# Do we want a human first, and a lawyer second? Developing law student empathy through clinical legal education.

## Abstract

In the UK, the legal profession is increasingly acknowledging the importance of emotional intelligence and empathy in legal practice. Furthermore, research has demonstrated that soft skills such as empathy can be taught, and these skills should be incorporated in legal education. This study uses the Basic Empathy Scale to examine whether law student participation in law clinic and tax clinic modules had any effect on students' self-reported empathy levels. It is submitted that, in general, the students who worked in clinic experienced a statistically significant positive shift in their empathy levels. However, a few students who worked in clinic also experienced a decrease in their empathy levels, and the possible reasons for this are explored. In addition, this paper considers the impact of gender on students' self-reported empathy levels.

## Introduction

Imagine the Law Clinic scene:

> Client: It has been a very difficult time, and I am finding my divorce hard to discuss.
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> Student 1: Oh…Can you be more specific about the problems you are having?

*Client: [Begins to get upset]. Problems have been happening for two years now. I am very worried about getting a divorce and about whether my children can still live with me.*

*Student 2: Right. When did you get married?*

*Client: [Now crying] We got married three years ago. My husband can be a very difficult person and has said he is going to sell our house. I am extremely concerned about where my family are going to live.*

*Student 1: So…my next question is where do you live currently?*

Students have received training to work with real clients within a University Law Clinic setting. They have become well versed in professional conduct, practical legal research, legal letter writing and client interviewing skills. On the day of their first client interview with a member of the public, they are well prepared with their initial research and their interview plan. But then, the member of the public becomes upset when explaining the facts about the particularly distressing time they have been having trying to remedy their legal issue. This emotional dialogue deviates from the interview plan, and the students freeze and continue with their prepared questions, without acknowledgment of the client's upsetting or difficult situation.

This paper originates from supervising an initial client interview by students on a Law Clinic module where a similar situation to the above scenario happened. First client interviews can be nerve-wracking and unexplored territory for many of our students,[1] so it is unsurprising that

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[1] For wider discussion on students' emotions see: Magdalena Kmak & Ketino Minashvili, 'Students' emotions in clinical legal education: a study of the Helsinki Law Clinic' (2021) *The Law Teacher* 150.

students would want to 'stick to the script' and the safety of their interview plan. At a time when the legal profession is seeking emotionally intelligent lawyers,[2] this experience raises questions about whether law students should, and effectively can, be taught empathy skills and, specifically, whether empathy can be developed by engaging in clinical legal education.

Empathy can include both cognitive and affective elements.[3] Cognitive empathy is the ability to identify and recognise another person's feelings and be able to communicate these emotions back to that person.[4] Conversely, whilst affective empathy also concerns the ability to understand and respond to another person's feelings, it can also involve emulating or feeling similar emotions to another person.[5] Informally, our experience as clinical legal education supervisors suggested to us that as students became more experienced and confident in interviewing members of the public, they began to appropriately adapt their skills to show more empathy towards a client's situation. However, we wanted to establish whether this observation could be supported by empirical research.

By drawing on 76 original student surveys using the Basic Empathy Scale, this paper argues that clinical legal education has the potential to develop empathy levels in our law students. The Basic Empathy Scale seeks to measure both affective and cognitive empathy by asking individuals to self-report their emotional responses to 20 questions. Whilst there is existing, quantitative literature in the medical field, legal scholarship is significantly less developed, and

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[2] Susan Douglas, 'Incorporating Emotional Intelligence in Legal Education: A Theoretical Perspective' (2015) 9(2) *e-Journal of Business Education and Scholarship of Teaching* 56, 57.

[3] Rajvinder Samra and Emma Jones, 'Fostering empathy in clinical teaching and learning environments: a unified approach' (2019) 6 (1) *Australian Journal of Clinical Education* 1, 5.

[4] ibid, 5.

[5] Jean Decety and Philip Jackson, 'A social neuroscience perspective on empathy' (2006) 15(2) *Current Directions in Psychological Science: a Journal of the American Psychological Society* 54.

we have a limited understanding of the impacts of clinical legal education on empathy levels.

Prior research shows that empathy can both increase and decrease in individuals exposed to a

clinical setting and our dataset reflects this. However, the majority of our students had higher

empathy scores at the end of their time in the clinics. Clinical legal education had largely

beneficial impacts and helped to develop empathy levels in our law students. With this in mind,

empathy could form the basis of an additional learning outcome for our clinical environments.

This study also confirms and builds on the existing literature that identifies gender as an

important factor in self-identified empathy levels. Female students self-reported more highly in

our dataset. Due to the self-reporting nature of the Basic Empathy Scale, this paper also calls

for more research to be done to observe how our law students react to difficult situations, as

self-reported empathy levels may not reflect reality.

### The clinical context at Lancaster

For this research, we considered whether empathy levels increase or decrease in students

engaging in a pro bono clinical setting.[6]  As part of these clinical legal education programmes,

students participate and take on the role of a student legal adviser (or that of a tax adviser in

the Tax Clinic). This paper draws on four modules (both a University Law Clinic and Tax Clinic)[7]

that ran during the 2020-21 academic year with 68 students in total.

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[6] It is acknowledged that not all clinical settings require pro bono work to be undertaken, such as simulated environments. However, for the purpose of this paper, we will be considering the impacts on empathy of engaging with real-life clients (rather than teacher-created scenarios).
[7] For details about how the North West Tax Clinic operates see: Amy Lawton, 'Lemons to lemonade: experiential learning by trial and error' (2021) *The Law Teacher* 1 (advanced online publication).

Clinical legal education (CLE) is now an established area of legal scholarship and some law clinics have now been running for decades.[8] The benefits of clinical learning, which has also been labelled a "self-directed learning environment",[9] have been considered extensively in literature. Clinics can expose students to broader questions, such as "how law interacts with society".[10] They help students to develop solicitor competences, such as to advise clients and act honestly.[11] Combe also identifies the possibility of wider skill development and argues that letter-writing, interviewing and reading skills can all be improved through clinical legal education.[12] Participation in Law Clinics can encourage students to go into legal practice,[13] and become more "work ready".[14] It is not all about skills, however, as Grimes notes that clinical learning can also help students understand "the meaning and application of law".[15] Despite this rich body of clinical legal education literature, quantitative data on our clinic students and empathy is still relatively limited.[16] This paper seeks to provide original data to begin to fill this gap in CLE literature.

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[8] See Richard Grimes, Joel Klaff and Colleen Smith, 'Legal Skills and Clinical Legal Education - A Survey of Undergraduate Law School Practice' (1996) 30 *The Law Teacher* 44; Sara Browne, 'A survey of pro bono activity by students in law schools in England and Wales' (2001) 35 *The Law Teacher* 33.

[9] Jonny Hall, 'Building reflection into the clinic supervision experience: research methods for the reflexive teacher' (2019) 53(4) The Law Teacher 475, 476.

[10] Malcolm Combe, 'Selling intra-curricular clinical legal education' (2014) 48(3) *The Law Teacher* 281-295, 281.

[11] Rachel Dunn, Victoria Roper and Vinny Kennedy, 'Clinical legal education as qualifying work experience for solicitors' (2018) 52(4) *The Law Teacher* 439-452, 445-446.

[12] Combe (n 10), 282; see also, Laura Lundy, 'The Assessment of Clinical Legal Education: An Illustration' (1995) 29 *The Law Teacher* 311.

[13] Francine Ryan, 'A virtual law clinic: a realist evaluation of what works for whom, why, how and in what circumstances?' (2019) *The Law Teacher* 1, 7.

[14] Francine Cantatore, 'The impact of pro bono law clinics on employability and work readiness in law students' (2018) 25(1) *International Journal of Clinical Legal Education* 147, 147.

[15] Richard Grimes, 'Reflections on Clinical Legal Education' (1995) 29 *The Law Teacher* 169, 171.

[16] There is some discussion of empathy and CLE but this tends to be more abstract in nature, see for example: Andres Gascon-Cuenca and Carla Ghitti and Francesca Malzani, 'Acknowledging the Relevance of Empathy in Clinical Legal Education. Some Proposals from the Experience of the University of Brescia (IT) and Valencia (ESP)' (2018) 25 IJCLE 218.

All law clinics have slightly differing formats; however, the format of the law clinic and tax clinic requires the students to interview real clients, with real-life problems. They conduct a fact-finding interview to ascertain key details, dates, and information. Due to the COVID-19 pandemic, the students had not engaged in face-to-face client interviews when this research was undertaken. The format of the interview was either via telephone or virtual, and therefore we have only been able to consider empathy development for students who are working at a distance from their clients. These interviews might not be straight forward and may involve eliciting a protracted history from a client. It can be an emotional time for a client to relive and retell the problems that they have been facing. Following on from the client interview, students research the issue and draft written legal advice to answer the client's legal query. All advice is supervised by a qualified practitioner.

## Empathy and our students

### The role of empathy in the legal profession

The notion of "thinking like a lawyer" has traditionally been synonymous with rational problem solving, objectivity and an adversarial approach to conflict resolution, and emotion has been seen as antithetical to legal practice.[17] However, in the UK, there has recently been a focus on the "emotionally intelligent lawyer", and both clients and the profession have recognised the need to develop legal practitioner's soft-skills and people-focused delivery.[18] For example, the O-

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[17] Douglas (n 2), 57.
[18] ibid, 68.

Shaped Lawyer project is aimed at reimagining the lawyer of the future, and it emphasises the vital importance of lawyers having human skills, such as empathy, influencing, communication and collaboration, in addition to an excellent legal mind.[19] The project motto is "people first, then lawyers", and the project has gained traction among clients; for example, Centrica and Easyjet have stated that they will only use law firms that are signed up to the O-Shaped Lawyer principles.[20] The importance of empathy has also been recognised in the Legal Education and Training Review, which identified empathy as a core legal competency.[21] However, of the competency frameworks to develop from this, only the Bar Standards Board's Professional Statement for Barristers explicitly refers to empathy, requiring practitioners to "know how and where to demonstrate empathy, and act accordingly".[22]

The profession is therefore increasingly acknowledging the importance of soft skills such as empathy in legal practice. This is important, as there is a body of research demonstrating that emotion and cognition are intertwined, and both are necessary for effective decision-making and reasoning.[23] It has even been argued that without empathy, "people could not live together".[24] Empathy inevitably plays a role in legal practice, as lawyers are human and have both emotional

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[19] Greg Bott, 'Now Introducing the O-Shaped Lawyer' (2020) https://www.cityam.com/o-shaped-lawyer/ accessed 8 July 2021.
[20] ibid.
[21] 'Legal Education Training Review' (2013) https://letr.org.uk/wp-content/uploads/LETR-Report.pdf accessed 8 July 2021, para 4.85.
[22] Bar Standards Board, 'Professional Statement for Barristers: Incorporating the Threshold Standard and Competences' (2016) https://www.barstandardsboard.org.uk/uploads/assets/a4556161-bd81-448d-874d40f3baaf8fe2/bsbprofessionalstatementandcompetences2016.pdf accessed 8 July 2021.
[23] Chalen Westaby and Emma Jones, 'Empathy: an essential element of legal practice or 'never the twain shall meet'? (2018) 25(1) *International Journal of the Legal Profession* 107, 108.
[24] Peter Margulies, 'Re-Framing Empathy in Clinical Legal Education' (1999) 5 Clinical L Rev 605, 605.

and cognitive responses to legal issues.[25] Empathy can help lawyers build a rapport and a relationship of confidence and trust with their clients, and it has been argued that empathy is the "real mortar of an attorney-client (indeed any) relationship".[26] Empathy can also help lawyers to better understand client needs and can improve their communication and negotiations with other parties.[27] It is therefore a false dichotomy to maintain that emotions such as empathy remain separate from the rational, orderly process of lawyering.[28]

When discussing the role of empathy in legal practice, it is important to consider what we mean by empathy. Two main types of empathy have been identified. The first type of empathy is affective empathy, which involves identifying, emulating and sometimes feeling the emotion of another person.[29] In contrast, cognitive empathy involves consideration of the experiences of another person from that person's perspective, while retaining a clear distinction between themselves and the subject of their empathy.[30] Within legal practice, the focus has predominantly been on cognitive empathy.[31] However, both types of empathy have advantages and disadvantages. For example, affective empathy could cause a lawyer to over-identify with a client.[32] An overly emotional response may be inappropriate in a legal setting and could blur professional boundaries, as lawyers are required to remain professional and pragmatic when

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[25] Westaby and Jones (n 23), 112.
[26] David Binder, Paul Bergman, Susan Price and Paul Tremblay, *Lawyers as Counsellors: A Client-Centred Approach* (2nd edn, West Group Publishing 2004), 49.
[27] Samra and Jones (n 3), 3.
[28] Westaby and Jones (n 23), 108.
[29] Decety and Jackson (n 5).
[30] Westaby and Jones (n 23), 109.
[31] Samra and Jones (n 3), 5.
[32] Stewart Mercer and William Reynolds, 'Empathy and quality of care' (2002) 52 *British Journal of General Practice* S9; Samra and Jones (n 3), 5.

giving legal advice and acting on behalf of their client.if cognitive empathy is not combined with emotion, it can be inauthentic.[33] If lawyers solely rely on cognitive empathy its value is somewhat diminished, as empathy effectively becomes a communication tool instead of a way of developing trust and deepening the lawyer-client relationship.[34] It is therefore important that lawyers can balance affective and cognitive empathy, as they must maintain objectivity and impartiality, without losing the authenticity of emotional empathetic connection.

## The role of empathy in legal education

In our research, we have studied whether clinical legal education increases or decreases student empathy levels. This study is particularly relevant in light of the increased focus on the importance of empathy by both clients and the legal profession, and the evidence that empathy is a key part of legal practice. As Silver argues, legal education should therefore "prepare students for the emotional dimensions of lawyering. We fail our students if we fail to prepare them for the impact of their emotional lives, as well as those of their clients, on the practice of law. Legal education should cultivate emotional intelligence".[35] Research has demonstrated that the skills that make up emotional intelligence, including empathy, can be taught, and these skills should be incorporated in legal education.[36]

Despite this, traditional legal education often focuses on legal analysis, legal rules and their application to hypothetical situations, without consideration of client relation skills, such as

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[33] Westaby and Jones (n 23), 115.
[34] ibid, 8.
[35] Marjorie Silver, 'Emotional intelligence and legal education' (1999) 5(4) *Psychology, Public Policy and Law* 1173, 1174.
[36] Douglas (n 2), 62.

empathy and compassion.[37] Criticism in the current academic literature suggests that legal

education often focuses on text-based issues, rather than being client focused,[38] with some

academics arguing that legal education would be more efficient if it also focused on the human

facets needed to be a lawyer, such as empathy, emotions and altruism.[39] Fletcher and Weinstein

argue that "legal education devotes insufficient attention to developing the attendant skills and

mechanisms lawyers need to negotiate successfully the emotional demands of the profession".[40]

Gerdy argues that "too often students are taught legal analysis in a near vacuum, with little or no

discussion of how the legal concepts they are learning actually impact the lives and emotions of

real people".[41]

It has been suggested that this could be because lawyers and academics have previously seen

soft skills, and the role of emotion and empathy, as irrelevant or as a distraction from the legal

issue at hand.[42] However, as discussed previously, the emotional responses of a lawyer or those

of a law-student to their client, directly impacts how they deliver legal services, and therefore

needs to form part of legal education.[43]

The traditional methods of teaching law have come under criticism for failing to provide a

mechanism of developing soft skills, including empathy in students. Whilst lectures can allow

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[37] Kristin B Gerdy, 'Clients, Empathy, and Compassion: Introducing First-Tear Students to the Heart of Lawyering' (2008) 87 Neb L Rev, 32.
[38] ibid, 32.
[39] ibid, 31.
[40] Laurel E Fletcher and Harvey M Weinstein, 'When Students Lose Perspective: Clinical Supervision and the Management of Empathy' (2002) 9 Clinical L Rev 135, 144.
[41] Gerdy (n 37), 30.
[42] Fletcher and Weinstein (n 40), 144.
[43] ibid, 156

students to work through hypothetical scenarios, this environment has been found to be unlikely to promote empathy and compassion.[44] Rosenberg argues that although a lecturer could impart that empathy has a value in legal studies, a large classroom setting would not provide the environment for students to develop their own empathy skills.[45] In contrast, there is research to suggest clinical legal education programmes allow for the learning of skills already taught in law, such as problem solving and conflict resolution, but extends this remit by ensuring that students also become emotionally intelligent.[46] It has been argued that clinical legal education programmes provide the 'optimal' environment to promote development of these skills.[47] Clinical legal education is about learning by doing. Central to participating in clinical legal education is the relationship that the student has with their client.[48] Emotional intelligence, which includes empathy, has been noted to allow students to enhance their client care skills, communication skills and consideration of ethical situations.[49] Clinical legal education allows students to feel emotions, observe emotions in others and to reflect and develop their own practice as a result.[50]

If we look to medicine as an example, with utilises clinical education, a review into 27 separate studies of the medical profession found that medical students who had engaged in practical work with real clients had a statistically higher attitude change when working with under-served or disadvantaged patients. This contrasted with no statistical attitude change for those medical

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[44] Gerdy (n 37) 34

[45] Joshua D Rosenberg, 'Teaching Empathy in Law School' (2002) 36 USF L Rev 621, 637.

[46] Douglas (n 2), 57.

[47] ibid, 68.

[48] ibid, 65.

[49] ibid, 68.

[50] ibid, 64.

students who worked on hypothetical situations only. The conductors of this research suggest that this demonstrates "the transformative power of experiential and empathy-based learning".[51]

Rosenberg argues that assisting students to develop their empathy skills can be achieved through a three-stage process, in that students observe model behaviour, students practice that behaviour and individualised feedback is given.[52] The role of the teacher/supervisor is a fundamental feature of assisting a student with developing their empathy skills. Research suggests that supervisors should: introduce the concept of empathy at the start of the course, develop a framework in which students feel comfortable with discussing their emotional responses to legal work, model how students should engage in a professional way with clients and encourage self-awareness and reflection.[53]

A further benefit of a clinical setting is that it allows students the opportunity to consider both the positive and the negative consequences of empathy. It is important for students to be aware that negative emotional responses can impact their ability to meet a client's interest.[54] In addition, students could become overly attracted to the emotional side of the client's situation, which could in turn distract them from resolving the legal issue.[55] Providing guidance on self-

[51] Samra and Jones (n 3), 8.
[52] Rosenberg (n 45), 637.
[53] Fletcher and Weinstein (n 40), 144-152.
[54] ibid, 150.
[55] ibid.

awareness and boundary setting are offered within the current literature as examples of how to

assist students with avoiding any negative consequences of empathy.[56]

It is essential that students are trained and inducted into empathetic awareness and

development, and various teaching strategies can be employed. Examples can include: the use

of role-modelling (where students observe their supervisor conducting interview techniques),

role-play (simulating client interactions), using reflection for students to be able to consider their

own experiences and feelings, in class discussions relating to empathy, and hearing the

experiences of lawyers who have worked alongside real-clients. Importantly, the current

literature suggests that as well as learning from others, students need to have their own

experiences to feel empathy and compassion (through experiential learning).[57] This participatory

element is important as observation of others alone has been deemed insufficient to enhance

empathy. Rather, it is the participation and the individual feedback from the student's supervisor

which research has suggested assists in enhancing empathy as a skill.[58]


However, it is also important to recognise that if empathy levels can be increased through clinical

education, they can also be decreased. For example, studies have demonstrated that empathy

levels decline as medical students take part in clinical education.[59] Hypotheses for why empathy

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[56] For detailed consideration of a model for clinical supervision, see: Fletcher and Weinstein (n 40), 156.  For consideration of clinical teaching and learning environments, see Samra and Jones (n 3), 10-11.
[57] For detailed exploration relating to learning activities to promote empathy, see: Gerdy (n 37) 42-62
[58] Gerdy (n 37), 39.
[59] Paula Nunes, Stella Williams, Bidyadhar Sa and Keith Stevenson, 'A study of empathy decline in students from five health disciplines during their first year of training' (2011) 12 *International Journal of Medical Education* 12; Samra and Jones (n 10), 11.

levels decrease during medical school include the notion that students transition from idealism to realism as a result of clinical work, or that they shed their empathic responses as a coping mechanism to deal with stressors.[60] The studies from medical clinical education suggest that empathy could also decline in clinical legal education as students start working with clients.[61] As the research suggests that empathy levels can be both increased or decreased through clinical legal education, it is important for educators to develop teaching strategies to develop empathy and prevent its decline as students participate in clinic.[62] In this regard, it would be helpful for educators to share best practice across clinical disciplines, such as law and medicine, to facilitate interdisciplinary learning.[63] In addition, the potential for empathy decline reinforces the fact that students who take part in clinical learning must be supported to discuss the effects of stress or the potential loss of idealism that may result from their participation in clinic.[64]

## Methods

### Student surveys

This paper draws on a total of three surveys that were conducted during the 2020-21 academic year in a quantitative analysis of empathy in students. The surveys were distributed to two groups of students: the students participating on a clinical module at Lancaster University (two surveys) and a control survey that was distributed to all second and final year students in the

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[60] ibid, 12; Samra and Jones (n 3) 11.
[61] Samra and Jones (n 3), 11.
[62] ibid.
[63] ibid.
[64] ibid, 12.

Law School.[65] In total, this paper draws on 76 survey responses (31 control responses and 45 clinic responses (25 for survey 1, 20 for survey 2)). The response rate was therefore relatively low, with around 540 students available to respond to the control survey and 68 students enrolled on clinical modules. Quantitative methods have been criticized for their lack of flexibility which leads to surface data (i.e., data that is not deep or rich).[66]

The sample size is also relatively small at 76 and so the results are potentially less statistically significant. Despite the small sample size, the data and results from this study are consistent across all three surveys, demonstrating a level of reliability and generalizability to the dataset. In addition, this initial dataset will allow us to *begin* to explore whether there has been any shift in empathy as a result of engaging in clinical legal education.

The first clinic survey and control survey asked demographical questions of students. In the control survey, 84% of respondents identified as female (n=26), 13% as male (n=4) and 3% as questioning (n=1). For the clinic students, 76% identified as female (n=19), 16% as male (n=4), and 8% as non-binary (n=2). 68% of clinic students (n=17) self-identified as fulfilling one or more of the widening participation criteria,[67] with 81% (n=25) in the control student group. The most common widening participation criteria self-identified with were 'the first in my family to progress to higher education' (n=24), 'from a low income background' (n=20), 'a mental health problem, Specific Learning Difficulty and/or on the autism spectrum' (n=14) and 'from a certain

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[65] These modules included the Lancaster University Law Clinic and the North West Tax Clinic. The North West Tax Clinic also had students from UCLan participating in it. The dataset contains one response from a UCLan student. This will not be disaggregated to protect the anonymity of the student.

[66] Alan Bryman, *Quantity and Quality in Social Research* (Unwin Hyman 1988), 104.

[67] As adopted by Lancaster University, available at < https://www.lancaster.ac.uk/widening-participation/our-strategy-and-approach/eligibility-criteria/> last accessed 16 July 2021.

minority ethnic group' (n=13). The data therefore leans heavily towards female responses, as well as those who self-identify as coming from a widening participation background. This is important, as:

> "under experimental conditions, women and men show small differences in empathy for pain, but under conditions which allowed for personal judgement about oneself, the role of gender stereotypes may have underpinned larger differences in empathy scores"[68]

Females also consistently score more highly on measures of empathy.[69] This bias towards the female voice in the dataset will therefore be borne in mind and a discussion of gender and empathy will take place below.

The reliability and generalisability of data is incredibly important in qualitative research.[70] Due to the small size and self-selecting nature of the student responses, this data will not seek to set out concrete conclusions on whether clinical legal education (and specifically pro bono clinics in this study) can encourage empathy growth in our students. It is also important to note that the clinical modules were run virtually for the 2020-21 academic year (due to COVID-19). Our data therefore draws from the experiences of our students in this context. As there is no literature on whether clients engaged with virtually have any different impact on empathy to clients seen face-to-face, this paper will not attempt to draw conclusions on this point.

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[68] Samra and Jones (n 3), 9.
[69] Darrick Jolliffe and David Farrington, 'Development and validation of the Basic Empathy Scale' (2006) 29 *Journal of Adolescence* 589, 598.
[70] Nahid Golafshani, 'Understanding reliability and validity in qualitative research' (2003) 8(4) *The Qualitative Report* 597.

That being said, the data in this paper provides a foundation for discussion and further study into the empathy levels in our students and whether learning and teaching methods are able to alter these levels.

## Basic Empathy Scale (BES)

Various methods have been used to measure empathy but self-reports "constitute the most extensive strategy used for the study of empathy".[71] The Basic Empathy Scale (BES) was developed by Joliffe and Farrington to overcome the weaknesses of other measures of empathy.[72] These "shortcomings" of other scales include equating sympathy with empathy.[73] Originally, the BES was developed to understand the relationship between empathy and offending;[74] and it draws on four of the basic emotions to do so (fear, sadness, anger and happiness).[75] Joliffe and Farrington argue that all emotions stem from the basic emotions allowing the BES to more accurately engage with measures of empathy.[76] It is a two-factor scale that considers both cognitive and affective empathy factors (where affective empathy is the

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[71] Noelia Sánchez-Pérez et al. 'Assessing children's empathy through a Spanish adaptation of the Basic Empathy Scale: parent's and child's report forms' (2014) *Frontiers in Psychology* 1, 1; See also Karen Gerdes et al., 'Conceptualising and Measuring Empathy' (2010) 40 *British Journal of Social Work* 2326, 2334.

[72] Joliffe and Farrington (n 69). Examples of other scales include: the Hogan Empathy Scale, the Questionnaire Measure of Emotional Empathy, and the Interpersonal Reactivity Index (at 590).

[73] Joliffe and Farrington (n 69), 591.

[74] ibid, 592.

[75] ibid, 593.

[76] ibid.

ability to share the emotional experiences of others, and cognitive empathy is the ability to take

the mental perspective of others)[77] by asking students 20 self-reflective questions.[78]

Self-reports to measure empathy are not without criticism: "because they are based on self-

assessment, they usually tell us very little about empathic accuracy".[79] That being said, since its

development by Joliffe and Farrington, the BES has been validated in Spain,[80] France,[81] Italy,[82]

China,[83] Slovakia,[84] Poland and others.[85]  As a widely validated measure, the BES therefore

provides a useful starting point for collecting quantitative data on empathy levels in our law

students.

Data Analysis

Descriptive statistics "are an excellent starting point for most statistical analyses and are a good

way to summarize and communicate information".[86] As such, this paper will use averages (both

[77] Christine Cox et al., 'The Balance between Feeling and Knowing: Affective and Cognitive Empathy are Reflected in the Brain's Intrinsic Functional Dynamics' (2012) SCAN 727,727.

[78] Although this has been criticised in light of more recent work that suggests there may be three relevant components to empathy: Arnaud Carre et al., 'The Basic Empathy Scale in Adults (BES-A): Factor Structure of a Revised Form' (2013) 25 *Psychological Assessment* 679, 680.

[79] Gerdes et al. (n 71), 2334.

[80] Noelia Sánchez-Pérez et al. 'Assessing children's empathy through a Spanish adaptation of the Basic Empathy Scale: parent's and child's report forms' (2014) *Frontiers in Psychology* 1.

[81] Carre et al. (n 78), 685; F D'Ambrosio et al., 'The Basic Empathy Scale: A French Validation of a Measure of Empathy in Youth' (2009) 46 *Personality and Individual Differences* 160.

[82] Paolo Albierto, Giada Matricardi, and Diana Toso, 'La Basic Empathy Scale, uno strumento per la misura della responsivita` empatica negli adoles- centi: Un contributo alla validazione Italiana [The Basic Empathy Scale, a measure of empathy in adolescence: A further contribution to the Italian validation]' (2010) 14 *Psicologia Clinica dello Sviluppo* 205.

[83] Yaogua Geng, Dan Xia, and Beibei Qin, 'The Basic Empathy Scale: A Chinese Validation of a Measure of Empathy in Adolescents' (2012) 43 *Child Psychiatry and Human Development* 499.

[84] Vladimíra Čavojová, Miroslav Sirota, and Zuzana Belovičová, 'Slovak Validation of the Basic Empathy Scale in Pre-Adolescents' (2012) 54 *Studia Psychologica* 195.

[85] Izabela Zych et al., 'Psychometric properties of the Basic Empathy Scale in Polish Children and Adolescents' (2020) *Current Psychology* 1.

[86] Thom Baguley, *Serious Stats: A guide to Advanced Statistics for the Behavioural Sciences* (Palgrave Macmillan 2012), 4.

in total empathy scores and average responses) to look at patterns and changes in empathy

levels. To consider whether there is a statistically significant relationship between students'

empathy scores at the start of clinic and at the end, a two-sample t-test will be carried out. All

data analysis was conducted via SPSS.[87]

The BES asks 20 questions that requires participants to respond on a 5-point Likert scale from

strongly disagree (1) to strongly agree (5). Eight of the BES questions are reversed, which

required responses to be back coded into SPSS. The total empathy score that can be generated

from the BES scale is therefore between 20-100 and the individual responses can range

between 1-5. Lower scores correlate to lower levels of empathy. Overall, we expected there to

be a correlation between time spent in a clinic and an increase in empathy. We did not expect

there to be no change (null hypothesis).


## Results

### Results: control students

Using the BES, an individual will have a score between 20 and 100, with a lower score indicating

a lower empathy response.

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[87] For a useful guide to SPSS, see Daniel Denis, *SPSS data analysis for univariate, bivariate, and multivariate statistics* (Wiley 2019).

|  | N | Minimum | Maximum | Mean | Std. Deviation |
|---|---|---|---|---|---|
| TotalEmpathyScore | 31 | 56.00 | 96.00 | 77.0968 | 11.57110 |
| Valid N (listwise) | 31 | | | | |

*Table 1: Average Total Empathy Scores for control group in April 2021.*

The control survey was administered to all second and final year students in the Law School in April 2021. From that survey, a total of 31 useable responses were generated, with 16 partial responses that were deleted because the student did not complete the survey.

The average control empathy score was 77, with an average question response of 3.85 (standard deviation: 0.57855). The control survey provides a useful comparison point for our clinic student data. This figure is similar to the figures produced in Jolliffe and Farrington's original development of the BES,[88] demonstrating that law students are not particularly unempathetic.

Results: clinic students

The clinic students were surveyed three times during the academic year. However, the response rate for the second survey was lower (13 responses). As such, this paper will draw on the first and final surveys that were administered in October 2020 and May 2021 respectively.

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[88] Where females scored >70 and males >60 (albeit in the specific context of helping others). As our dataset has a skew towards females, our results are in a similar range. Jolliffe and Farrington (n 69), 606.

| | N | Minimum | Maximum | Mean | Std. Deviation |
|---|---|---|---|---|---|
| TotalEmpathyScore | 25 | 52.00 | 88.00 | 76.2000 | 9.92052 |
| Valid N (listwise) | 25 | | | | |

*Table 2: Average Total Empathy Scores for clinic students in October 2020.*

The initial survey received 25 responses and presented an average starting empathy score of 76 for our clinic students. This equated to an average response of 3.81 per question (standard deviation: 0.49603). Whilst this survey was administered six months before the control survey, the first clinic survey produces a score that is not dissimilar to the control score of 77.

| | N | Minimum | Maximum | Mean | Std. Deviation |
|---|---|---|---|---|---|
| TotalEmpathyScore | 20 | 61.00 | 96.00 | 80.1000 | 10.98755 |
| Valid N (listwise) | 20 | | | | |

*Table 3: Average Total Empathy Scores for clinic students in May 2021.*

By looking at the average score for the third survey responses, there is a small (around 5%) increase to a score of 80, which equates to an average response of 4.01 per question (standard deviation: 0.54938). However, there was a smaller response rate to the final survey and different students responded. We therefore tracked through the students who had responded to both surveys, to see whether the increase was present there.

| | N | Minimum | Maximum | Mean | Std. Deviation |
|---|---|---|---|---|---|
| TotalEmpathyScore1 | 11 | 52.00 | 88.00 | 75.0000 | 12.44990 |
| TotalEmpathyScore2 | 11 | 61.00 | 96.00 | 79.6364 | 12.49218 |
| Valid N (listwise) | 11 | | | | |

*Table 4: Average Total Empathy Scores for clinic students who responded to both surveys.*

A very similar starting score was present in the 11 students who responded to both surveys.

Again, there was an increase from a starting score of 75 to 80 during the final survey – which

also sits well with the average survey 3 data. This equated to a shift from an average question

response of 3.75 to 3.98 – or an increase of 6.1%.

This is a fairly small increase in empathy response, yet positive growth, nonetheless. To test the

reliability and significance of this growth, a paired t-test was performed on the data for the 11

students on SPSS. A paired t-test confirms whether or not there is a positive or negative

correlation between two datasets. This means that it can explore whether there has been a

statistically significant growth or reduction in empathy for our eleven students (in this instance,

whether the growth is statistically significant).

To determine whether a result is statistically significant, a significance level needs to be

identified. In statistics, a $p$ (significance) value of lower than 0.05 is the conventional threshold

for declaring statistical significance.[89] The significance values for the clinic student data is held

in table 5:

## Paired Samples Test (t-test)

| | | Paired Differences | | | | |
|---|---|---|---|---|---|---|
| | | | | | 95% Confidence Interval of the Difference | |
| | | Mean | Std. Deviation | Std. Error Mean | Lower | Upper |
| Pair 1 | AverageEmpathyScore1 - AverageEmpathyScore2 | -.23182 | .27044 | .08154 | -.41350 | -.05014 |
| Pair 2 | TotalEmpathyScore1 - TotalEmpathyScore2 | -4.63636 | 5.40875 | 1.63080 | -8.27001 | -1.00272 |

| | | t | df | Sig. (2-tailed) (p) |
|---|---|---|---|---|
| Pair 1 | AverageEmpathyScore1 - AverageEmpathyScore2 | -2.843 | 10 | .017 |
| Pair 2 | TotalEmpathyScore1 - TotalEmpathyScore2 | -2.843 | 10 | .017 |

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[89] For a discussion of p values and the 0.05 threshold, see Giovanni Di Leo and Francesco Sardanelli, 'Statistical significance: *p* value, 0.05 threshold, and applications to radiomics—reasons for a conservative approach' (2020) 4 *European Radiology Experimental* 1; see also Baguley (n 86), chapter 3.

*Table 5: t-test results for eleven students who took both surveys.*

The 2-tailed significance figure is 0.017, which is halved to 0.0085. The results of the t-test produce a p value (or significance value) that is smaller than 0.05 (for our data, 0.0085). This means that the differences between the first survey (with the lower scores) and the second survey (with the higher scores) is statistically significant.

## Discussion

Overall, there was a positive shift in empathy scores for our clinic students. The literature demonstrates that measuring empathy is not simple, and there are significant questions as to whether empathy can be altered by external activities. In addition, the self-reporting nature of the Basic Empathy Scale raises questions as to whether our students are actually more empathetic in reality. Nonetheless, the data demonstrates that the law students who have engaged in clinical legal education at least perceive themselves to be more empathetic.

| *Student* | Gender | Widening Participation | Total Empathy Score 1 | Total Empathy Score 2 | Change |
|---|---|---|---|---|---|
| 1 | Female | No | 84 | 80 | -4 |
| 2 | Male | No | 52 | 61 | +9 |
| 3 | Female | Yes | 82 | 84 | +2 |
| 4 | Female | Yes | 62 | 61 | -1 |
| 5 | Female | Yes | 81 | 80 | -1 |
| 6 | Female | Yes | 75 | 78 | +3 |

| | | | | | |
|---|---|---|---|---|---|
| *7* | Female | Yes | 82 | 96 | +14 |
| *8* | Male | Yes | 57 | 67 | +10 |
| *9* | Male | Yes | 75 | 81 | +6 |
| *10* | Female | No | 88 | 95 | +7 |
| *11* | Female | Yes | 87 | 93 | +6 |

*Table 6: a breakdown of empathy scores for clinic students who took both surveys cross-referenced with self-identified gender and widening participation status.*

The table above shows the individual empathy scores for each of the 11 students tracked through the academic year. The right-hand column indicates any change in the empathy scores from the start to the end of the clinic, with a positive number demonstrating a growth in empathy. A negative change applies where the empathy score has gone down. An important starting point is that all 11 students had a change in their score and that the change ranges from 1 to 14. Some students saw very little change, while others had more significant increases. The remainder of this discussion will explore two common themes within empathy literature: decreases in empathy from clinics and the gender divide.

### Empathy ups and downs

As Rosenberg argued: an improvement in empathy skills can be achieved where students observe model behaviour, students practice that behaviour and individualised feedback is given.[90] All but three of the eleven tracked students improved their empathy skills but this was not universal. Indeed, three students reduced their scores, albeit with a –2 point average. The

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[90] Rosenberg (n 45), 637.

reductions are therefore small. This reflects the position where exposure activities can also decrease empathy levels.[91] There are a number of reasons why this might be the case: as a coping mechanism, because they have started work with clients, or a loss of idealism.[92] These reasons resonate with experiences in the clinic. Students face difficult situations, clients with complex personal lives, and a legal system that weighs heavily on the unrepresented. For our students at Lancaster, they were specifically dealing with clients with personal difficulties such as bereavement, family estrangement, the threat of court proceedings and diagnosed mental health difficulties.

Clinics therefore expose students to situated clients, which allow students to:

> "identify, question and inquire deeply into the complex, embedded practices
>
> through which legal rules and doctrines take on meaning in the world through
>
> the interpretive activities of lawyers as they engage with clients in
>
> understanding their stories and in shaping for and presenting them to the
>
> world."[93]

However, the "client-centredness" in legal literature is seen as a pedagogical theory that develops students,[94] or even as a "cultural" goal,[95] rather than a potential emotionally distressing experience that could negatively impact on a student's ability to empathise in the

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[91] Nunes et al. (n 59); Samra and Jones (n 3), 11.
[92] Samra and Jones (n 3), 11.
[93] Carolyn Grose, 'Beyond Skills Training, Revisited: The Clinical Education Spiral' (2013) 19 Clinical L Rev 489, 497.
[94] ibid.
[95] in exposing students to the "class" of clinic clients: Douglas A Blaze, 'Deja Vu All over Again: Reflections on Fifty Years of Clinical Education' (1997) 64 Tenn L Rev 939, 946.

future. It would be important for us to better understand these emotional impacts of clinical work on our students.

That being said, most students increased their empathy scores in the clinic. Of the students with an increased empathy score, the average gain was 7.1 points. This equates to an 8.9% increase in empathy score, which is much higher than any reductions seen from participating in the clinic. There would appear to be a stronger positive impact of clinics on our students. This is particularly notable in the students who had lower scores at the start of the clinic. The two scores of 52 and 57 are less than halfway along the possible empathy scale. With a potential score of between 20 (low empathy) and 100 (high empathy), the halfway point would lie at 60. By the end of their time in the clinic, they both increased by +9 and +10 respectively, bringing both scores into the 60s. No student finished the clinic with a score below the halfway point.

Gerdy argues that participation and individual feedback promote empathy growth in our students.[96] It is not, therefore, sufficient to simply place students in a clinical setting to see their empathy thrive and grow. It is important to frame and structure the feedback that students receive to best promote empathy growth. The data from the Law Clinic and Tax Clinic demonstrate that empathy growth is possible in clinical education.

### Gender and empathy

When considering the empathy scores reported in table 6 above, it is also important to recognise that empathy is a gendered concept. Gender stereotypes such as "boys will be boys", "girls are emotional", "real men don't cry" and "crying like a girl" are prevalent in society and

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[96] Gerdy (n 37), 39.

culture, and perpetuate the idea that women are naturally more empathetic and caring than men.[97]

However, this is not borne out by recent research on the topic. Baez et al conducted studies examining empathy and gender differences.[98] In the first of their studies, they asked 10,802 people (roughly half female and half male) to watch animated scenarios where either intentional or actual harm was inflicted on an individual, as well as a neutral scenario where no harm was inflicted.[99] Participants were also presented with two moral dilemmas, in which they had to decide whether to harm one person to save five.[100] The results of this study showed that although there were some significant sex differences in the study, the effect sizes were miniscule.[101] As such, the authors concluded that "sex does not play a crucial role in empathy".[102]

Baez et al also conducted a second study, in which participants were asked to complete a self-evaluation questionnaire of their empathy levels.[103] In this study, women reported much higher empathy levels than men.[104] The authors suggested that there might be higher self-reported empathy levels among women because sensitivity and empathy are stereotypically associated with the female role.[105] As such, it is likely that women feel more comfortable presenting

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[97] Sandra Baez, Daniel Flichtentrei, Maria Prats, Ricardo Mastandueno, Adolfo M. Garcia, Marcelo Cetkovich and Agustı´n Iba´ñez, 'Men, women. . .who cares? A population based study on sex differences and gender roles in empathy and moral cognition' (2017) 12 (6) PLOS One, 1, 1.
[98] ibid.
[99] Baez et al (n 97), 4.
[100] ibid, 5.
[101] ibid, 12.
[102] ibid.
[103] ibid.
[104] ibid, 14.
[105] ibid, 11.

themselves as empathetic, although the de facto levels of empathy are similar in men and women.[106]

The gendered aspects of empathy are highly relevant to our study, as we asked students to self-report on their levels of empathy. In accordance with Baez et al's second study, female respondents may have self-reported higher levels of empathy than their male counterparts due to gender-relevant social stereotypes about empathy.[107] In Survey 1 (the first clinic survey), students who identified as female scored an average of 79 (or 3.95 per question), while males scored an average of 67 (or 3.35 per question). The students who identified as non-binary scored an average of 67.5 (3.37). The male/ female averages correlate with the control survey scores (female, 77; male, 68.5; other, 94). There is a lack of scholarship on empathy beyond the binary genders, but the initial data suggests that female law students are self-reporting higher empathy levels than their male colleagues.

It is also notable that of the 11 students that we tracked through the academic year, only 3 were male. In addition, of the 3 male students that we tracked, 2 reported initial empathy scores of 52 and 57, which were the lowest initial scores (these scores were less than halfway along the possible empathy scale). By the end of their time in clinic, the 2 male students who had reported the lowest initial scores had both increased their empathy self-evaluation by +9 and +10 respectively, which brought their scores into the 60s. However, this still put them in the bottom three for self-reported empathy levels. It is important to recognise that gender-

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[106] ibid.
[107] ibid.

based societal and cultural stereotypes may have influenced how the male and female students in our study self-reported their empathy levels, even if their actual empathic responsiveness was similar.[108] This is a topic that requires further research; for example, it would be helpful to study empathy and sex differences by directly observing empathic behaviours in law clinic, to examine the extent to which self-reported empathy levels match actual behaviour.[109]

## Concluding Remarks

This paper has drawn on 76 student surveys to explore some of the impacts of clinical legal education on our law students' empathy levels through the use of the Basic Empathy Scale. Law students are not unempathetic. The control and initial surveys indicate positive empathy levels amongst our students. However, time spent in a clinical setting can both improve and diminish empathy levels. These ups and downs in empathy levels were seen in the students on the clinical modules at Lancaster. On the whole, however, this paper argues that the impact of pro bono clinical work on students is positive – most saw increases in their empathy scores. These increases were relatively limited (between 5-6%) but were statistically significant.

The self-reporting nature of the Basic Empathy Scale means that our students may not be more empathetic in reality – but they certainly perceive themselves to be. In the very least, pro bono clinics expose law students to difficult and emotionally challenging situations that make them question their empathetic responses. Our data also confirms the existing literature that suggests female students are more likely to self-report higher empathy scores. This does not

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[108] ibid.

[109] ibid, 16.

necessarily mean that our female students are more empathetic in reality. It would be important to develop our understanding of student wellbeing, empathy and our clinical projects. Some clinics engage in some really distressing case work (for example, where clinics engage in asylum work), but the emotional impact on our students is not often picked up on. Whether there is a link between developing empathy, student wellbeing, and emotional resilience is an important question for clinical legal education.

The themes that have emerged from the data help us to begin to explore the impact of clinical legal education on student empathy. So far, it would appear that clinical legal education has largely beneficial impacts and helps to develop empathy levels in our law students.

With that in mind, clinical legal educators might want to consider adding empathy as a discrete learning outcome to their clinics or to consider more informally how their clinics help to foster and grow empathy in their law students. While we would not be able to set a Learning Outcome of "become more empathetic" or "understand appropriate empathetic responses" due to the ups and downs of empathy in CLE and also Bloom's taxonomy of learning;[110] we could potentially set a learning outcome requiring students:

> *To be able to identify emotionally difficult situations in the clinic and reflect on your own*
>
> *response to them.*

A learning outcome such as this also reflects the the Bar Standards Board's Professional Statement for Barristers, which requires practitioners to "know how and where to demonstrate

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[110] See, for example, David Krathwohl, 'A Revision of Bloom's Taxonomy: An Overview (2002) 41(4) *Theory into Practice* 212, 212.

empathy, and act accordingly". This can then be aligned with assessment by asking students to reflect on a difficult case, an emotional client, or where they struggled with an interview in a reflective journal. This is something that many clinics already do.[111] Reflective journals are not the only way to scaffold reflection,[112] and a more informal, non-assessed approach might be to facilitate open discussion on empathy and emotional responses in clinic. Conversations are powerful and can help our students process their experiences in clinic.[113] Such discussions would also allow us to begin to gauge the wider emotional impacts CLE might be having on our students.

## Acknowledgments

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[111] Anil Balan, 'Investigating the feasibility of using student reflective journals to understand how clinical legal education an develop the ethical competence of law students' (2020) 54(1) *The Law Teacher* 116, 127.

[112] Debra Coulson and Marina Harvey, 'Scaffolding student reflection for experience-based learning: a framework' (2013) 18(4) *Teaching in Higher Education* 401, 407.

[113] Lawton (n 7); Coulson and Harvey (n 112), 409; for a wider discussion of experiential learning and conversation, see Ann Baker, Patricia Jensen and David Kolb, 'Conversation as Experiential Learning' (2005) 36(4) *Management Learning* 411, 412.