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Clinical Legal Education and Environmental Law: the Benefits of Non-casework Approaches.

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Clinical Legal Education (CLE) is one of the biggest success stories in modern legal education. The 'first wave' of clinics arose out of the United States in the early part of the 20th century and spread quickly in the 1960s and 1970s to Australia, Canada and the United Kingdom. Today, CLE is a global



phenomenon¹ and focuses on developing a range of student skills in 'learning by doing' often in small teams and often, though not always, on issues of social justice such as poverty, the environment, human rights, discrimination, criminal law and consumer law.²

The typical clinic model involves law students working with community lawyers on 'real life' cases. Various approaches to CLE delivery exist including agency models, university partnerships and in-house clinics.³ There is certainly no 'one size fits all' to CLE and issues of insurance, resourcing, supervision, speciality, and assessment all need to be carefully considered when establishing a clinic.⁴

Environmental law clinics (ELCs) are generally thought of to be a specialist type of CLE. Other areas of law that have lent themselves to specialist clinics include: human rights; immigration; domestic violence; and consumer credit.





Although a comprehensive answer to 'what is an ELC?' doesn't appear to have been settled, we might assume, for the purposes of this short piece anyway, that an ELC is a specialist approach to CLE which aims to promote an in-depth understanding of the content of environmental law, with a particular focus on the skills and processes necessary for its practice. Existing ELCs, like the thirty five that exist in the United States,⁵ and the few dozen or so that exist elsewhere in the world,⁶ have seemed to focus on public interest litigation (or 'impact litigation') where students assist lawyers and their clients in gathering and analysing evidence, preparing arguments and presenting cases. Though such models appear to be relatively successful, I argue that ELCs are also well-suited to non-

casework tasks, such as law reform, community education, policy development and even media and communications.⁷ But what might be the benefits of such models?

Well, firstly, there are the community benefits. The dedication of students to non-casework tasks can be invaluable for cash-strapped and time-poor community groups (or government departments) and are likely to provide longer-term and deeper solutions to social dilemmas than encountered in individual cases. In this regard, non-casework clinics might closely resemble successful 'community lawyering' models of delivering CLE.⁸

Secondly, interdisciplinary opportunities (and challenges) abound in environmental law, and law schools would do well to promote cooperative approaches to experiential learning involving other disciplines such as environmental science, media and communications, business, information technology, social work and design. Such opportunities more accurately represent the 'real' relationships environmental advocates are likely to encounter post-graduation. Working in and across multidisciplinary teams also encourages more effective problem-solving skills, including communication, negotiation and time



management.⁹

Thirdly, ELCs based on non-casework approaches can help students feel a sense of achievement, relevance and closure in the tasks they complete. The practice of litigation, and particularly public



interest litigation, is notoriously time consuming and complex. Students may only work on a sliver of a file and may never see it through to completion. Moreover, as most public interest litigants would attest, the rather tedious processes of interlocutory hearings, discovery, correspondence and the like certainly doesn't resemble Erin Brokevitch!

And lastly, there is I think a far deeper pedagogical reason to explore non-casework models, and that has to do with the changing needs of our profession. Law graduates, in many parts of the world, are increasingly hard pressed to find careers in the 'pure' practice of law. The market is flooded with lawyers, and environmental litigation is often only a small (albeit important) part of what environmental advocates do.¹⁰ The fact of the matter is that many environmental lawyers will never step foot inside a courtroom, but still provide valuable work in the areas of research, advice, compliance, transactions, policy and law reform. We have a responsibility to expose students to such career paths, whilst at the same time maintaining their interest in sustainability and access to justice.

In the end, the challenges of the future will require environmental advocates to cooperate and innovate, to think outside the box and across borders, to work with NGOs, governments and private enterprise and to develop new solutions to complex problems alongside economists, scientists and political activists.¹¹ Non-casework models have an important role to play in this regard. Accordingly, we would do well to broaden the types of learning experiences we offer students.

Endnotes

¹ See for instance, Frank S. Bloch (ed.) *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford University Press, 2011); and also: Richard J., Wilson (2004) *Training for Justice: The Global Reach of Clinical Legal Education*. 22(421) *Penn State International Law Review*.

² Giddings provides probably the most comprehensive (and as he remarks, probably the most student-centred) definition of CLE in the literature. See: Jeff Giddings, *Promoting Justice through Clinical Legal Education* (Justice Press, 2013) 14.

³ *Ibid.*

⁴ Consider for instance the best practice guidelines for CLE in Australia: Council of Australian Law Deans (2012) 'Best Practice Guidelines for Clinical Legal Education' 4; and in the United States: Roy Stuckey et al., 'Best Practices for Legal Education: A Vision and a Road Map (Clinical Legal Education Association, 2007).

⁵ Examples in the United States, to name a few, include the law schools of Harvard, Yale, Chicago, Washington, Maryland, Duke, Tulane and Pace University.

⁶ Examples of specialists ELCs in China include: Sun Yet-Sen University in Guangzhou, Chinese University of Politics and Law, An Hui University and Wuhan University. In South and Central America, examples include: Medellin University and Los Andes University (both in Colombia), Chile's Facultad de Derecho at the Universidad de Chile; the Federal University of Mato Grosso in Brasil; a 'year-round' ELC at the University of Costa Rica (UCR) and the University of Buenos Aires in Argentina. Australia has ELCs at Queensland University of Technology, University of Queensland, the University of New South Wales, and at Macquarie University where students intern at the New South Wales Land and Environment Court.

⁷ The arguments in this note are based largely on my own thinking as well as my experience in the supervision and coordination of a non-casework ELC in Queensland, Australia. An example of such an ELC which I have been involved with is described in Evan Hamman et al., (2014) Pro bono partnerships in environmental law: enhancing outcomes for universities and CLCs. 39(2) *Alternative Law Journal* 115-119. The QUT model has its challenges including difficulty in attracting non-law students, consistent resourcing and administration, and maintaining stakeholder relations in an era of changing human resources, but on the whole reports from students have been overwhelmingly positive. For those interested, there are many other examples of 'non-casework' projects students have been involved with across the world (though many aren't reported in academic journals). The Environmental Law Centre at the University of Victoria, Canada, for example, allows students to help publish various 'research papers' used in law reform and advocacy: see:

www.elc.uvic.ca/projects/publications/. Moreover, students at the International Environmental Law Clinic at New York University have been involved in research work on renewable energy, climate change and forestry. See: www.law.nyu.edu/academics/clinics/semester/intlenvironmental. Lastly, there are non-casework examples from Yale University's Environmental Protection Clinic such as assisting with the development of a new 'public facing' website: www.law.yale.edu/studying-law-yale/clinical-and-experiential-learning/our-clinics/environmental-protection-clinic. The Yale Clinic example was similar to another example I supervised at QUT law where design, business and law students developed 'infographics' for community education work. For an overview of those student's work, see their presentation: <https://prezi.com/rpns39zvywmwz/environmental-defenders-office/>.

⁸ For an excellent overview of the community lawyering model, see Karen Tokarz et al 'Conversations on Community Lawyering: The Newest (Oldest) Wave in Clinical Legal Education' (2008) 28 *Washington Journal of Law and Policy* 359.

⁹ Traditional case-based learning which is ubiquitous in law schools does little to develop these characterises in students. For a discussion of the new skills lawyers in the 21st century are likely to need, see Remus, Dana, *Out of Practice: The Twenty-First Century Legal Profession* (October 1, 2012). *Duke Law Journal*, Forthcoming. Available at SSRN: <http://ssrn.com/abstract=2344888> or <http://dx.doi.org/10.2139/ssrn.2344888>

¹⁰ See for instance Heidi Gorovitz Robertson, *Methods for Teaching Environmental Law: Some Thoughts on Providing Access to the Environmental Law System*, 23 *Columbia Journal of Environmental Law* 237 (1998).

¹¹ Non-casework ELCs are not without their challenges of course. As Hurwitz remarks, one of the risks non-casework clinics is they may be 'lawyer-driven' and "convey to students the wrong message about the correct motivation for doing the work, which is to use the legal system to struggle for social justice for the poor, not to empower lawyers to determine in the abstract what is in the public interest." See Deena R. Hurwitz, *Lawyering for Justice and the Inevitability of International Human Rights Clinics*, 28 *Yale J. Int'l L.* 505 (2003).