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THE VALUES PRIORITY IN QUALITY LEGAL EDUCATION: Developing a Values/Skills Link through Clinical Experience

By ADRIAN EVANS*

Introduction

THIS PAPER discusses the close relationship between quality in legal education, the development of values in law students and community access to justice. It is suggested that lawyers' behaviour (in facilitating or retarding access to justice) depends upon their core personal values and that these are affected by the quality of legal education and in particular, upon the development of appropriate motivation and values in law students.

These links support a mechanism (described below) to address an endemic deficiency in legal education—the concentration upon skills to the neglect of values. That there is such a deficiency cannot be doubted, even if the odium of some lawyers' behaviour is attributed not to law schools but to the workplace beyond, *i.e.* the culture of the law firm.

In an age when law schools are often asked, with fewer resources, to increase both the quantity and quality of their graduates—as if the obvious contradictions in such an objective were of no consequence—the law school which wants to raise the quality of its teaching, without harnessing student motivation, will surely fail in that objective. The connection can be made through the learning energy generated by a motivated student. "Motivation" is not used here to sum up an ambitious "success at any cost" approach, but rather the willingness of a student to explore issues of injustice confronting clients in poverty.

Values in Skills

It seems likely that this sort of motivation depends primarily upon the *values base* of law students, *i.e.* the basic qualities which have a direct influence on their behaviour. Students whose values are appropriately motivated by the quality of their legal education (to act ethically and to seek justice—which, it is suggested, remain essential justifications for a legal profession) are also likely to improve their technical proficiency.

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This is so because, for most of them, an energetic ethical consciousness begets a desire for excellence. Unfortunately, an interest in skills development alone carries no inbuilt incentive for students to behave ethically—once they are admitted to practice.

It is probably unfortunate that, in order to make the above point, the distinction between teaching values/ethics and teaching technical skills needs to be drawn at all. Reflection on the issue ought to result in the obvious conclusion that the two are inseparable, but this is not always recognised. Values/skills are best identified as separate concepts and then taught together, subject to the recognition as to which ought to dominate. One of the best techniques to reveal this relationship is to devise a role play which is value laden and focus initial discussion on the skills issues, allowing students to raise naturally the values dimension.[1] Approached obliquely in this way, students come to recognise that the ultimate "skill" is an understanding of their own values base.

> "The importance of teaching values with our students is to help them to understand how their values affect their lawyering—(a clear 'link' between skills and values)."[2]

Accordingly, any suggestion that the teaching of skills is in some way diluted by also teaching values, *e.g.*, in the notion that an effective cross-examination will depend upon a certain disregard for the welfare of a witness, is to be rejected.[3] On the contrary, in this particular example, the advocate who is sustained by the value that a witness is entitled to their dignity, will act more with a *skilful* restraint than aggressive accusation.

As teachers the notion that we ought in some way to be teaching values is sometimes offensive, not to say naive, since for most people the formation of values is something that occurs—presumably—long before law school. The curious thing here however is that a surprising number of students have limited ideas as to why they are in law school and are, especially within a clinical context, extremely open to discussion and reflection about their motivations. The process of reflection often has surprising results. If students understand that there is a difference

1 Koh-Peters J. (ed.), "Reflections on Values for Clinical Teachers", Proceedings of the American Association of Law Schools Conference on Clinical Legal Education, Portland, Oregon, 5–9 May 1998, p. 2.

2 *Ibid.* p. 7.

3 The MacCrate Report observed that "The Statement of Skills and Values emphasises the essential linkage between lawyering skills and professional values. It is hoped that this holistic approach to lawyering will in the future help to avoid the perpetuation of the notion that competence is simply a matter of attaining proficiency in specified skills." American Bar Association Section on Legal Education, Task force on Law Schools and the Profession, *Legal Education and Professional Development—An Educational Continuum*, American Bar Association (The MacCrate Report) 1992 at p. 317.

between discussion of *their* values and the imposition of *our* values (as teachers), they engage in the process with vigour.

> "It is risky but since we expect risk-taking by [our] students, [we] have to push ourselves to take risks (risk is a good value)."[4]

Positive Values

Commentators regularly decry the apparent lack of ethical conduct in today's lawyers.[5] The repetition of the assertion is demoralising for those lawyers who see themselves as ethical practitioners, but they also will acknowledge that the problem is now chronic. One view is that a distinctive and regressive "lawyer personality" has emerged which is responsible for much of the problem,[6] though it seems pertinent to focus equally on the cause of the lawyer "personality", if it exists.

Some are prepared to say that it is not just lawyers' lack of ethics but a lack of spiritual identity[7]—leading to a social callousness—a point which could be made of society at large. Decline in the (Judaeo–Christian) belief of the essential sacredness of each human life may have occurred,[8] but it is surely still that core idea which underlies the notion of all personal values and remains to inspire our students if we have the confidence to expose them to it. Needless to say, it will remain difficult in the extreme to integrate this sort of consciousness amongst students in conventional classrooms, let alone by the fashionable remote "control" of the Internet. That remains a task for the intensive experience of client practice, preferably within the managed environment of the law school clinical programme. Student placements with local community organisations can provide a low cost opportunity for law schools in their quest to develop students' values and their motivation to learn.

4 Koh-Peters J., *op. cit.*, n. 1, p. 10.

5 See *e.g.* Lincoln Caplan in the United States, who connects the malaise to a "bottom line accountability" replacing older themes of loyalty, confidentiality and candour [The Profession—Identity Crisis, (1994) 80 ABA J. 74]. Note that Richard Abel, as usual in an arresting counter, prefers to suggest that the problem is macro-economic, affecting all occupations, and that concerned lawyers are probably unable to influence the problem for the better. He also projects that increasing numbers of lawyers will inevitably increase pressure for "bottom line" practices to become the norm [id]. The implication is simply an arithmetic one.

6 Daicoff S., "Lawyer, Know Thyself : A Review of Empirical Research on Attorney Attributes Bearing on Professionalism", (1997) 46 Am. L.R. 1337–1426.

7 ". . . there is a deeper malaise . . . which is left in many lives by the absence of any spiritual construct and by the increasingly general rejection of any spiritual dimension whatever to life. By a life in the law that has no reflection on the amazing fact of existence or its brevity . . . Until now a spiritual dimension, provided to Western societies . . . a framework of beliefs which have been important to sustaining and reinforcing ethical principles." Kirby J, "Legal Professional Ethics in Times of Change" (1996) 14 Australian Bar Review 13.

8 *Ibid.*

Values and Ethics

One foundation of lawyers' ethics (related no doubt to the derivation of the word "ethos" from the notion of custom[9]) is the central idea of the Rule of Law—*i.e.* that fairness to all people can only be guaranteed by "the law" (and not by individuals, in the strict sense). It is nevertheless essential for our social well-being that the Rule of Law is articulated by individual, credible practitioners. The apparent conflict between the need of society for credible lawyers and the (imprecise) social perception that lawyers encourage instability and uncertainty, makes it more important to be precise about the values base which underlie their actions.

Thus an essential preliminary question is the identification of exactly what values govern the mass of Western lawyers' behaviour in their early careers? While as yet there is no significant empirical research material available to assist an answer, a workable hypothesis is that "values" are important here rather than "ethics" as such. The latter it would appear are now confused in the minds of many lawyers with proscriptive rules of conduct and that association tends to kill off (in the minds of practitioners at least) any active exploration of the roots of ethics.[10] It is also possible, as Simon suggests, that the study of formal codes of ethics undermines ". . . complex, creative judgment and . . . subverts the vital aspirations of professionalism".[11] It is likely therefore that values underlie practitioner motivations and hence their behaviour more keenly than *e.g.*, the fear of sanction (or the faint promise of praise) from a law society.

The issues for investigation include the definition of "values" (both as a part of and as distinct from concepts of morality and ethics) the contribution of law students' pre-existing value bases to their subsequent professional behaviour—as compared with their experience of law school education—and of course, the impact of the first year or so of professional life. The second of these influences remains problematic because there is as yet no direct empirical research applicable to lawyers. The last factor is however closely emulated by the experience of 'live-client' clinical process and is therefore accessible to law schools. It does seem plausible that early workplace experiences are crucial to the relationship between

9 Custom in this sense is seen as synonymous with a consistent morality or "goodness" and "right", as opposed to "evil" and "wrong". See Concise Oxford Dictionary: ethic—"relating to morals". See also Butterworths Concise Australian Legal Dictionary (1997): "A valid custom must be certain, reasonable and continuous. . . .", p. 101.

10 Some writers go so far as to say that moral values (discussion of which may be considered to considerably overlap the classical exploration of ethics) are no longer taught in law schools because formal ethics codes have simply displaced them from the syllabus. See *e.g.* Beggs G., "Reap What You Sow: Lawyer ethics could benefit from an application of proverbs", 82 Mar. ABA J. 116.

11 Simon W. H., "The Trouble With Legal Ethics", (1991) 41 *J. Legal Educ.* 65, 67.

values and behaviour,[12] although the profession usually identifies the context as one of *ethics* and behaviour.

Internationally, there is much attention to these issues. The American Bar Association recently announced another initiative ("Ethics 2000")[13] designed in part to continue encouraging its numerous members to behave ethically, but with the additional implicit objective of persuading governments to leave them alone on the issue of self-regulation. In Australia, the view that practitioners' ethics (and competencies) are deficient and reflected in the level of public complaints has received attention from academics, law societies, parliamentary committees and the Australian Competition and Consumer Commission. Comments by the Australian Attorney General and State appellate judges[14] show that the issue is recognised as important by governments of all persuasions.

Lawyers continue to exercise a persuasive influence over almost every aspect of society and, if anything, that influence seems to encourage costly and highly adversarial dispute resolution. It is possible that serious cultural acceptance of alternative and lower cost dispute resolution in its various forms will be undermined by the dominance of lawyers' views on this issue and that, if nothing changes, their opportunities to play a moderating influence in economically polarising Western societies will not be fully realised.

The popular hypothesis[15] is that the conversion of many legal practices from a professional to a business orientation (for economic reasons) has cut across attempts by governments (and ironically, the organised profession) to improve practitioner behaviour—and with it access to justice. It is suggested that this situation will not change appreciably unless and until there is a reawakening of personal and professional *values* amongst lawyers.

There is a great deal of scholarly material appearing, principally in the United States, concerning the perceived lack of values in practising lawyers. In particular, Anthony Kronman's bleak, but influential 1993 book "The Lost Lawyer"[16] described his understanding of the malaise for an audience beyond lawyers. Kirby and Dawson JJ. of the High Court of Australia have weighed in with their views, essentially concurring

12 Australian Law Reform Commission, Issues Paper 21: "Review of the Adversarial System of Litigation: Rethinking Legal Education and Training" (August 1997), para. 8.22, p. 77.
13 Shestak JJ, "Putting Our Professional Values to Work: We are taking on 'pay-to-play', the Model Rules and health care litigation", President's Message, (1997) 83 ABAJ 8.
14 *E.g*, Brisbane, Queensland, "Courier Mail", 11 July 1997, p. 7
15 Kronman A. T., "The Lost Lawyer: Failing Ideals of the Legal Profession", Cambridge, The Belknap Press of Harvard University Press, 1993. Kronman's observations focus on the American profession but his viewpoint is also plausible for other common law legal systems.
16 *Ibid.*

with Kronman that the influence of business on the practice of law has undermined ethical practice.[17]

Journal articles since then have discussed various dimensions of the problem including the effect of modern legal practice on lawyers' ethics,[18] "nourishing" the profession,[19] and have attempted to rebut Kronman's thesis.[20] This last article by Robert MacCrate, former ABA President and highly influential authority on American legal education, does not stifle concern. MacCrate, who is clearly proud of the profession's achievements, suggests that the problems with ethical conduct in the American legal profession (identified by Kronman) are confined to the impact of "elite law schools and . . . large law firms over the last 25 years."[21] He argues that Kronman does not make the same specific criticism of the mass of the 800,000 American lawyers. MacCrate's 1992 report to the ABA on the relationship between legal education and professional development[22] did nevertheless identify a number of skills and significantly, four "professional values"[23] (as opposed to personal values) to be taught by law schools. While he considers that the amount of professional and academic debate since his report and the continuing contributions by individual lawyers in large law firms,[24] evidence that things are improving,[25] it is clear that there is as yet no large scale empirical evidence for that confidence. In 1996 the ABA weighed in again with another report recommending extensive strategies for teaching professionalism in law schools and in a post-admission context, but would and probably could not mandate any of them.[26] A great deal of academic and professional discussion may indicate that improvement is

17 Kirby J., "Legal Professional Ethics in Times of Change", 14 ABR LEXIS 13, and Dawson J., "The Legal Services Market" (1995) 5 JJA 147. See also Goldsmith A., "Heroes or Technicians? The Moral Capacities of Tomorrow's Lawyers" (1996) 14 J. Prof. L. Educ. 1.

18 Myers E. W., "'Simple Truths' About Moral Education" (1996) 45 Am.U.L. 823. Amongst large firms, even the *pro bono* schemes of recent years are seen as evidence only that the firms practising such schemes are profitable rather than moral. Lincoln Caplan and Lloyd Carter seem to agree that "pro bono" activity has not been a big feature of firms that are struggling financially. [See "The Profession: Identity Crisis", Note 5 above]

19 Gibeaut J., "Nourishing the Profession", (1997) 83 Jan. ABA J. 92. Law teachers are encouraged to recover/retain their crucial role of role model to law students, and to teach ethics throughout law courses. Caution is however necessary, in order to avoid a direct reliance on religion as the base of these endeavours, lest perceptions of bias occur [in relation to the judiciary, according to David Barringer, "Higher Authorities", (1996) 82 Dec. ABA J. 69].

20 *E.g.*, MacCrate R., "A Nation under Lost Lawyers: The Legal Profession at the Close of the Twentieth Century: The Lost Lawyer Regained, the Abiding Values of the Legal Profession" (1996) 100 Dick. L. Rev. 587.

21 *Ibid.* p. 612.

22 The MacCrate Report, *op. cit.* n. 3 above.

23 Each of these values in turn begat a "special responsibility". Thus the value of competent representation begets the responsibility to clients; striving to promote justice fairness and morality begets public responsibility for the legal system; striving to improve the profession begets responsibility for it; and professional responsibility produces responsibility to one's self. See MacCrate "A Nation Under Lost Lawyers . . .", *op. cit.* n. 20, p. 616.

24 *Op. cit.* n. 20, p. 613.

25 *Op. cit.* n. 20, p. 619.

26 "Teaching and Learning Professionalism: Report of the Professionalism Committee", American Bar Association Section of Legal Education and Admissions to the Bar, August 1996, p. 2.

occurring in practising lawyers' values—and that their behaviour is improving—but at present it is evidence only of the thought processes of those discussing the issues.

American concern with professional values is shared in the United Kingdom, and the emphasis is upon the role of law schools. The Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC) 1996 report calls explicitly for renewed emphasis in law schools on "legal values" and "contextual knowledge".[27] These are described generally by Halpin and Palmer[28] as addressing the ". . . deeper significance that the discipline of law is regarded as having for society".[29] The urgency does not seem however to be a priority of government. Behind the ACLEC call is the implicit recognition that, notwithstanding that law schools are being told to "do more with less" in a quantitative sense, they are also being asked to "do better with less", *i.e.* to lift quality with, in relative terms, less money. Harris and Jones in their 1996 survey of UK law schools report that over the three years from 1993 to 1996, there was a 50% increase in the number of students but only a 3% improvement in the numbers of law teachers.[30] The gap between the community expectation that lawyers will act with integrity (and a heightened social awareness) on the one hand, and, on the other, the growing restrictions on their educational process, suggest that an alternative and coherent approach to quality in legal education is necessary.

The tentative view of the Australian Law Reform Commission (ALRC) that at present the workplace, rather than law schools, determines lawyers' behaviour[31] is confidently supported by those who see the commercial pressures of practice as crucial for the success or failure of legal education in ethics.[32] If these views are accurate, this may be because the considerable opportunities for law schools to address quality issues (including the development of *quality* values) by embracing the "first work place", are yet to be fully realised.

Defining Values

An emphasis upon values as distinct from ethics seems straightforward. Values are said to underlie our behavoiur and are assumed to have great

27 Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC) "First Report on Legal Education & Training" (1996) HMSO, pp. 24–25.
28 Halpin A. and Palmer P., "Acquiring Values" (1996) 146 New Law Journal 1357.
29 *Op. cit.* p. 1358.
30 Harris P. and Jones M., "A Survey of Law Schools in the United Kingdom, 1996", 31 *The Law Teacher* 38 at p. 99.
31 *Op cit.* n. 12 above.
32 Myers E. W., *op. cit.*, n. 18, p. 831. At this point, Myers records the similar views of the American Bar Association [see the Foulis Report of 1980 ("Law Schools and Professional Education: Report and Recommendations of the Special Committee for A Study of Legal Education of the American Bar Association 62") and the Stanley Report of 1986 ("'. . . In the Spirit of Public Service': A Blueprint for the Rekindling of Lawyer Professionalism 16", American Bar Association Commission on Professionalism)] and MacCrate [The MacCrate

influence: but they are rarely discussed with any precision.[33] Ethics, while also intended to govern behaviour, have been discussed *ad nauseam* to the point that they are now regrettably confused with specific rules of conduct. While ethics in the pure sense have always been understood as a positive,[34] they are now more often associated with a negative "do not"[35] and may be losing their ability to improve lawyers' behaviour—in the same way that a parent who criticises a child has less impact on its behaviour than the parent who praises. The parenting analogy may be trite and perhaps patronising of lawyers but the hope nevertheless is that a discussion about values (as a positive[36]) will in some way dig deeper into their motives and reinvigorate socially desirable behaviour.

Obviously, this process will not be easy. To begin with, there is of course no consistency in the use of the terms "values" and "ethics". Halpin and Palmer *e.g.* speak of

> "Legal Values [conveying] two separate categories. One covers values that are identified with the law—a commitment to the rule of law, to justice, and fairness. . . . The other covers lawyers' professional ethics in the wide sense—encompassing high *ethical* standards, professional skills, responsibility to the client, equality of opportunity, and access to justice."[37] [Emphasis added.]

This description, apart from interpolating ethics into values, sees the need for lawyers' values as limited to the professional arena. It is echoed strongly by MacCrate in his description of four "professional values"[38] which he links to certain defined responsibilities: they in turn bear a close resemblance to Halpin and Palmer's second category of legal values.[39] It is accordingly difficult to separate "legal values" and "professional values" from many descriptions of "professional ethics" or "legal ethics" unless the latter two terms are defined in the common proscriptive manner as the

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Report, *op. cit.*, at p. 235]. See also editorial "Fairness for All", The Lawyer, 20 May 1997, p. 6, Centaur Communications.

33 A recent exception was the American Association of Law Schools clinical conference, which focused on values issues. See Note 1 above.

34 *Op. cit.* n. 9 above.

35 See *e.g.*, Moore N., "The Usefulness of Ethical Codes" (1989) Annual Survey of American Law, pp. 7–21.

36 Schneyer reminds us that the reference to "values" includes the inevitable "no values" scenario or at least the possibility that "values" can only ever mean the lowest common denominator variety, representative of the whole of society (however expressed). See Schneyer T., "Moral Philosophy's Standard Misconception of Legal Ethics", (1984) Wis. L. Rev. 1529.

37 *Op. cit.* n. 28 above.

38 *Op. cit.* n. 23 above.

39 *Op. cit.* n. 28 above.

". . . rules which govern lawyers' behaviour *by virtue of the fact that they are lawyers*".[40] [Emphasis in the original.]

It is somewhat disappointing (some would also say premature) to give up the nobility in the word "ethics" to the reduced significance of a set of rules, but the change appears to have entrenched itself amongst many practitioners and may as well be acknowledged for what it is. If that were agreed, at least the confusion between ethics and values as concepts would be reduced.

Values, as distinct from ethics (as defined above), are nevertheless likely to go the same way as ethics if they are defined narrowly in the MacCrate sense as "professional values". It is suggested that only by personalising values and appreciating that they operate at several levels, will they retain their potency. It is no good *e.g.*, emphasising to a law student that there is a professional value to promote justice and fairness in the legal system[41] if at the same time there is no attempt to explore what that really implies for honesty and/or[42] integrity at the personal level. Instinctively, students involved in a ("live client") experiential learning process know that the discordance is to be explored rather than simply swallowed.[43] Similarly, the value of striving to support the Rule of Law[44] through the right to adequate representation (as the guarantee of impartiality in a democracy) is unattainable without first reinforcing the personal values of courage and perseverance.

Personal values are not one dimensional. Differing values are constantly competing for dominance and can be a mixture of both "bad" and "good". One useful categorisation divides values into foundation (addressing basic needs for survival), focus (daily concerns for identity, work and self worth) and future values (at the aspirational or noble end of behaviour).[45] Under pressure, we tend to regress towards values which help us survive. If survival is assured, the potential emerges for

40 Bottomley S. and Parker S., *Law in Context*, The Federation Press (1997), Sydney. A further dichotomy has been noted in the distinction (not central to this argument) between "ethics" and "conduct": the former affecting the basis of professionalism and the latter only the superficial procedures of practice. See Crawley A. and Bramall C., "Professional Rules, Codes and Principles Affecting Solicitors (or What Has Professional Regulation to do with Ethics?)" in Cranston R. (ed.) *Legal Ethics and Professional Responsibility*, Oxford, Clarendon Press, 1995.

41 MacCrate's 2nd "professional value". See above n. 23.

42 There are situations where honesty and integrity may require different actions, *e.g.* when offering (secret) sanctuary to a political refugee from an oppressive regime.

43 In sharp contradiction is the weighty philosophical tradition which separates professional and personal roles and allows what is otherwise discordant to be reconciled at, it is argued, both the ethical and psychological level. See Wasserstrom R. A., "Roles and Morality" in Luban D. (ed.) *The Good Lawyer: Lawyers' Roles and Lawyers Ethics*, Totowa N. J., Rowman and Allanheld, 1984 pp. 25–37. The problem with this reconciliation is that it tends to elevate what is really only a justification for a *choice* to act "professionally" (in this instance, an action that would be personally offensive) to the level of an *obligation* to so act. It is the supposed obligation which is indigestible to "clinically aware" law students.

44 One of Halpin and Palmer's values identified with the law. See n. 28 above.

45 Lagan A., "Managing Through Values", 20 City Ethics 1, (1995), Newsletter of the St James Ethics Centre, Sydney.

growth towards the aspirational values.[46] It is these higher level personal values to which law students and lawyers can often aspire, and not just because their basic needs have commonly been met through the accidents of birth and class. Students without privileged backgrounds are often zealous in their desire to "do justice" before anything else. Of course, it is not easy to "allow" students (in the facilitative sense) to recognise that the *practice* of aspirational values combined with the provision of competent service is linked to the achievement of their basic and everyday needs (since quality/best practice approaches often attract respect and the referral of new clients[47]) but the potential is there for law teachers to exploit with the right methodology.

The great regret about popular perceptions of lawyers at present is that there are lawyers who have clearly passed beyond the need to satisfy basic and everyday needs—they are in conventional terms successful—yet they have not developed significant aspirational values. Longstaff describes those lawyers who are prepared to behave unethically for a sufficient fee as

> ". . . reduce[d] . . . to a cipher 'a brilliant and creative cipher perhaps' but one who has surrendered all claims to exercise professional judgment on matters affecting a client's interest."[48]

Longstaff speculates that without ethics lawyers may become "semi-skilled tradespersons".[49] If that is so, quality legal education cannot be defined only in terms of technical competence.

Quality and Clinical Experience in Collaboration

Anecdotal evidence suggests that law school graduates with clinical experience, *i.e.* those who have had contact with clients in poverty with genuine problems, and who are enabled to reflect upon that experience,[50]

46 Id.

47 See *e.g.* Rosner S., "Service to Clients Comes First; Lawyers need to make the right ethical choices to produce the best results", (1997) 83 A.B.A.J. 108. While Rosner does not argue for the view that aspirational decision making will make more money for the lawyer—he makes the more limited observation that if lawyers place the pursuit of money before service to clients the results will be "bad"—the reverse approach (where clients interests come before lawyers fees) means that ". . . everything else falls into place". It is also true that some types of legal practice passively marginalise ethical behaviour, *e.g.*, routine conveyancing performed for high volume mortgage originators. It is suggested, however, that the lawyer who aspires over the long term to ethical practice will reap the benefits in terms of reputation and, ultimately, remuneration.

48 Longstaff S., "Ethics Drive Needed to Restore Profession's Legitimacy", (1994) 32 Law Society Journal 29-30 (NSW).

49 *Ibid.* p. 30.

50 Unsurprisingly, there is a dearth of empirical evidence for this view because the survey parameters are difficult to design and to implement in a sufficiently large sample. However, a recent paper argues persuasively that clinical experience is transformative for a student who experiences an emotional identification with the client or issue. In the US clinical context—where there is an extensive scholarly debate about student awareness of "diversity" —it is argued that a law student who is disoriented by contact with a client who comes from a different class, race, gender or sexual orientation, may be encouraged to reflect on *why* they are disoriented. See Aiken J. A., "Striving to Teach Justice, Fairness and Morality", 4 Clin. L.R.

enter legal practice with attitudes that are different in some way to those who do not choose this option within their undergraduate studies. It is possible that students who encounter only the varieties of Socratic method in their law course "to be ready and able to argue for the case for either side of a controversy . . . .[underemphasise] . . . consideration of legal ethics and the rights and wrongs of the situation".[51]

The probability here is that for those students whose first significant work place experience is a "live client" clinical programme, better values, social awareness and motivations are inculcated because students are under the control of legal educators rather than "the market".[52] If "experience best promotes movement toward the highest levels of [moral] development",[53] the controlled experience of clinical process is ideal for that development.

There is however, a qualification—implicit in the emphasis in this article upon actual as opposed to simulated experience. It is difficult if not impossible to convince students in the debriefing stage of a simulated ethical experience that high aspirational values can be achieved in the reality of private practice. A seed may be sown but the seedling rarely emerges with vigour. It is the *intimate* experience and identification with real clients which provide the sap for real growth. As Aiken suggests[54] the complete clinical setting enables a skilled teacher to develop students' confidence to the point that they will subsequently affirm positive values when challenged by their employers. These are the values of the justice priority and they are held close to the heart of the student whose experience is made intentionally reflective.

There are a number of examples internationally of law school/community legal centre connections that have instinctively sought to develop student motivation, over decades in some cases.[55] Each of these law centres place students in morally responsible (as distinct from legally responsible) relationships with their clients: students understand that they have the obligation to empathise, to gather facts carefully, to research and to advocate on behalf of their clients. They know (or come to know) that if they do not accept these responsibilities their clients will

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1 (1997). Reflection of this sort can lead to a new understanding by the student that they come from a privileged position and this in turn allows for ". . . the creation of opportunities for reflection and reorientation of a learner's values". See also Brayne H., Duncan N. and Grimes R., "Clinical Legal Education: Active Learning in Your Law School", Blackstone Press, London, 1998, which effectively argues for the same connections within the UK context.

51 Reuben R. C., "Change of Course Needed: Elder Statesman says acceptance of law as business will break the profession", (1994) 80 ABA J. 99.

52 Myers considers that ". . . values education is essentially experiential and must be embedded in context to be meaningful". Myers E. W., *op. cit.*, n. 18, at p. 832 (note 45).

53 *Op. cit.*, n. 18, at p. 836, (note 57) referring to Wangerin P. T., "Objective, Multiplistic, and Relative Truth in Developmental Psychology and Legal Education", (1988) 62 Tul. L. Rev. 1237, 1282–83 (note 171).

54 *Op. cit.* n. 50.

55 Notably Parkdale Legal Service/Osgoode Hall Law School in Toronto, Juss-Buss/University of Oslo in Oslo, Howard College Legal Aid Centre/University of Natal in Durban and Springvale Legal Service/Monash University in Melbourne.

suffer. The sense of responsibility they discover is—for them—both daunting and exciting, and it is (at bottom) only because of this process of identification that their values are developed.[56]

Over the last 10 years at Monash University in Australia—in partnership with Springvale Legal Service (SLS)—this process has become more reflective with the addition of a client-group process arising from the use of the so-called "community development" model.[57] In addition to the traditional one-to-one clinical caseload, students work in small "policy change" task groups at SLS designed to facilitate the creation of and then raise the awareness of client groups about systemic issues common to their experience as individual clients.[58]

The issues tackled in these client groups have been diverse, ranging, *e.g.*, from the exploitation of particular ethnic groups by private lawyers from their own community, to residents affected by toxic paint discharge, to the review of offensive cemetery practices. Client group facilitation has been chosen because it seems to offer the best opportunity for social reform—even though this means a long time scale—and the prospect of achievable social reform appears to be particularly attractive to students who are energised by clinical method.

While the mobilisation of client groups, especially in class actions, has an impressive history,[59] it has not generally included a law student dimension. Clinical supervision at Monash/SLS of the student task groups involved in the issues described above has included reflective ("values") sessions which appear to be useful in changing students beliefs/attitudes as to the interests that call out for responsible lawyering. The process—which involves little more than encouraging students to talk about their developing insights—is dependent on insightful

56 The process is intricately described in Brayne, Duncan and Grimes, *op. cit.*, n. 50 above. At Monash University the approach has been to locate students in an in-house clinic (Monash-Oakleigh Legal Service) and at a nearby community legal centre (see note 55). 90 students per annum spend a productive semester at either of these two locations and have done so successfully for the last 21 years.

57 A process of collective social and community growth first systematically expounded by Paulo Freire. See Freire P., "Pedagogy of the Oppressed", (1972) Penguin Books, London. The process of client group development has suffered from criticism that it promotes social instability rather than social growth. The criticism may be accurate but it is of limited use because social growth and instability inevitably go hand in hand. Another criticism of this methodology (derided as "morally active" lawyering) is that it overrides the autonomy of individual clients. David Luban has convincingly argued that this criticism is of little significance because the goal of client autonomy in this context is only a means to the end of ". . . responsibility, creativity or authenticity". In essence, Luban sees this contest between different means as resolving in favour of the interests of the client group when the latter includes a "morally active" approach to the practice of law. See Luban D., "Partisanship, Betrayal and Autonomy in the Lawyer-Client Relationship: A Reply to Stephen Ellmann", (1990) 90 Colum. L. Rev. 1004, 1037.

58 This article is not intended to describe client group development process in detail. It is worth noting however that, from the perspective of the law teacher, the crucial issues are teacher/student ratios, delineation of individual student tasks, the frequency of supervision meetings and the methodology of values reflection in those meetings.

59 See *e.g.*, Ellmann S., "Client-Centredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers Representation of Groups", (1992) 78 Va. L. Rev. 1103.

supervision and this is not always available, but it seems to be effective because it is constructive in emphasis and case derivative; *i.e.* personal interactions with client's cases convince students that the policy discussion and the policy change process are legitimate.

Conclusion : Law Schools and Law Centres in Collaboration

Law schools with diminished resources can improve the quality of their students' values, motivation and hence their legal education by initiating partnerships with law centres, Citizens Advice Bureaux and a range of local community organisations. Together the opportunity exists to ensure that the first workplace experience is focused upon the justice priority of these organisations. These partnerships are at relatively little cost to the law school. In the UK the opportunities for law schools and such organisations to join forces—for they both have much to gain—are significant. Providing local organisations can be encouraged to supervise with skilled and committed staff, partnerships of this nature are energetic contributors not just to quality legal education, but also therefore to justice and the Rule of Law. The attraction to community organisations is the assistance in dealing with their caseload. Small groups of students can be placed with appropriate centre supervisors and handle ongoing files as well as systemic issues.[60]

American experience makes it clear that the lack of comprehensive clinical experience in United States law schools ensures that the first workplace experience (*i.e.* the private law firm) determines the values expressed in practice.[61] International experience of "live client" clinical process suggests that, providing the reflective element of supervision is addressed in their first "workplace", students' motivation to subsequently act in the interests of justice is enhanced. This motivation encourages and enables greater commitment amongst students to achieve a "value rich" proficiency in their undergraduate studies and in their subsequent employment. If quality in legal education is intended to include increased student proficiency and a commitment to justice, reflective student placements in a clinical environment are an invaluable tool.

60 This combination appears to offer a way through student apathy and cynicism about the Rule of Law. It is perhaps worth following the example of South African law schools, who are all to introduce a single law degree which is expected to include a period of work in community settings. See McQuoid-Mason D., "Single New Degree For All Law Graduates in South Africa", 77 Newsletter of the Commonwealth Legal Education Association 27–29 (Jan. 1998).

61 Myers E. W., *op. cit.*, n. 18, at p. 836, referring to Hartwell S., "Promoting Moral Development Through Experiential Teaching", (1995) 1 Clinical L. Rev. 505, 531–535.