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MIND THE GAP: CLINIC AND THE ACCESS TO JUSTICE DILEMMA

Elaine Campbell and Victoria Murray¹

ABSTRACT

It is clear from the extensive literature that there is a deficit in the provision of legal services to the poor.² In recent years, access to justice has further deteriorated due to the global recession. In particular, in England and Wales substantial cuts to both civil and criminal legal aid provision were imposed as part of a series of austerity measures. This reduction in state funding has had devastating effects. This article examines whether there is an obligation on clinical legal education to fill the gap where there is inadequate legal service provision. Two clinicians will respectively argue whether law students, particularly through the medium of law clinics, should fill the void.

INTRODUCTION

Legal aid was introduced in England and Wales in the late 1940s, at a time when Europe was still feeling the deep residual effects of World War II. Since its inception the system has evolved to fund both civil and criminal disputes subject to qualification criteria and limitations. It has been acknowledged as one of the most generous legal funding schemes in existence.³ In a speech to the Centre for Crime and Justice Studies, the then justice minister stated,

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² See for example *Tackling the Advice Deficit: A strategy for access to advice and legal support on social welfare law in England and Wales*, Report of the Low Commission on the future of advice and legal support, Legal Action Group 2014.

³ Spending on legal aid in England and Wales in 2010 was five times higher than the European average. See Evaluation Report on European Judicial Systems. 4th Report Edition 2012 (2010 data), available at http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2012/Rapport_en.pdf.

“Our legal aid system has grown to an extent that we spend more than almost anywhere else in the world. France spends £3 per head of the population. Germany; £5. New Zealand, with a comparable legal system, spends £8. In England and Wales, we spend a staggering £38 per head of population.”⁴

Therefore when the global recession hit in 2008, this generosity suddenly became unsustainable. In 2009 the annual cost of legal aid in England and Wales was in excess of £2billion (US \$3billion) so it was an obvious target for austerity measures.⁵ Despite access to justice being an accepted mainstay of democracy, legal aid did not escape swingeing cuts, with the Government announcing that it needed to achieve savings of £450 million per year from the legal aid budget.⁶

The vehicle responsible for this extensive cost cutting measure was the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), which reduced the types of disputes eligible for public funding, in itself saving £270 million.⁷ There was widespread criticism of LASPO from all corners of the legal profession and from organisations involved with indigent citizens. As a consequence of the cuts it is estimated that some 650,000 individuals are unable to access legal representation and assistance in civil cases alone.⁸ Although the cuts promised £350 million in savings in 2014/15,⁹ other parties estimate that some £600million will have disappeared from the legal aid budget by 2015.¹⁰ However, legal quarrels do not dissipate simply because the funding disappears. In fact, disputes often worsen in correlation with the financial downturn. Where the economy shrinks, industry decreases, jobs are lost, debt and housing problems inevitably deteriorate, the need for welfare benefits increases, social and mental health problems¹¹ rise. By its own admission, the

⁴ *LEGAL AID: controversy surrounding the government's plans for reform*, Standard Note SN/HA/5640, House of Commons Library, Jan. 26 2011.

⁵ Graham Cookson, *Unintended Consequences: the cost of the Government's Legal Aid Reforms, a report for the Law Society of England and Wales* (Department of Management, King's College London, 2011), at 6. <http://www.lawsociety.org.uk/policy-campaigns/research-trends/research-publications/unintended-consequence-of-legal-aid-reforms/>

⁶ *Ibid.*

⁷ Cookson, note 5, at 12.

⁸ *The Real Impact of Legal Advice Cuts*, Legal Action Group, March 2010, available at <http://www.lag.org.uk/policy-campaigns/the-real-impact-of-legal-aid-advice-cuts.aspx>.

⁹ Kenneth Clarke Statement to the House of Commons, 15 November 2010, Hansard Column 660, available at <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101115/debtext/101115-0001.htm#10111511000003>.

¹⁰ Sadiq Khan, *The Government's Legal Aid Cuts Are Leaving Vulnerable People With Nowhere to Turn*, Huffington Post, May 18, 2014.

¹¹ According to an LSRC report, *Mounting Problems*, 66% of respondents sought medical help for a physical problem arising from their legal disputes. See Cookson, note 5, at 25.

Government acknowledged that LASPO reforms would adversely affect social cohesion and levels of crime.¹²

In contrast to the decline in legal aid, pro bono and clinical initiatives within Higher Education have continued to grow dramatically in England and Wales. According to the 2014 LawWorks Law School Pro Bono and Clinic report, in 2006 at least 46% of law schools were involved with pro bono and clinical activity. By 2010, this had risen by 33%. The 2014 report shows a further increase with at least 70% of all law schools engaged in pro bono or clinical work.¹³

Where there is an undeniable shrinkage in legal services available through legal aid, and an exponential growth of universities offering pro bono opportunities, should law students step in and fill the gap?

In Part I Murray argues the case for bridging the ever growing access to justice divide. She contends that if law clinics fail to react to the pressing situation this would have significant repercussions for those unable to access legal services. She further posits that inaction would produce dire consequences for the future of our legal systems, particularly in respect of public interest lawyering.

In Part II Campbell opposes the use of clinicians and law students to fill the justice gap. She declares that just because it can be done, this doesn't mean that it should be done. Clinical legal education, Campbell argues, is first and foremost a pedagogic tool, and we are in danger of damaging our students' welfare if we start to use them solely as a replacement for legal aid.

PART I: THE CASE FOR BRIDGING THE GAP

In *Pro Bono is great education for law students but they shouldn't fill the gap*¹⁴ Campbell argues that law schools are not a replacement, or indeed sticking plaster, for legal aid. For many years I used to share this view. However, as the devastating effects of LASPO and wider austerity measures across the globe become ever more apparent, the statistics demonstrate we can no longer stand by and

¹² Cookson, note 5, at 8.

¹³ It is estimated that this figure is actually higher since 96% of institutions which responded to the survey were engaged in clinical/pro bono work.

¹⁴ Elaine Campbell, *Pro bono is great education for law students, but they shouldn't fill gap left by legal aid cuts*, THE CONVERSATION, Nov. 19 2014. <https://theconversation.com/pro-bono-is-great-education-for-law-students-but-they-shouldnt-fill-gap-left-by-legal-aid-cuts-34323>.

naively hope governments perform policy U turns.¹⁵ The warnings were well publicised before LASPO was introduced¹⁶ and the dire consequences continue to be highlighted post enactment.¹⁷ We must be galvanised into action.

According to Robert E. Rodes, Jr,

“Social justice is that branch of the virtue of justice that moves us to use our best efforts to bring about a more just ordering of society - one in which people's needs are more fully met. It ... is something due from everyone whose efforts can make a difference to everyone whose needs are not met as things stand... I do not owe any poor person a share of my wealth, but I owe every poor person my best effort to reform the social institutions by which I am enriched and he or she is impoverished.”¹⁸

I am a champion of clinic and recognise the wide ranging and empowering work that it already does. However, taking Rhodes to heart, we must act now to halt the significant damage inflicted on our legal systems by redoubling our *best efforts*. We must intervene and revolutionise from the bottom up. Our duty to step into this breach stems from our ethical and moral duties as lawyers, and not least the statistical reality.

The Statistical Case

Prior to the introduction of LASPO, a survey showed that only half of respondents sought legal advice, over 10 percent abandoned attempts to resolve their dispute, whilst others tried to tackle the problem alone.¹⁹ Readers may be surprised to learn that even at a time of generous provision only half of those with issues sought legal assistance. This is a poor yardstick of how litigants will approach their problems in the face of the legal aid lacuna, and this concern is borne out by the statistics. For example, post LASPO we know that significantly fewer parties are legally represented in family cases than before the cuts took effect.²⁰ Further, according to the Legal Action Group

¹⁵ The Conservative party, which initiated the cuts, was elected for a further 5 years of government in 2015 so no change in policy is on the horizon for England and Wales.

¹⁶ See Cookson, note 5.

¹⁷ See e.g. Catherine Baski, *Civil Legal Aid: Access Denied*, The Law Society Gazette, Apr. 7 2014, and Andrew Caplen, *The Law Society President's Access to Justice Day address* (Breakfast speech at The Law Society for Access to Justice Day, Sept. 8 2014).

¹⁸ Robert E. Rodes, Jr., *Social Justice and Liberation*, 71 *NOTRE DAME L. REV.* 619, 620–21 (1996).

¹⁹ See Cookson, note 5.

²⁰ See Baski, note 17. According to CAF/CASS figures cited in Baski, in family disputes prior to the legal aid cuts one party legally was represented in 60% of cases, in 22% of cases both parties were represented and in 18% of cases neither party was represented. After the cuts, these figures have dramatically reduced with neither party represented in 42% of cases, and both parties are represented in only 4% of cases.

(LAG), there was a particularly high funding deficit (and resultant advice and representation shortage) in 77% of discrimination cases and 68% in debt disputes.²¹ Some law firms now report rejecting 50% of enquiries as a result of lack of legal aid funding.²²

The Government expected other agencies to fill the gap left by legal aid cuts. However, with a lack of state funding several law centres have been forced to close²³ or have placed staff at risk of redundancy.²⁴ Worryingly, some pro bono organisations have begun charging fees.²⁵ Even with the level of resource available to charities and Citizens Advice Bureaux (CABs), there is not enough resource to fill the gap. National housing charity Shelter only has capacity to answer 60,000 of the 140,000 telephone calls it now receives per year.²⁶ Similarly the CAB reported only being able to answer 45% of telephone enquiries.²⁷ The Bar Pro Bono Unit has experienced double the volume of applications for assistance since LASPO.²⁸

Despite almost half of practicing solicitors in England and Wales providing pro bono services in the last year, this is still not enough to cater for the level of unmet need.²⁹ The Law Society of England and Wales has clearly reiterated its position, stating that the profession will not plug the gap via pro bono provision.³⁰ Yet there is a clear appetite for legal assistance. Some 89% of individuals expressed an intention to seek help from alternative sources if publicly funded representation is not available.³¹

²¹ See Baski, *ibid*.

²² See Baski *ibid*. The situation has now deteriorated as criminal legal aid lawyers are refusing to handle cases on the new lower payment scheme. See *Legal Aid Work Refused by Law Firms in Cutback Protest*, BBC News, July 1, 2015 <http://www.bbc.co.uk/news/uk-england-33336651>.

²³ At least nine law centres have closed since the introduction of LASPO. See <http://www.lawgazette.co.uk/analysis/features/law-centres-picking-up-the-pieces/5042728.fullarticle>. See also <http://www.legalactiongroupnews.org.uk/law-centre-closures/>.

²⁴ Natalie Byrom, *The State of the Sector: The impact of cuts to civil legal aid on practitioners and their clients*. A report by the Centre for Human Rights in Practice, University of Warwick in association with illegal, April 2013.

²⁵ See Catherine Baski, *Law centres: picking up the pieces*, The Law Society Gazette, Sept. 1 2014, available at <http://www.lawgazette.co.uk/analysis/features/law-centres-picking-up-the-pieces/5042728.fullarticle>.

²⁶ See Caplen, note 17.

²⁷ *Ibid*.

²⁸ *Ibid*.

²⁹ See Caplen, note 17.

³⁰ See John Hyde, *Justice Secretary told pro bono no substitute for legal aid system*, The Law Society Gazette, Jun. 23 2015, available at <http://www.lawgazette.co.uk/news/gove-told-pro-bono-no-substitute-for-legal-aid-system/5049566.article>.

³¹ See Cookson, note 5, at 29.

If these alternative agencies are drowning under the level of demand, and there is nowhere left to turn, clinics cannot continue to elevate their educational aims and ignore their social justice function. It therefore seems appropriate that law clinics can, and should, step into the breach.

The Ethical and Moral Case

I do not dispute that as clinicians we have a clear educational function. We do, after all, predominately operate within academic institutions. However, most clinical supervisors are also licensed to practise law. We therefore have a dual function being both educators and lawyers. Until such time that the legal aid deficit is remedied, I argue that we should increasingly emphasise the *legal* in clinical legal education and ameliorate the evident shortage.

As lawyers we are tasked with ensuring access to justice and representing our clients zealously. In England and Wales the Solicitors' Code of Conduct imposes overriding principles which govern our professional endeavours. The Code stipulates that we must "uphold the rule of law and the proper administration of justice" and "behave in a way that maintains the trust the public places in you and in the provision of legal services."³² There are no doubt similar ethical obligations provided for within other legal jurisdictions.

I therefore contend that in accordance with our professional obligations we are bound to take action where we see that "proper" administration of justice is being eroded. Legal professionals must possess an unswerving adherence to a strict ethical code in compliance of the fiduciary duties arising from our position. As clinical supervisors, we are no less accountable.

Having outlined how our professional obligations require clinicians to act, what can perhaps be questioned is how our duties apply to those we supervise. Clinical students are not yet qualified or formally in practice – so are they equally compelled to act? Until recently students in England and Wales were required to enrol as a student member of the Solicitors Regulation Authority (SRA). From this it can be inferred that the SRA intended aspiring lawyers to embody the spirit of the Code and the ethics it seeks to engender *prior* to qualifying as a solicitor and whilst still completing their legal education. Therefore, both clinicians and students are obligated to step into the gaping hole left in the wake of LASPO.

³² Principles 1 and 6 of the SRA Code of Conduct 2011, as updated.

Law Students and Clinics- An Untapped Resource

Much has been made about how the profession can adapt to meet the challenges presented by LASPO and access to justice. However, very few voices acknowledge the role to be played by clinicians and law clinics in addressing the legal services gap. On the whole, the legal sector has overlooked the value of law clinics which could be harnessed in addressing the current social justice gulf. Whilst in post as President of the Law Society, Andrew Caplen adopted a narrow approach arguing the solution lay with the Government or members of the profession. We should not need reminding that clinicians are members of the legal profession and many clinical students are aspiring to enter that same profession. Therefore, we must increase our best efforts and meet our responsibilities.

We cannot continue to occupy the moral high ground and watch the system implode whilst hiding behind clinical legal education's pedagogic objectives. I endorse Carasik's view that

"Law schools have a moral obligation not only to raise awareness of unequal access to justice, but to identify and implement strategies aimed at ameliorating these pervasive inequities."³³

We have an army of clinics growing year on year. With at least 70% of law schools engaged in pro bono or clinical work,³⁴ a figure which continues to expand³⁵, this rich and extensive resource is much too powerful to hover around the perimeter of legal provision simply because we choose to focus on its *educational* function. It has a *legal* function too that must increasingly be engaged in the losing battle of access to justice. We need to use all of the tools at our disposal to better support marginalised and vulnerable members of our community who face almost insurmountable barriers to access to justice. Law students and clinics are some of the most powerful instruments we have. We can take a creative approach to our delivery models and work collaboratively, as has been achieved by countries with a strong clinical tradition, such as the United States.

³³ Lauren Carasik, *Justice in the Balance: An Evaluation of One Clinic's Ability to Harmonize Teaching Practical Skills, Ethics and Professionalism with a Social Justice Mission*, 16 Southern California Review of Law & Social Justice 23 (2006).

³⁴ Damian Carney et al., *The LawWorks Law School Pro Bono and Clinic Report 2014*. Available at: <http://lawworks.org.uk/index.php?cID=49&cType=news>.

³⁵ Pro bono in law schools increased by 33% from 2006 to 2011.

The Case for Securing the Future of Social Justice Lawyering

Much of the press around the LASPO cuts has centred on the impact for the *recipients* of legal aid. Less attention has been paid to the consequences for those *delivering* legal services. If the trend for law centre closures and turning cases away continues, then social welfare practice areas will all but disappear.

As social justice advocates including Wizner have loudly espoused, if we fail to expose students to public interest legal work and the harsh realities faced by underrepresented clients and vulnerable communities, the future of our legal profession is undermined.³⁶ If clinics do not step into the chasm left by legal aid cuts, there is an inherent risk that we will singularly churn out commercial lawyers since there will be no future in public interest lawyering. The future already looks bleak. According to a 2014 survey, only 4% of junior lawyers were interested in working in legal aid fields, which echoes the previous year's findings.³⁷ This is yet another reason why clinics must bridge the gap and help avoid public interest lawyers becoming a "dying breed."³⁸

Concluding Thoughts

It is clear to me that we must try to fill the gap, albeit as part of a complementary and collaborative approach. How can we claim to educate our students about justice, the legal system and instil a sense of ethics if clinicians or our clinics stand back in the face of an access to justice crisis? We have a body of knowledge, expertise and resources which could make a much greater contribution to the provision of legal services. There is no plan B, no legal knight in shining armour coming to the rescue of underrepresented clients. We can be part of the solution to the present crisis. At the very least we can contribute a significant resource to the ever deepening problem. We must grasp the opportunity to provide a bottom up remedy, until such time as there is a return to financial buoyancy which floods the legal system with much needed restorative funds.

³⁶ Stephen Wizner, *Beyond Skills Training*, 7 CLIN. LAW REV 327 (2001), at 331: "We need... an agenda that exposes students to the maldistribution of wealth, power and rights in society, and that seeks to inculcate in them a sense of their own ability and responsibility for using law to challenge injustice by assisting the poor and the powerless."

³⁷ Junior Lawyers Division Early Career Work Experience Survey, The Law Society (2014) at 6. Available at <http://www.lawsociety.org.uk/Law-careers/documents/JLD-early-career-work-experience-survey-2014/>

³⁸ *Legal Aid Lawyers "a dying breed"*, The Law Society, Press Release Dec. 1 2014. Available at <http://www.lawsociety.org.uk/news/press-releases/legal-aid-lawyers-a-dying-breed/>

PART II: JUST BECAUSE WE CAN DOESN'T MEAN THAT WE SHOULD

Murray puts forward a persuasive and passionate argument for clinic to be a knight in shining armour, ready to ride to the aid of those who no longer have access to free legal advice and representation. On the face of it, how can we say no to this call? The legal aid cuts have been deeply felt. Law Centres and other pro bono resources are either turning clients away or shutting down.³⁹ There has been a significant increase⁴⁰ in the number of people being forced to represent themselves in court, and this - coupled with lost access to civil legal aid⁴¹ - makes for gloomy reading. Unfortunately, the situation appears to be getting worse. This was evident in July 2015, when, faced with yet more cuts, criminal legal aid lawyers made the difficult decision to boycott any cases paid at lower legal aid rates.⁴² For us to take off our armour, put our horse back in the stable, and watch from the side-lines appears at best nonchalant and at worst cruel. Nevertheless, in this section I intend to defend the view that clinics should not rush to fill the justice gap.

What Do We Want To Emphasise – Legal Or Education?

The rejection of education as the main driver behind clinic is a dominant feature of Murray's piece. Linked to this is the idea that, as clinicians, we have a dual role – we are educators, but remain lawyers. The argument seems to be that as lawyers we have a professional duty to ensure access to justice. However, there are two problems with this proposal. First, it presupposes that we put lawyering above our duties as teachers. We have made a choice to leave private practice and enter the world of academia. That means that our duty should be the students that have chosen to study at our institution. Our role is to give those students the best educational experience that we can. Given that students in the UK can be charged up to £9000 a year to study law, it is all the more important to provide quality, meaningful and innovative teaching. Secondly, it separates clinicians from private practice lawyers and places a greater burden upon them. Whilst the new Lord Chancellor Michael Gove has suggested that legislation could be put in place to require lawyers to provide more work

³⁹ See notes 23 and 25.

⁴⁰ See note 20.

⁴¹ See note 8.

⁴² Owen Bowcott, *Legal aid cuts: lawyers to begin boycott that could see courts grind to a halt*, THE GUARDIAN, Jun. 30 2015. Available at: <http://www.theguardian.com/law/2015/jun/30/criminal-lawyers-promise-boycott-legal-aid-cases-lower-rate>

*pro bono*⁴³, currently practitioners in fee-paying practices are not required to undertake any free legal work. If the idea is that all lawyers have a professional requirement to promote access to justice, then this should be applied across the board. Clinicians should not be forced to pick up the slack.

More importantly, we need to consider the needs of our students. Students come to law school for a wide range of reasons - to learn, to meet new people, to develop skills, to be part of a community. They do not sign up for a law degree in order to combat the deficit inflicted upon our legal system by Government policy. In my view, there are three reasons why utilising students to make up a shortfall is problematic:

1. Not all students want to work in the areas hit by legal aid cuts

Murray states that if we fail to expose students to public interest work then the risk is that law schools will merely produce commercial lawyers. I agree with the sentiment. We do not want to 'churn out', as she says, one type of lawyer. Indeed, The Law Society reports that solicitors who hold practising certificates work in exceptionally varied areas of law⁴⁴. Although "Business Affairs" is a dominant area⁴⁵, 10,000 to 15,000 solicitors identified their area of law as "Advocacy", "Crime – General, Motor and Juvenile", "Employment", "Family", "Landlord and Tenant – Residential", "Mergers and Acquisitions", "Personal Injury" and "Wills and Probate".⁴⁶ Commercial law is not all encompassing, nor should it be.

My concern is that if we focus entirely on the areas worst hit by legal aid cuts then we fail our students by limiting their exposure to a whole host of lawyering areas and skills. For the past 5 years, I have led a specialist business and commercial law clinic. It sits within a wider clinic⁴⁷ and has between 18 and 24 students attached to it. Those students typically assist clients with company, commercial and intellectual property including choosing a business structure, corporate governance⁴⁸, reviewing and drafting commercial contracts⁴⁹, drafting website terms and conditions,

⁴³ David Barratt, *Michael Gove: Wealthy lawyers should do more free work for the justice system*, THE TELEGRAPH, Jun. 23 2015. Available at: <http://www.telegraph.co.uk/news/uknews/law-and-order/11693145/Michael-Gove-Wealthy-lawyers-should-do-more-free-work-for-the-justice-system.html>.

⁴⁴ See e.g. <http://www.lawsociety.org.uk/policy-campaigns/research-trends/fact-sheets/>.

⁴⁵ Over 15,000 solicitors work in that area.

⁴⁶ See note 44.

⁴⁷ The Student Law Office. See <https://www.northumbria.ac.uk/about-us/academic-departments/northumbria-law-school/study/student-law-office/>.

⁴⁸ e.g. understanding directors' duties, constitutional issues, advice on administrative and filing requirements and penalties for non-compliance.

⁴⁹ e.g. commercial agreements and terms and conditions of sale and/or purchase.

terms of use and privacy policies for e-businesses, advising on data protection and confidentiality issues, advising on the existence/protection of intellectual property rights including copyright, designs, trade marks and patents, and advising on disputes such as intellectual property infringement.⁵⁰ The clients range from small to medium commercial enterprises to large charitable organisations.⁵¹ The business and commercial clinic (as with the wider clinic itself) does not mean test or enquire into clients' financial position. The advice, including the commercial documentation drafted and registration documents completed, is free. Critics have argued that clinical legal education must avoid assisting businesses and concentrate on the poor and unrepresented lest it lose its "soul".⁵² This is exemplified in the work of Wizner, who proposes that clinic must remain firmly planted in its social justice foundations as this is "a lesson that students should - and deserve to - learn".⁵³ Such statements are unsatisfactory because they fail to recognise that students also deserve to have a varied experience and to feel welcome whatever type of law they wish to practice or client they would like to act for.

2. Students as an untapped –and unpaid - resource

I recently heard a clinician express the view that law students were privileged and it was therefore their duty to help those less fortunate than themselves. The idea that all of our students have all had a certain type of upbringing is one which I question. The students that I have encountered have had a diverse range of socio-economic backgrounds. I can recount multiple examples of students telling me how they are struggling to pay their rent, or trying desperately to combine study with caring responsibilities, or deal with difficult family circumstances. Gone are the days (thankfully) when a university place was reserved for a privileged demographic. Our students can often have the same problems as those for which they are providing free advice.

We have a duty, as educators, to provide pastoral care for our students. This means not overloading them with numerous legal cases which are often complex, urgent or subject to short deadlines, and/or require specialist expertise. As lawyers we often talk about client care, but rarely – in a clinical context – do we reflect on student care. If we utilise our 'army' of students, as Murray

⁵⁰ For more detail about the business law clinic at the Student Law Office see Elaine Campbell, *A dangerous method? Defending the rise of business law clinics in the UK*, 49 *THE LAW TEACHER* 2 (2015).

⁵¹ It does act for larger corporations, though these are fewer in number.

⁵² Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access To Justice*, 73 *FORDHAM L. REV.* 997 (2004), at 1008.

⁵³ Stephen Wizner, *Is Social Justice Still Relevant?*, 32 *B.C. J.L. & SOC.* 345 (2012), at 355.

suggests, how many cases are we going to expect them to take on? Will they be permitted to use their Winter and Summer breaks? Will clinic work take priority over other university (and external, voluntary and paid) work? One of my former students suggested that in paying his university fees for the year which he worked in the clinic he was in fact subsidising the local community's free legal advice; he paid his fees and others received advice *pro bono*. It is not difficult to see other students starting to come to this conclusion if they become overloaded with a new role – a free workforce to plug a hole which they did not create.

3. Giving students room to learn

Wizner and Aitken declare that clinicians spend too much time dealing with pedagogic issues not directly related to clients' cases. They ask, "Have we sacrificed supervised student representation of disadvantaged clients in favor of clinical pedagogy – classroom teaching, simulations, skills training, journal writing, and guided reflection?"⁵⁴ I find it interesting that Wizner and Aitken place live client work in direct opposition to pedagogy. In doing so, they overlook how rich pedagogic practice intertwines with clinical experience. You can enhance a student's ability to write a coherent and accurate letter to a client by preparing them for that experience through skills training, giving them that experience and then guide them through a reflective process where they consider what they learned and what they might do differently next time. Lose the pedagogy then we are merely farming out students as free workers without any meaningful space to hone their practical legal skills or reflect on their personal strengths and weaknesses.⁵⁵ We need to give our students the room and the time to learn.

The morality of replacing CABs and Law Centres

The Law Society states that "affordable access to legal advice to a basic right for everyone".⁵⁶ Clearly, this is a laudable statement. But who is going to provide that access? Well, until recently we had a stretched but working system of law centres and citizens advice bureaux. We also had a number of law firms which concentrated on legal aid work. Clinics were part of that ecosystem. They supplemented the network. Today, the network has fragmented and the ecosystem has been destroyed.

⁵⁴ Wizner and Aitken, note 52, at 1002.

⁵⁵ See Campbell, note 14.

⁵⁶ The Law Society, May. 21 2015, at http://www.lawsociety.org.uk/policy_campaigns/campaigns/access-to-justice/affordable-legal-services/.

Clinicians, like Murray, feel a moral duty to step up and be counted. However, what about the morality of replacing organisations and other lawyers who were already doing a perfectly good job? I was listening to a radio news programme which had a story about a library that was in line to be closed due to government cuts. Retired members of the community decided that they would undertake the roles – cleaning, shelf stacking, loans, stock updates, events for children – free of charge. The library remained open. Whilst admiring the efforts of the community, I couldn't help but think of the staff who had worked at the library prior to its takeover. Staff had lost their jobs to be replaced by well meaning, free labour. Spurred on by the emergence of 'community libraries', the government now has a webpage with details as to how volunteers might like to maintain their local service.⁵⁷ I see clear parallels with the legal aid cuts.

We are in danger of creating new law centres populated by students and academic staff, rather than fighting for services that already exist and which are provided by experts in their field. Instead, we should be concentrating on critiquing government policy and putting pressure on the government to reverse the decisions which have led to this situation.

CONCLUSION

It is perhaps unsurprising that there has been no clear, unified strategy emanating from the clinical community when, as this article has shown, two clinicians operating from within the same clinic cannot agree on the appropriate way to deal with the access to justice deficit. As funding for legal services waxes and wanes in correlation with financial prosperity, clinics should review their services to ensure maximum impact. Only by best meeting the needs of the communities it serves can clinics contribute to the seemingly never ending deficit in legal service provision. Finally, as society evolves, we should consider taking a wider view of social justice. By doing so we might recognise that providing services to businesses can inculcate more responsible, legally compliant and ethical practices within employers and organisations, which more often than not employ those individuals who we typically represent. To that end, we might reduce the need for legal assistance in many common disputes.

⁵⁷ See e.g. <https://www.gov.uk/government/get-involved/take-part/create-a-community-library>.