.ac.uk/resources/clinic/plowden.html>.

¹¹ Legal Clinics in Poland, available at http://www.fupp.org.pl/index_eng.php?id=activities. Open Society Justice Initiative *Clinical Legal Education in CLE: Central and Eastern Europe / Former Soviet Union*, available at http://www.justiceinitiative.org/activities/lcd/cle/cle_ceefsu; CEELI Focal Area: Legal Education Reform, available at <http://www.abanet.org/ceeli/areas/legaled.html>.

¹² Among the universities with clinical programmes are Peking University, Tsinghua University, Renmin University of China, Wuhan University, Zhongnan University of Economics & Law, East China University of Politics & Law, Fudan University, Sun Yat-Sen University, Northwest University of Politics & Law, Sichuan University, Yunnan University, Nanyan Institute of Technology, and Guizhou University for Ethnic Minorities. See “The Present Situation and Prosperous Future of China Clinical Legal Education” (2005), available at http://www.law.ucla.edu/docs/zhen_zhen_prosporous_future_of_chinese_clinical_educatio_.pdf; Pamela N. Phan, “Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice”, (2005) 8 *Yale HR & Dev LJ* 117; June Shih, *From the Rule of Law to the Rule of Man* (Sichuan University, available at http://www.fordfound.org/publications/fff_report/view_ff_report_detail.cfm?report_index=431); Jay Pottenger, “The Role of [Clinical] Legal Education in Legal Reform in the People’s Republic of China: Chicken, Egg – or Fox?”, (2004) 4 *Int J Clin Educ* 63.

programmes, collaborate on teacher training, and pool resources to produce teaching materials and texts.¹³

Several factors might pose obstacles to the development of clinical education programmes outside the USA. First, in almost all countries other than the USA, law is an undergraduate department or specialty. Both students and their professors presume that the LLB degree will be based on a theoretical examination of legal principles. Many who study law actually do not plan to enter the profession so practical experience may not seem particularly important on the LLB level. Moreover, many law faculty members are not themselves qualified to practice. In order to offer a clinical practice experience in this context, some universities have had to create new positions or new departments which call for professional qualifications and have scholarship and teaching expectations that differ from those in place for traditional faculty.

Other related issues have also posed challenges to the introduction of clinical education internationally. First, undergraduate law students are young; many are inexperienced, privileged, and even sheltered. Second, clinical methodology differs greatly from the large-class lecture format that dominates legal education at the undergraduate level. Students are more used to passive learning than active or experiential learning. Third, the students who do not intend to practice law upon graduation may reject clinical education as irrelevant to their futures.

Many countries require law graduates to enrol in a professional training course and possibly also complete an apprenticeship period to qualify for law practice. In theory, this system supplies the practical training that law school does not. Although clinical education therefore may appear redundant, the apprenticeship experience can be erratic. Some settings may not foster autonomy or responsibility in trainees so that this system has mixed success in preparing for law practice even when combined with a practical legal education course of study. More importantly, even the most successful skills and apprenticeship programmes only address the skills training aspect of clinical legal education. Other goals of clinical education – developing habits of reflective practice, providing access to justice for unrepresented people and fostering a *pro bono* ethic – are omitted. Moreover, a law school clinic emphasises the self-conscious development of intangible transferable skills such as judgment, initiative, teamwork and problem solving.

In some countries, the organisation of the profession and the rules governing law practice may hamper the development of clinics. Whereas students in

¹³ Committee of Chinese Clinical Legal Educators (CCCLE), <http://www.cliniclaw.cn>; Clinical Legal Education Organization (CLEO) [United Kingdom]; Legal Clinics Foundation [Poland]; Clinical Legal Education Foundation (CLEF) [Russia]; Public Interest Law Initiative (PILI), http://www.pili.org/2005r/index.php?option=com_content&task=view&id=253&Itemid=165; The Global Alliance for Justice Education (GAJE) <http://www.gaje.org/>.

many clinics in the USA provide direct representation to clients in court, and are authorised to do so by statute or court rule and with the acquiescence of professional bar organisations, many countries restrict the right of audience in many courts and tribunals to qualified lawyers. Legal practice ordinances also might preclude unqualified persons from practicing as solicitors, thus barring student practice. Furthermore, some tribunals even prohibit representation by counsel and be conducted somewhat informally. To allow students to assist or appear on behalf of one litigant might violate the tradition of equality-of-arms. Nevertheless, there are many types of cases and many settings not subject to these constraints where which students can provide valuable service while gaining experience in interviewing, counselling, fact investigation, legal analysis, problem solving, and communication. Alternatively, the restrictions might be altered to accommodate supervised student practice. For example, in response to the growth of clinics in the USA, legislatures or courts revised practice rules to permit representation by student advocates but these rules require direct supervision by an attorney. Some jurisdictions might be less flexible about making substantial modifications but past experience has proven students to be extremely competent advocates in clinical settings.

The cost of clinical legal education, particularly a live-client programme, poses yet another barrier in some countries where universities operate under very tight budgets. Fiscal constraints have led law schools to adopt the more cost efficient externship model or advice-only programmes. While finances are always a consideration, gradual implementation of a clinical programme in many places has occurred with careful budgetary planning and the will to succeed.

The global reach of clinical education is inescapable. Despite systemic, financial and cultural hurdles, law clinics that have adapted to the needs of local communities are ensconced and flourishing in a huge variety of contexts. Some obstacles are more intractable than others thus confining options to certain types of clinical programmes, but none is insurmountable especially if the benefits of clinical education to students and the community are convincingly demonstrated.

Education and Service: A Summary of Current Hong Kong “Clinical” and Legal Assistance Programmes

The initial step in planning for the future of clinical legal education in Hong Kong is an examination of the present – both inside the law school and outside in the local legal community. Concern about unmet legal needs and the state of legal education in Hong Kong is not new. In his speech at the Ceremonial

Opening of Legal Year 2002, Chief Justice Andrew Li emphasised two especially relevant themes.¹⁴ He addressed the challenges posed to the court system by unrepresented litigants and announced the establishment of a resource centre for these individuals with cases in the High Court and District Court. Coincidentally, in that same speech, as if recognising an ineluctable connection between these ideas, he also spoke about the need for legal education reform to respond to concerns about the quality of entrants to the profession voiced in the 2001 Consultant's Report on Legal Education and Training.

The introduction of clinical education programmes at HKU could be a modest, but groundbreaking step toward improving the quality of legal education *and* alleviating the pervasiveness of unrepresented or unassisted people in Hong Kong. Apprehensions about lawyer competence and access to justice and the legal system, and the very evident relationship between these two problems, can be redressed by creating programmes that allow students to learn lawyering skills while helping individuals solve legal problems.

In order to proceed, first, it is important to identify the activities that HKU currently offers for credit or otherwise that could be characterised as "clinical." Then, this section will inventory existing *pro bono* and volunteer programmes in order to ascertain what the Hong Kong legal community (either branch of the profession, the government or the judiciary) is doing presently to try to assist individuals who cannot afford or are unable to obtain legal counsel. It then will identify some areas of unmet legal needs where student legal assistance could help fill an acknowledged vacuum.

Programmes at HKU with a Clinical Component

There presently are a few limited opportunities at HKU for work that is clinical in nature. In varying degrees, these programmes expose students to real people with actual or potential legal problems, allow students to interact with the community, and occasionally to assist with some kind of legal problem solving. Some are credit-bearing while others are purely voluntary.

Free legal referral and advice scheme

Since its inception in January 2002, approximately 30 to 40 students per semester assist personnel in District Offices to conduct intake interviews of people seeking free legal advice from the Duty Lawyer Service and prepare notes of the interview for later use by the Duty Lawyers. Students are encouraged, but not required, to follow up by attending the subsequent Advice Session. Fourth-year LLB students and PCLL students can participate. All participants attend a briefing and a training session (including some training

¹⁴ Available at <http://www.info.gov.hk/gia/general/200201/14/0114101.htm>.

on interviewing skills) at the beginning of the semester but usually each student goes to the District Office only once.

This project replaced an earlier similar programme conducted at the University itself. Law faculty members, or students in the presence of faculty members provided oral advice to clients who had some connection with HKU, usually staff or relatives. Clients came to appointments set once a week during lunch hour on the university campus. The programme was intended for people who could not afford legal advice. About 30 to 40 students a year participate. This programme was suspended when the Duty Lawyer project began.

Social justice summer programme

The mission of this programme, first offered in 2001, is to provide opportunities for students to observe how the law affects the community and to encourage *pro bono* engagement. The programme coordinates with HKU's Social Sciences Department. It is offered in the summer for four weeks.¹⁵ During the internship, students work in the offices of community partners who decide how to work with the students. Students intern with NGOs and social service agencies but there is no requirement that there are lawyers on the premises, nor that the students be assigned tasks involving legal problems. In recent summers, Community Partners have included the Consumer Council, Care for your Heart, the Legislative Council, Hong Kong Association for Women Abuse, Society for the Prevention of Cruelty to Animals, Hong Kong Vocational Center, Elderly Financial Management / Education Project, Hong Kong Rehabilitation Alliance, Caritas Family Crisis Support Centre, Society for the Promotion of Hospice Care, Boys' and Girls' Clubs Association, Bethune House of Women Migrant Workers, Mission for Filipino Migrant Workers.

At the end of the internship, both the students and the community partners submit evaluations to the supervising faculty member. Students receive three pass / fail credits following the submission of a satisfactory paper and reflection journals. Three readers determine if the paper is satisfactory. A few students have expanded their papers into larger projects for additional credit, but this does not require them to perform additional fieldwork. Paper topics in recent years have included: Protection of Disabled Persons in Hong Kong: A Right-Based Perspective; Review on Current Laws of Bankruptcy; Dying at Home; and Role of Self-Help Organisations.

In their reflection journals, students express deep satisfaction with their experience demonstrating that this programme offers a valuable opportunity for students to interact with the community and to expose them to career options beyond the barrister or solicitor route.

¹⁵ Information about this programme is available at <http://www.hku.hk/law/student/sjsi.htm>.

Law firm internships

During the summer and in some instances during the winter recess, students are able to work at law firms or barristers' chambers to gain practical legal experience.¹⁶ These positions are highly competitive and can lead to job offers. There never has been any system of monitoring these internships to determine what students learned by observation or what responsibilities or tasks they were assigned. It is assumed that the experience is a useful exposure to this type of law practice. Because these internships do not earn credit, the law school has not overseen them or evaluated their educational value.

PCLL

The Post-Graduate Certificate in Laws programme is not part of the undergraduate LLB curriculum. Nevertheless, its teaching theory and methods are essentially clinical, relying heavily on simulation exercises that both teach and reinforce skills.¹⁷ The principal differences between PCLL simulations and a live-client clinical programme is the reality factor. Also, because PCLL problems are simulated, they also can involve simplified versions of some types of clients and matters that would be too complex or have too much at stake for inexperienced students to handle.

Pro Bono Services in Hong Kong

Hong Kong struggles with the problem of unrepresented litigants and unmet legal needs. Although some *pro bono* legal services are available, they are limited in scope and depth. Other than the Legal Aid Department, there are no publicly or privately funded legal services law offices specifically dedicated to representing indigent clients or individuals who are unable to obtain counsel. The Legal Aid Schemes fund representation for individuals in court proceedings, but are available only to people who are poor enough to satisfy rather stringent financial eligibility criteria. Moreover, by most accounts the legal culture in Hong Kong does not have a strong tradition of a commitment to *pro bono* service.

It is widely acknowledged that there is insufficient legal assistance in Hong Kong in litigation in the High Court or District Court, and in numerous other settings where lawyers generally would handle matters, as well as in proceedings where lawyers would not or cannot appear (eg labour, employment, discrimination, small claims, housing, and administrative disputes).¹⁸ Moreover,

¹⁶ The materials distributed for the 2006 Hong Kong Law Fair held on 18 February 2006, listed 18 private law firms, the Department of Justice, and the Hong Kong Bar Association as employers seeking trainees and summer and / or winter students.

¹⁷ The teaching philosophy of the PCLL programme is described in Stephen Nathanson, Wilson W.S. Chow and Felix W.H. Chan, "The University of Hong Kong's New PCLL", (2002) 32 HKLJ 381.

¹⁸ See, for example, *Civil Justice Reform – Interim Report and Consultative Document*, Unrepresented Litigants, Part I, s G (Nov 2001), available at <http://www.civiljustice.gov.hk/ir/download.html>.

some individuals simply need assistance in understanding the legal significance of their circumstances or their rights.¹⁹

According to a recent unpublished survey conducted by the Department of Justice, no more than 53 of the 684 NGOs in Hong Kong claim to be engaged in law-related activities. Very few organisations other than those identified below provide actual legal assistance.²⁰

The Central Policy Unit of the Government recently undertook a study of non-profit, voluntary, non-governmental institutions.²¹ The study described legal services and consumer protection organisations as having “minimal” significance within the wider community because few organisations fit this definition.²² It also noted that “only a small percentage of the total professional population participates in legal services programmes.”²³ This confirms the observations of the 2001 Consultants Report that the culture of volunteerism in the Hong Kong legal community is underdeveloped.²⁴

Principal *Pro Bono* Service Providers

The Legal Aid Department

The mission of the Legal Aid Department is to ensure that any person who has reasonable grounds for taking or defending a legal action is not prevented from doing so by lack of means. Any person, whether or not resident in Hong Kong, who is involved in court proceedings may apply for Legal Aid. Legal Aid will be granted if the applicant is able to satisfy the statutory criteria as to financial eligibility and the merits for taking or defending the legal proceedings. Certain types and categories of cases do not qualify for legal aid while others qualify for the Supplemental programme. Legal aid may be provided by solicitors, or when needed, by barristers, in District Court, the Court of First Instance, the Court of Appeal and the Court of Final Appeal.

¹⁹ This situation led to the establishment of a Steering Committee on Resource Centre for Unrepresented Litigants in February 2002 whose eventual report resulted in the creation of the Resource Center for Unrepresented Litigants located at the High Court building. The Steering Committee’s Report also noted that law students might be able to assist at the Centre by sorting requests into legal categories for more appropriate and accurate referrals to other agencies, or as language interpreters. “Report of the Steering Committee on Resource Centre for Unrepresented Litigants”, paras 3.39, 3.56, 4.5(3). The Steering Committee encouraged the two branches of the profession and the two Universities (now three, with the new law school at Chinese University) to give further thought to collaborations (para 3.56).

²⁰ Materials on file with author.

²¹ Elizabeth Hutton, “Law and Legal Services Organizations”, in *Study on the Third Sector Landscape in Hong Kong* (2004), available at http://www.cpu.gov.hk/english/documents/new/press/3rd_content.pdf.

²² *Ibid.*, at 167.

²³ *Ibid.*, at 163.

²⁴ Consultants’s Report (n 1 above), at para 14.1.3, pp 296–297.

In criminal proceedings, it appears that most accused persons who cannot afford private lawyers can benefit from the Legal Aid Scheme. In particular, the Court has discretion in criminal cases to grant legal aid, even if the accused's resources exceed the statutory financial eligibility limit if the interests of justice so require. However, Criminal Legal Aid does not normally fund the legal costs of pre-trial investigations so that lawyers accepting instructions from the Legal Aid Department are not generally rewarded separately for preparation work.

On the civil side, the gap is much wider. First, legal aid is available in proceedings in the District Court or above, but not in proceedings before tribunals or appeal boards. Hence, no legal aid is available for such matters as administrative appeals, housing appeals, buildings appeals, or complaints against the police. Second, certain proceedings in the District Court or High Court are also excluded from Legal Aid Schemes. Third, financial eligibility requirements are very stringent so that many "sandwich class" people who cannot afford the substantial legal costs of full-blown civil proceedings are ineligible for legal aid.²⁵ Fourth, these Schemes do not allow for partial representation so that unbundled legal assistance cannot be provided to an unrepresented litigant at key stages of the proceedings.²⁶

The Duty Lawyer Service

Managed by the Hong Kong Bar Association and the Law Society of Hong Kong, the Service has three components. The Duty Lawyer Scheme provides legal representation to people appearing before the Magistrates, Juvenile and Coroners Courts, and assigns lawyers to advise defendants facing extradition as well as hawkers appealing to the Municipal Services Appeal Boards. The Free Legal Advice Scheme provides free preliminary advice to individuals who come to District Offices in the evenings. The Tel-Law Scheme allows callers to hear information on tape on more than 70 subjects.²⁷

Most criminal defendants who cannot afford private lawyers can benefit from the Duty Lawyer Scheme in criminal proceedings before the Magistrates and Juvenile Courts. The main gap is that the Duty Lawyer Scheme does not cover minor offences which do not carry sentences of imprisonment.

²⁵ For the Ordinary Legal Aid Scheme, the total financial resources of the applicant and spouse cannot exceed HK\$155,800. For the Supplementary Legal Aid Scheme, covering only professional negligence claims, the limit is set a HK\$432,900. See <http://www.lad.gov.hk/english/ginfo/welcome.htm>.

²⁶ See n 18 above.

²⁷ In 2004, the Duty Lawyer Scheme reported that its lawyers represented 50,760 defendants charged with criminal offences in the Magistrates' and Juvenile Courts, an increase of 3.91% over the previous year. The Free Legal Advice Scheme also made 922 lawyers available at 9 evening centres advising 6,089 persons, an increase of 0.88% over the previous year. The Tel Law Scheme recorded a total of 40,210 calls representing a drop of 8.91% over the previous year. See <http://www.dutylawyer.org.hk/en/free/free.asp>.

On the civil side, the Free Legal Advice Scheme has considerable limitations as it only offers a one-time preliminary legal assessment on relatively simple matters. The lawyer on duty on a particular evening is not expected to study more than a handful of documents before an advice session. Each client is normally given 20 to 30 minutes to meet the Duty Lawyer. This includes time for eliciting further information from the client in order to understand the problem and for interpretation if the Duty Lawyer is not bilingual. Even if there are outstanding issues or matters requiring follow-up, the client cannot make another appointment to consult the same Duty Lawyer. The Scheme does not provide assistance to the client who needs help to negotiate with another party or to draft letters or court documents. An unrepresented litigant in court proceedings is unlikely to benefit from this Scheme.

The Bar Free Legal Service Scheme

The Bar Free Legal Service Scheme (BFLSS) provides free legal advice and representation in cases where Legal Aid is not available or where the applicant is unable to afford legal assistance and the case is thought to be one where assistance should be given. Volunteer barristers with a range of experience are placed on a panel. Each of them offers their services free of charge for three days or 20 hours each year.²⁸

The main limitation of the BFLSS is that its resources are scarce so some worthwhile cases are excluded. The Scheme can only cover short hearings and will not provide a barrister to advise on a continuing basis over a long period or to provide assistance in long cases in court. Moreover, barristers do not have the resources to carry out factual inquiries or to deal with correspondence or court procedures on the client's behalf.

Resource Centre for Unrepresented Litigants

The Resource Centre for Unrepresented Litigants, located in the High Court building, provides assistance to individuals who are parties to or about to commence civil proceedings in the High Court or the District Court (other than matrimonial, lands, employees' compensation and probate matters).²⁹ The assistance provided at the Centre is confined to procedural matters.

²⁸ See <http://www.hkba.org/the-bar/free-legal-service>. According to the last available Report of the Bar Free Legal Advice Scheme tracking cases between December 2004 and November 2005, the Scheme received 287 applications and reviewed 259 of them during that period. Representation was granted in 21 matters (Criminal matters: 14 [won – 2, lost – 8, pending – 4]; Legal Aid granted: 1; Civil matters: 2 [both won]; Legal Aid Appeals: 4 [won – 1, lost – 1, pending – 2]; cases where advice given: 24 [Criminal matters: 14; Civil matters: 20]; cases where Director of Legal Aid was approached for reconsideration: 4 [Legal Aid granted after Scheme's approach: 1]; cases where work was undertaken with a view to obtaining Legal Aid: 1). See <http://www.hkba.org/whatsnew/chairman-corner/annual-statement/2005-2006/index.html>.

²⁹ See <http://rcul.judiciary.gov.hk/rc/cover.htm>.

Computer terminals with access to the Judiciary website, interlinked with the websites of the Legal Aid Department and of other agencies offering free legal advice, are provided at the Centre. A database on the frequently asked questions raised by unrepresented litigants is also provided for users' reference. Also available are brochures introducing the broad outline of civil proceedings in the High Court and the District Court; sample court forms; videos on court procedures; daily cause lists of the High Court and the District Court; and a writing area and self-service photo-copying machines.³⁰

Since the Resource Centre is run by the judiciary, it must remain impartial and be perceived as such. Hence, it can only provide information about court procedures, but cannot provide legal advice or assistance to a litigant. Thus, even after coming to the Centre for help, most people still have the problem of finding someone to assist them.

Organisations providing legal information

Several organisations provide know-your-rights information either over telephone hotlines or on web sites. They include: Hong Kong Federation of Women's Centres, The Community Legal Information Centre (CLIC), The Association for the Advancement of Feminism, Hong Kong International Arbitration Centre, and Law Links. Each of these organisations offers valuable advice about individual rights in particular areas of law and explains aspects of the legal system, including how to apply for Legal Aid assistance. None, however, provide direct representation or individualised advice.

Unmet Legal Needs in Hong Kong

As this inventory of existing *pro bono* services demonstrates, there are obvious unserved legal needs in Hong Kong. There is near-agreement in the legal community about gaps or insufficiencies in legal services in several types or categories of matters or in particular settings. In some instances, the problem is clear since one litigant appears in court without counsel. This can create an inequality-of-arms between the parties that might call for interference by the presiding judge in order to protect the unrepresented person. On other occasions, both parties lack legal counsel resulting in less orderly administration of the proceedings. The absence of legal advice and assistance can be quite disruptive resulting in protracted and chaotic proceedings. A law school clinical programme could fill these gaps by providing assistance to individuals in certain types of matters where a lack of representation negatively affects both the people involved and the efficiency and fairness of the system.

³⁰ By most accounts, the Centre has not lived up to the hopes of its founders. Few individuals come in person, the space is under-utilised, and the unavailability of individualised assistance may result in more rather than less confusion for people interacting with the legal system.

For example, individuals struggle in Small Claims or Labour Tribunal proceedings where formal representation is not permitted. While these and other similar tribunals have the advantage of somewhat informal practices, in many cases one of the parties is a big corporation represented by its own in-house lawyers or with resources to engage private lawyers to assist in preparations for the hearing. The equality-of-arms intended by the prohibition against counsel at the hearing is illusory. The weaker party, without legal assistance, often faces great difficulty in formulating the claim and collecting and organising the relevant evidence. Background legal assistance to that party could restore equality-in-reality.

A second arena of unmet legal needs involves eligibility for legal aid assistance. Certain matters do not fit within the guidelines for legal aid, yet the party is unlikely to be able to afford a private lawyer or a private lawyer is unlikely to be interested in acting in certain proceedings. Lawyers rarely appear in claims or at proceedings before agencies such as CAPO (Complaints Against Police Office and Independent Police Complaints Council), the Consumer Council, or the Land's Tribunal. Frequently individuals are unrepresented on building appeals, immigration appeals, refugee screenings, appeals from denials of Legal Aid assistance, or at mediations of discrimination claims before the Equal Opportunity Commission.

Third, in some instances, an individual might receive legal aid at some stage in the proceedings, but at other vital stages there is no legal advice or assistance available.

For example, legal aid is not provided at the pre-proceedings stage in criminal matters. In civil matters, the Duty Lawyer scheme does not provide assistance beyond one-time preliminary advice. Further, an individual might be eligible for legal aid relating to some aspects of a matter but not others, a situation which can lead to fragmented results.

Finally, there is also a notable gap in legal assistance to individuals in civil matters who are not poor enough to obtain legal aid yet unable to afford private lawyers for full-blown litigation.

Possible Directions for Clinical Legal Education in Hong Kong

General Considerations

With the three basic models of clinical legal education in mind, when considering whether to introduce a clinical programme, HKU has to set priorities taking into account educational goals, available funding for staff and operations, and the external legal environment. Some of the systemic impediments noted above are present in Hong Kong so that the law school might have to work closely with outside groups such as the administrators of tribunals, the professional organisations and the judiciary. Certain models are

more suited to achieving particular objectives but the approaches are not mutually exclusive; a single school can adopt each model in one manner or another.

A clinical programme must be carefully designed to achieve its primary educational objective. Occasionally, a clinical programme exists principally to meet the legal needs of a community when law students are a substantial or even sole resource to alleviate an access problem. To enhance its educational value and to avoid being overwhelmed by public service demands, a clinical programme should be a part of the regular curriculum and overseen by the law school. Clinical education, therefore, succeeds best when students receive comprehensive training and conscientious, contemporaneous supervision by full-time, fully qualified lawyers who are responsible to the students, the clients, the profession, and the University.

Another mission of clinical programmes is the improvement of society by assuring greater access to justice to people who cannot find legal assistance elsewhere. This goal is best accomplished through serving unmet legal needs in matters which are not handled by private lawyers for a fee although it is important to structure a programme so that educational objectives are carefully balanced with service needs. The more clinic students devote time, energy and skills to people in need, the more likely a *pro bono* ethos will grow at an early stage in the students' moral and professional development.

Planning a Clinical Programme for the LLB Curriculum

A plan for a clinical programme at HKU requires consideration of many key questions and many design choices based on pedagogical goals, institutional resources, and local circumstances. Most generally, these decisions focus on educational goals and how to attain them; the size and scope of the programme; the type of supervision; the classroom component; the nature and content of reflective practice; and the assessment tools.

Starting a live-client clinic raises additional questions such as the nature and area of client service and a wide array of organisational, logistical and practical concerns. Of course, funding is a pervasive concern. These larger categories generate a more detailed, though not exhaustive, set of questions.

Academic / educational and service goals

- What are the basic educational goals of the programme and how to achieve them within the structure of the law school?
- What skills and values will be taught?³¹

³¹ On this question, the Consultant's Report provides an extremely helpful taxonomy of intellectual and professional skills that are at the core of any legal education. These include skills of analysis (problem identification and problem solving within a legal context), technical skills (research, writing), dealing with facts, and understanding legal processes, para 7.2.3, p 115, and professional skills (eg interviewing, client counselling, negotiation, advocacy, drafting), paras 7.2.4–5, pp 116–118.

- What teaching methods will be used?
- What is the relationship between the clinical work and educational objectives?
- What will be the basic structure of the clinical programme (eg live-client, externship, simulation, or various combinations)?
- Will there be formal classroom requirements?
- What should the duration of the clinic be?
- How many credits will students receive?
- How many semesters can a student take?
- How will student work be assessed?
- How many students can participate?
- How will students be selected?
- How extensive will the programme be throughout the entire curriculum / course of study?
- How will the clinical programme coordinate or compliment existing programmes?
- Does the programme have additional goals such as service to the legal community or the public?
- Who and how many teachers will supervise in the clinic?
- What qualifications should the ideal teacher have?

Organisation / management / operations

- What will the formal structure of the clinic be?
- If the clinic takes actual cases, what kind of cases (subject matter, type of proceeding, type of client)?
- Will professional liability insurance be required and, if so, is it available and how much would it cost?
- What will be the relationship of the clinic to the rest of the law faculty?

Logistics

- How much will the programme cost and how will the programme be financed?
- Do financial limitations affect the achievement of educational or service goals?
- Where will the office be located?
- What kind of staff is necessary?
- What kind of equipment is needed?

Relations outside the law faculty

- What formalities do professional organisations require?
- What will be the legal relationship between the university and the clinic?
- How will the clinic describe its services to the public?

A Proposal for Introducing Clinical Legal Education at Hong Kong University

Given the range of choices, there are several possible approaches to introducing clinical education to HKU. First, the law school could develop one or more models simultaneously since each offers its own advantages. Internal factors such as funding, space, or faculty resources might dictate how extensively each model could be implemented at any given time or over time. External factors such as limitations on law practice might determine the type of work a student can do. Alternatively, the law school could devote its energies and resources to implementing only one model, or to introducing each model sequentially. For example, in the USA, early clinical programmes tended to be externships in which students worked at field placements. As the academic value and popularity of the programmes increased, the law schools moved the programmes in-house providing space and finding faculty.

The most challenging type of programme to begin and to operate obviously is the live-client clinic. The rewards of these programmes usually justify their cost. The levels of student engagement and service are the highest in programme where students work with actual clients to solve real problems. The live-client clinic would be a notable innovation on the part of HKU. Accordingly, the proposals below examine the possibilities in light of the educational and service values of each model, but strongly recommend creating the "HKU Legal Education and Service Centre," a law school / law firm that would be the infrastructure to support live-client clinical work. This major step would be followed by the development of externships and the enhancement of simulations courses.

The live-client component: the HKU legal education and service centre

Constructing a live-client clinic is a major undertaking. But the ingredients for a successful programme are present in Hong Kong today. As noted above, there are many potential categories of cases where student legal assistance would benefit students, clients and the legal system. "The HKU Legal Education and Service Centre" is an entity that the law school can establish where supervised students can interview, counsel and advise clients who otherwise could not afford or obtain legal assistance. Third and fourth year students in the LLB programme and perhaps eventually students in the PCLL programme can participate for academic credit.

The defining characteristic of a live-client clinical programme is the amount of responsibility and autonomy given to the students. Often this idea is referred to as "ownership of the case." Of course, this much delegation requires active, attentive and dedicated supervision of the students by a qualified attorney. This assumption of responsibility strives to teach students to engage actively with people, with the law and with legal institutions, and it places students in the position to examine ethical principles and social justice values in law practice.

To implement a live-client clinical programme, a law school must first locate a setting in which to provide opportunities for students to interact with individuals with legal needs. In the USA, the predominant solution is to establish a clinical law office sponsored by the university. The office usually, but not always, is housed on or near the campus (for the convenience of students) but might be located away from the campus to be closer to the legal centre of the community (courts, law offices). Sometimes the law school clinic operates out of an existing office or agency where space is set aside for the clinic students and supervisors.³²

There are also several choices along the same lines for the supervisory personnel. Most often, the law school will hire its own practitioner-instructors whose principal teaching responsibility is to clinic students. Sometimes clinic instructors also teach other courses in both the skills and doctrinal curriculum. Another option is to pay the salary of an attorney working at the agency with which the law school is cooperating whose job thereafter is the instruction and supervision of the students.

Regardless of where the clinic is set or the status of the supervising instructor, the principal goal of the live-client clinic is to assure that students interact with clients about legal matters and, whenever possible, give them tangible, useful assistance. The range and depth of this assistance is the key design question that must be addressed with educational and service goals in mind, and with an awareness of any professional structural limitations.

The nature of the relations with individuals seeking assistance with legal problems could range from general non-personal information all the way to actual representation. For example, a client might simply need to be told where to go to find an official record. This simple referral does not demand expertise or sophistication yet may require the student to listen carefully, research the legal system with reference to the facts, and perhaps even escort individuals to make sure they receive the help they require. It is easy to imagine each of these aspects becoming more complicated depending on the client's problem, the laws at issue, and the institutions involved.

A clinical programme could be constructed to offer nothing more than the basic one-time "advice only" assistance now provided by the Duty Lawyer Service. The main difference would be that supervised students rather than solicitors would provide the advice. A clinic student could assume even more responsibility for helping the person by doing other tasks that might be useful such as helping the person to gather and organise evidence, negotiating with an opposing party to reach a resolution of the dispute, helping to prepare the

³² In either instance, the law school will have to provide financial support for the clinic's operations by funding the expenses of the law office or by contributing to the outside agency.

individual for a personal appearance before a tribunal, and attending the hearing or trial to provide moral support, legal back-up and perhaps even intervention if the presentation falters.

As noted above, there are several types of proceedings and settings in Hong Kong where students could be very helpful both to the individuals and, in some situations, to the tribunals. A clinic might promote access to justice by serving unmet legal needs while providing a challenging setting in which students could grapple with indeterminate facts, analyse the legal principles at stake, and synthesise both threads into a coherent claim on behalf of an individual who otherwise would be without assistance. Even if a matter does not require resolution in a formal proceeding the student still would have an invaluable opportunity to learn something about brainstorming and solving problems for other people.

Once the structure of the clinic and the nature of the work are determined, many logistical issues arise. These can be educational (eg credits, prerequisites, assessment), professional (eg case selection criteria, establishing collaborations with other agencies and tribunals, creating a legal entity for authorised practice, developing office management procedures) and practical (eg location and space, staffing, equipment). Each step requires careful planning, deliberation, and time, and above all, a willingness to support the endeavour financially.

Live-client clinics, indisputably the most expensive model of clinical legal education, impose ongoing financial obligations. At a minimum, the law school must fund a core clinical department with a budget sufficient to sustain a predetermined number of instructors and to cover expenses. Sometimes temporary funds will allow for expansion by hiring clinical teaching fellows or short-term instructors. But without the long-term funding commitment, a live-client clinic which creates client obligations is irresponsible.

The externship component

Externships also place students in environments away from the law school where they are exposed to actual legal problems. The amount of personal responsibility assumed by the student will depend on the needs and capacity of the host office to develop and monitor projects appropriate for students to handle. An externship can either substitute for or supplement live-client clinical programmes. Favoured by administrators for their comparatively low cost and their wide availability, these programmes depend on the cooperation of outside lawyers, agencies or judges to design tasks, provide feedback, and otherwise usefully supervise student work. In these field placements, students can work with clients or witnesses, conduct research, prepare all varieties of written work, and even appear in court under the supervision of the assigned counsel. With respect to the students' educational experience, instructors hold regularly scheduled classes or tutorials during which they engage the students in reflection on their experiences. Externships can require papers,

presentations, journals or other kinds of written work in addition to whatever work the student is producing at the field placement.³³

Whether or not the HKU faculty decides to move ahead to implement a live-client clinic, externship programmes can be developed for LLB students. Preferably they would work on legal problems in the offices of government agencies, NGOs or law offices which perform *pro bono* work. It would be inappropriate in light of the public service mission of clinical education for students to work for free on fee-generating matters.

The possibilities for externships are limitless, depending only on the ability of the law school to enlist appropriate supervising host offices. The externship model permits a broad set of offerings in a wider range of settings, including many which are not available in a live-client clinic (eg in a prosecutor's office or as a judicial law clerk). The law school will have to educate the legal profession about the utility of having students work for them. First, supervising attorneys have to be given clear instructions about the educational expectations of the externship course. One risk of an externship is erratic supervision so a responsible programme has to monitor for and correct any problems along those lines. Also, some agencies consulted had difficulty imagining how students could be useful since many experienced full-time paralegal employees perform the kinds of work suitable for a student but require much less supervision. Even if students are not full-time employees, they can provide useful assistance to the law office by, for example, doing legal research or intake interviews. Doubts about student competence certainly had to be overcome in the USA in the early days of clinical education but students so enthusiastically embraced the opportunity to engage in the world outside their classrooms they soon proved themselves. They quickly become indispensable resources for busy lawyers, particularly those in non-profit organisations with no budget to hire paralegal employees.

The simulation component

Simulation, the third branch of clinical teaching, already exists at HKU in the PCLL programme so it would be the easiest and most cost-effective method to incorporate into the LLB curriculum. There, simulation courses have the potential to reach the greatest number of students. Simulation as a teaching method takes place in stand-alone courses such as trial and appellate advocacy,

³³ There is a significant body of literature about externships. See, for example, Mary Jo Eyster, "Designing and Teaching the Large Externship Clinic", (1999) 5 *Clin L Rev* 347; Daniel J. Givelber, Brook K. Baker, John McDevitt and Roby Miliario, "Learning Through Work: An Empirical Study of Legal Internship," (1995) 45 *J Legal Educ* 1; Henry Rose, "Legal Externships: Can They Be Valuable Clinical Experiences for Law Students?", (1987) 12 *Nova L Rev* 95; Robert F. Seibel and Linda H. Morton, "Field Placement Programs: Practice, Problems, and Possibilities", (1996) 2 *Clin L Rev* 413; Linda F. Smith, "Designing an Extern Clinical Program: Or As You Sow, So Shall You Reap", (1999) 5 *Clin L Rev* 527; Marc Stickgold, "Exploring the Invisible Curriculum: Clinical Field Work in American Law Schools", (1989) 19 *NML Rev* 287.

interviewing and counselling, negotiation, and drafting, all courses that are taught routinely in US law schools to JD candidates. Simulation also can be the teaching method in the classroom components of both live-client and externship clinics because these exercises assure exposure to the full range of lawyering activities. Simulation exercises can be introduced and integrated into other classroom courses also to enhance learning substantive law. For example, students might conduct a negotiation in Contracts or a trial in Criminal Law.

There is a large body of literature about such topics as interviewing, counselling, negotiation, fact investigation, and advocacy. Commercial publishers offer both texts and materials for use in simulation exercises.³⁴ Simulation courses developed by law school faculty could be taught to LLB students by either full-time or adjunct instructors, as is now the case in PCLL.

Other possible directions

Community education / "street law"

Some clinical programmes focus on community education rather than client representation. Many law schools in the US and several international programmes offer so-called Street Law opportunities to students for credit or as volunteers.³⁵ Street Law programmes send law students to high schools to teach a law-based curriculum that introduces young students to the substantive law, legal procedures, and civic responsibility. It provides law students with an opportunity to master and communicate ideas related to legal systems, and to plan and prepare for classes.

Although Street Law programmes most often partner with secondary schools, some programmes prepare students to go to community groups such

³⁴ For example, the National Institute of Trial Advocacy (NITA) publishes an enormous range of materials and case files for simulation courses, available at <http://www.nita.org/>.

³⁵ For general information, see "Street Law", available at <http://www.streetlaw.org/lawschoolhome.htm>. This organisation also identifies many programmes taught throughout the world, particularly in Eastern Europe and Africa, see <http://www.streetlaw.org/world.html>. Street Law programmes have been sponsored by the Soros Open Society Institute (<http://www.streetlaw.org/osipage.html>) and the Ford Foundation. According to Street Law, the aim of the international programmes is to help foster effective citizenship by educating about law, democracy, human rights, violence prevention, and conflict resolution. Through Street Law programs, citizens acquire the necessary knowledge, skills, and outlook to succeed as participatory, active members of a pluralistic, law-based society. Each programme, designed with input from Street Law, local educators, and lawyers, reflects each country's unique laws and culture. Street Law programmes also operate at UK universities. See, for example, University of Essex, <http://www.essexlawsoc.co.uk/index.php?pg=street.php>. The DC Law Clinic at Georgetown University is one of the oldest programmes in the USA. Its mission is: "[T]o provide legal education to laypersons while also aiding in the professional development of the law students. The Clinic seeks to provide a greater understanding of the law to those outside the legal profession and promote the use of interactive educational methods to develop academic, critical thinking, and civic skills." (<http://www.law.georgetown.edu/clinics/dcstreet/>). The following article describes in greater detail the rationale and benefits of Street Law courses in law school: Kamina Pinder, "Street Law: Twenty-Five Years and Counting", (1998) 27 *JL & Educ* 211. For a brief description of another programme in the USA, see the University of Washington, <http://www.law.washington.edu/StreetLaw/>.

as senior centres, battered women's shelters, or other local organisations to deliver "know-your-rights" lessons in such matters as consumer protection, employee rights, family law, or criminal law.³⁶

Policy and research projects

Law students are an untapped resource for projects whose goals are policy-oriented. Students can conduct fieldwork on behalf of a NGO or other organisation trying to gather information about legal or law-related social phenomena that may lead to efforts to change legislation or legal systems. For example, law students could be enlisted to observe and document court proceedings, to interview individuals in detention about conditions, or to assist in systemic reform efforts. A clinical programme might make itself available to assist outside organisations or could initiate its own projects. However the projects are developed, students would be engaged in the educational process of mastery of an issue, designing, planning and executing a research project and reporting its results.

Personal service unit

One successful court-annexed project in the UK is the Personal Services Unit (PSU) of the Royal Court of London.³⁷ The PSU supports litigants-in-person, witnesses, and their family members attending courts by advising about court procedures. The PSU provides emotional support, companionship, guidance around the court building and intervention with court personnel but not legal advice.³⁸

The work of the PSU is reinforced by students from the BPP Professional Education School who volunteer both at the Royal Courts of Justice and the Principal Registry of the Family Division. As PSU volunteers, the students provide practical and moral support to litigants-in-person with whom they talk about their cases informally and accompany them around the courts and to hearings. This project is one of many volunteer opportunities available to BPP students.³⁹

³⁶ This kind of community education is at the heart of the Community Legal Services Centre Outreach Programme proposed by the Honourable Audrey Eu and the Honourable Margaret Ng. This project included legal advice, possible client representation, and community education through a network of NGOs with pre-existing expertise in certain areas of service. It drew upon the expertise of lawyers already participating in the Duty Lawyer Service. The proposal was well received but for bureaucratic reasons the full plan was to be held in abeyance. During its trial phase, the Outreach Programme was carried out with the voluntary help of practitioners and partial funding from the Department of Justice. Law students might be a useful resource to revitalise this project.

³⁷ See <http://www.thepsu.co.uk/PSU.htm>.

³⁸ Some kind of legal advice may be available at the Royal Courts of Justice through its Citizens Advice Bureau where volunteers do offer legal advice, but for actual representation, individuals are referred to the Bar Pro Bono Unit. See <http://www.hmcourts-service.gov.uk/cms/1260.htm> The HKU programme could replicate either or both of these projects.

³⁹ A fuller description of these projects is available at <http://www.bpp.com/law>.

A similar project could be established at HKU to supplement the work of the law clinic while simultaneously helping the High Court's Legal Resource Centre further its mission. The terms of any collaboration would have to be established clearly with the Court since it obviously would be impossible for the students to meet with, let alone help, every person who seeks assistance there. Nor should the students substitute for or duplicate the work of the Centre's staff. Since students would not be offering legal counsel, this project could provide a good initiation into the real world that might precede other clinic work. Alternatively, individuals interviewed at the Centre might be referred to the law school clinic for follow-up and more personalised assistance.

Clinical Legal Education Beyond the LLB

Once the door to clinical education is opened at HKU, introducing students, faculty and the legal community to the value of experiential learning, many other possibilities for more advanced programmes come to mind.

Programmes Within the University

Interdisciplinary programmes

Interdisciplinary clinical programmes are evolving in the USA. Just as there are joint degree programmes (eg JD / MBA), many universities are recognising the advantages of cross-fertilisation of approaches to problem-solving, analysis, and holistic representation in the clinical context. An example of this might be a clinical course that is cross-listed in both the law and the social work faculties in which students from both departments work collaboratively on legal and social issues for the elderly, the disabled or children.⁴⁰ This intersection of disciplines enables the clinic to provide non-fragmented services where the client's problems need multifaceted solutions. It also allows for cross-disciplinary conversations about professional responsibility, varying concepts of client relationships, and the connections between legal and non-legal problems and solutions.⁴¹

⁴⁰ The Social Justice Summer Programme is an example of such collaboration since students from both the Law and Social Work faculties participate, but at this point it is a rather informal association with no sharing of perspectives.

⁴¹ There is a considerable body of literature about interdisciplinary clinical programs. See, for example, Jacqueline St Joan, "Building Bridges, Building Walls: Collaboration Between Lawyers and Social Workers in a Domestic Violence Clinic and Issues of Client Confidentiality", (2001) 7 *Clinical L Rev* 403; Susan R. Jones, "Justice, Ethics, and Interdisciplinary Work in Transactional Law", (2004) 14 *Wash UJL and Pol'y* 249; Eric S. Janus and Maureen Hackett, MD, "Justice Ethics, and Interdisciplinary Teaching and Practice: Establishing a Law and Psychiatry Clinic", (2004) 14 *Wash UJL and Pol'y* 209; and see generally Symposium, *Promoting Justice Through Interdisciplinary Teaching Practice and Scholarship*, (2003) 11 *Wash UJL and Pol'y* 1.

Clinical programmes within PCLL

PCLL students headed for the profession might benefit from a live-client clinical experience even more than LLB students. The students are older, more experienced, and are learning skills already. Although the current PCLL curriculum is very demanding and time-intensive, a live-client clinical component in each of the streams would enhance the students' training.

A few potential examples come to mind. First, during the contentious module semester, PCLL students intending to be barristers might be assigned through the Duty Lawyer Scheme to represent defendants in criminal cases before the Magistrate's Court under the supervision of a PCLL barrister / instructor.⁴² Since these cases are not jury trials and even non-barristers can appear, a properly supervised team of students could handle the case. PCLL students in the non-contentious module might assist small businesses whose owners might be in the "sandwich" class and unable to afford legal representation to incorporate, organise taxes, lease property or set up a business plan.

Clinical programmes related to the LLM

Several LLM programmes might be amenable to clinical work. For example, in the USA, clinics working in the international human rights arena have become increasingly visible. In Hong Kong, students enrolled in the Master of Laws in Human Rights could assist asylum seekers before the UNHCR, individuals seeking protection under the Convention Against Torture, or trafficking victims. Students could conduct research to assist NGOs in the preparation of reports or draft complaints before human rights courts or the United Nations. Prominent law schools such as Harvard, and the University of California at Berkeley (Boalt Hall Law School) offer such clinical programmes.⁴³

Five-year LLB joint degree program

The expansion of the LLB programme to include several five-year joint degree opportunities allows the law school to contemplate how to include a clinical or practical component. The curriculum could offer a semester, a summer course, or a practicum add-on where students could intern intensively. An internship at a policy level in a government agency in conjunction with the BSocSci (Gov't & Law) joint degree is an obvious example of this approach.

⁴² A programme at Monash University in Australia where students have a limited right of audience in the Magistrate Court is described in Susan Campbell, "A Student Right of Audience? Implications of Law Students Appearing in Court", (2004) 4 *Int J Clin Legal Educ* 22.

⁴³ See, for example, <http://www.law.harvard.edu/programs/hrp/clinic/index.html> [Harvard]; <http://www.law.berkeley.edu/clinics/ihrcl/> [Berkeley]

Benefits Beyond the University

Expanding *pro bono* services

Many people in the Hong Kong legal community criticise its lack of commitment to *pro bono* work. A law clinic providing service to otherwise unrepresented individuals not only offers much needed assistance, but also plants the seeds for a future generation of lawyers with a firmly rooted commitment to service. In the interim, the legal clinic serves as a model for the other law schools in Hong Kong and for its lawyers.

One initiative might involve large US-based law firms whose lawyers are bound by ethical rules to provide *pro bono* legal assistance. These rules do not explicitly exclude lawyers practicing abroad.⁴⁴ Many of these lawyers have contributed to rewarding *pro bono* efforts while practicing in the USA and may well welcome an opportunity to continue in Hong Kong in collaboration with a clinical programme. Even though most US lawyers are not qualified to practice Hong Kong law, they may be able to assist in other matters, such as refugee screening which applies international law. If US lawyers do engage in *pro bono* work, law students could assist them in what might well be a fruitful partnership that would expose students not only to the world of volunteerism, but also to the world of big-firm practice.

Collaborations with other law schools in Hong Kong

There is strength in numbers. HKU is in the vanguard in thinking about clinical programmes. The legitimacy and acceptance of law clinics in Hong Kong legal education and by Hong Kong lawyers will be solidified if the two other law schools also offer them. As clinical programmes gain recognition, concerted efforts of the three law schools will increase opportunities, perhaps even allowing students to practice in areas that today seem controversial or unthinkable. In the USA, where students appear at all levels of courts – administrative, trial and appellate, federal, state and local – and on all kinds of matters, there is more than enough work for students even in locations with several law schools. An appreciation of the competence and contributions of student lawyering took time to arrive, but the ubiquity of clinical programmes contributed to their eventual acceptance. Judges frequently comment that the quality of student work and effort surpasses the work of many lawyers and routinely thank students for their commitment.

⁴⁴ American Bar Association Model Rules of Professional Conduct (2005), rule 6.1 *Voluntary Pro Bono Publico Service* provides: "Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of *pro bono publico* legal services per year . . ."

Collaborations with law school clinics in China

Clinical education has taken hold in law schools in China.⁴⁵ As educational collaborations and connections between Hong Kong and mainland China increase, and as students cross borders to study, LLB students could either observe or participate in corresponding programmes in China. They could witness and reflect on the differences in client relations, court or tribunal proceedings, and judicial role. In turn, HKU could host clinic students from mainland law schools to expose them to the Hong Kong legal system.

Conclusion

The fundamental educational goals of clinical programmes are fairly standard: teaching students the skills of factual and legal analysis, strategic planning, judgment and problem solving in a real context, and inculcating in them the value of service to others. The exact structure of the programme that will further these goals will necessarily depend on the extent of the law school's commitment, available financial support and the level of cooperation by the profession.

The decision of what direction to take requires careful deliberation, planning and choice. The basic requisites for a live-client clinic are present in Hong Kong. There is an unmet need that students can fill, there are venues in which students could work, and there is value to the work. If both educational and legal institutions agree to move forward, then with considerable hard work and a will to succeed, Hong Kong might see its first live-client clinic in the near future, and from that, many other programmes and collaborations might follow.

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⁴⁵ "The Present Situation and Prosperous Future of China Clinical Legal Education" (2005), available at http://www.law.ucla.edu/docs/zhen_zhen_prosporous_future_of_chinese_clinical_educatio_.pdf; Pamela N. Phan, "Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice", (2005) 8 *Yale HR & Dev LJ* 117; June Shih, *From the Rule of Law to the Rule of Man*, available at http://www.fordfound.org/publications/ff_report/view_ff_report_detail.cfm?report_index=431.

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