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From the Field

**THE EUROPEAN NETWORK OF CLINICAL LEGAL EDUCATION:
THE SPRING WORKSHOP 2015**

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INTRODUCTION

The European Network for Clinical Legal Education (ENCLE) was established in 2013 with the aim of bringing individuals and organisations together to exchange ideas and work collaboratively to promote justice and increase the quality of law teaching through clinical legal education. According to its mission statement, 'ENCLE aims to support the growth and quality of [clinical legal education] programmes in Europe through facilitating transnational information sharing, fostering CLE scholarship and research, convening conferences, workshops and

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training session, establishing a website as an open resource for information sharing and promoting collaboration between CLE programmes and legal professionals.²

In furtherance of the mission statement, ENCLE have organised several conferences and workshops.³ In April 2015, a workshop was held at Northumbria University, Newcastle upon Tyne, UK entitled 'Preparing students for clinic'. The aim of the workshop was to generate discussion, through themed sessions, as to how clinicians can prepare their students for the clinical experience. Sessions were facilitated by experienced clinicians from around Europe who drew out ideas for best practice thus strengthening the abilities of attendees to prepare their students for the clinical experience.

The first session, which will be the predominant focus of this article, considered 'Why we do clinic'. It is important that as clinical educators we understand the rationale for what we do. If we do not know where we are going, we will never get there, which was highlighted at the start of the first session.

Other sessions included:

- Establishing a legal clinic
- Running and sustaining a legal clinic

² ENCLE, *Mission Statement* Available at: <http://www.encle.org/about-encle/memorandum-of-understanding-statute-in-entirety>

(Accessed: 24 September 2015)

³For more information on other ENCLE events please see, <http://encle.org/news-and-events/past-events>

- Standardised clients
- Approaches to preparation: legal knowledge or problem based learning
- Developing ethical sensitivity in clinical students
- Ethical aspects of clinical design and management
- Strengthening the social justice mission of clinic
- Impact of clinic in Europe: What do we know so far and where do we go from here (and how)?

The sessions covered various forms of clinical legal education, not just those working with live clients. However, throughout the two days other sub-themes started to emerge and the need to justify why we do clinic as a form of legal education was underlying in all sessions.

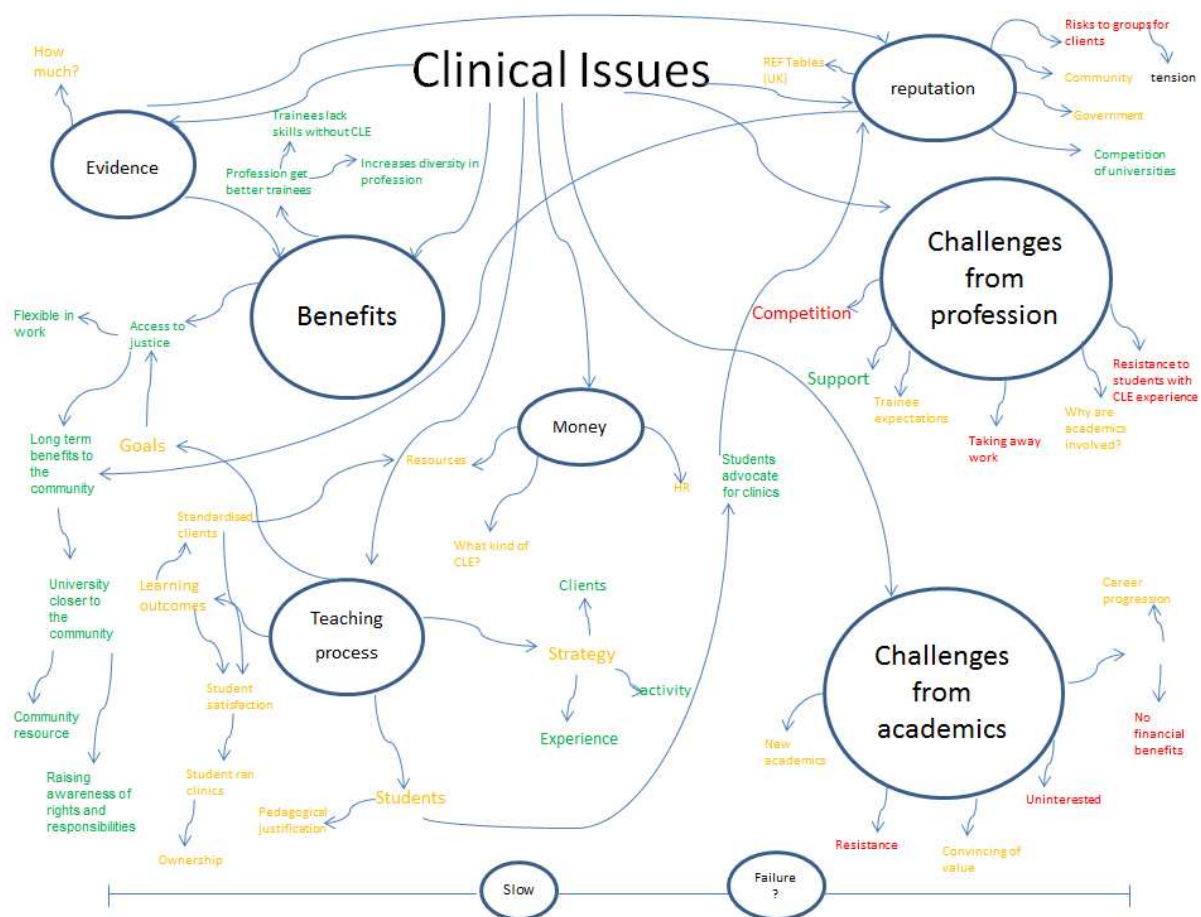
There were approximately 42 clinicians who attended the Workshop. The first session of the Workshop was recorded, lasting approximately one hour. Once we gained ethical approval to use this recording as data for an article and it was transcribed and analysed in order to highlight the main themes discussed during the Workshop. Attendees were notified of our intention to use the recording, provided with a username and password to access it securely on the ENCLE website and time was given for them to listen to it. They could then decide if they consented to their comments being used and were able to exclude any comments which they did not want to be used in this work. The comments discussed below are only those from attendees who agreed for their contributions to be used.

WHY WE DO CLINIC.

The first session of the Workshop, led by Professor Kevin Kerrigan and Carol Boothby, asked *'why do we do clinic'*. The purpose of this session, as Professor Kerrigan highlighted, was to justify why we, as educators, should have law clinics in universities. This justification is not just to Deans or Vice Chancellors, but also to the wider legal profession and community. This justification, or reason for doing clinic, is important for the sustainability of a clinic. However, an attendee also stated that it is important to know why we do clinic *'because this will then shape in what we need for it, how we do it, how we communicate with the students, what goals do we proceed, what we emphasise. So this is a really important thing to know in order to shape the teaching process in the right way.'* So, it is not just justifying to those outside of the clinic, but also for those working inside it, ensuring the clinic is pedagogically sound. As such, the purpose of the clinic needs to be clear in our own minds as to achieve anything, we need to know what it is we are trying to achieve.

There are various reasons why we establish clinics. Aksamovic and Genty highlight that it is important to distinguish between these reasons, and that two of the main goals of clinicians are *'...creating social change by giving disadvantaged groups access to legal services; making experiential courses mandatory so that all students*

are better prepared for the profession they will be entering...'⁴ However, this session highlighted other reasons as to why we do clinic and how we can justify it, which surfaced when we discussed the advantages and disadvantages, or the rewards and risks, of clinics. These advantages and disadvantages were to various groups, including the university, the community and the legal profession. Discussing the advantages and disadvantages of clinics also brought up other areas of discussion. The themes of this session can be displayed visually, taken from the recording:



⁴ Askamovic D and Genty P, 'An Examination of the Challenges, Successes and Setbacks for Clinical Legal Education in Eastern Europe' (2014) 20 The International Journal of Clinical Legal Education, p.437

The issues facing clinical programmes identified during the Workshop are represented above. The themes flowing from these issues are the main areas which were covered during the discussions, the bigger the circle the more weight placed on the discussion. We then have other comments flowing from these main areas, which attendees highlighted as advantages or disadvantages, or risks and rewards, of clinics. The bigger the comments the more it was discussed. Some of these issues link together, even though they were discussed during different themes. Looking at the data from the session in this way shows how certain issues can link together, even though they may seem very separate in practice. Furthermore, displaying the weighting of the conversations outlines what was most discussed, or was more of a concern to the attendees of the Workshop. The issues have also been colour coded. Comments in red represent issues which hinder the development of clinic whilst comments in green can be considered to advance the clinical mission, enhancing the education of our students and provide legal support to our community. Comments in orange could either advance or hinder the development of clinics depending upon their implementation in practice. At the bottom of the diagram is a comment made by an attendee that did not appear to fit with the other issues discussed, but is an important consideration none-the-less. This attendee wanted to highlight that when setting up a clinic you must be prepared to fail, as so many clinics do fail when they are first established. Also that establishing a clinic is a slow process and that you must be patient. This is a valid point to make to those who are considering setting up a clinic, and why it has been placed at the bottom of the diagram.

For example, one attendee talked of the educational benefits of law clinics and how there *'are certain things that a student can only learn in clinic.'* However, even though clinicians claim that this kind of pedagogy is beneficial to students, there is a lack of empirical evidence to help justify such a claim. To make such bold claims for clinics, which are logical to make, we must still be able to support them with evidence and research. These educational claims were then linked to reputation, the attendee advancing, *'students want to come to our university because we have an attractive clinical programme.'* These claims are connected to many of the issues. Reputation links back to students, and ultimately their satisfaction, to the community and their views of the university. In order to strengthen the reputation of clinic, we need more evidence. Should clinics be producing more research into their work to justify what they are doing?

Something which was highlighted during the discussion, and is apparent from the diagram, is the conflicting perception of clinic from the legal profession. There was a comment about how some law firms do not like their trainees to have prior clinical experience and like to *'mould'* them to their firm. This attendee stated that law firms can be resistant to taking on students who *'already have a professional identity.'* However, when looking at benefits there is a comment that clinic is beneficial to the profession as they are gaining trainees who are better prepared for practice and would otherwise lack the skills needed if it were not for a student's clinical experience. Thus, it appears that there can be confusion over the expectations of a

clinical programmes and what sort of position it can put students in when they have completed their degree. This difference of opinion is not surprising as all clinicians, and indeed the clinical programmes as a whole, have had different experiences with the legal profession and this will feed into their comments. Furthermore, different jurisdictions will have different experiences and relationships with the profession, resulting in this area of discussion not meeting a consensus.

It was highlighted that there are many reasons of why we do clinic, and these reasons will vary from clinic to clinic. Whatever the reason, we must be able to justify our clinics and be honest about the rewards and risks of them. This justification will help us with our teaching and shaping the clinical programme for the students. Getting the attendees to think about this from the start of the Workshop helped during the other sessions to think about what kinds of clinic is best for their institution and why.

ISSUES

Throughout the two day workshop there were issues highlighted which made sustaining a successful clinical programme difficult. As the diagram above illustrates, the issues faced by clinical programmes are complex. As attendees started to open up about this more people started to share and we realised that these issues are common throughout clinics in Europe. Knowing what issues there are assists with overcoming them and move forward with our European clinical movement. We will focus the discussion on two issues identified in the Workshop,

resistance from the legal profession and resistance from the university. As key stakeholders in any clinical programme, it appears useful to address these concerns.

Resistance/opposition from the profession

Resistance or opposition from the profession arises from a lack of understanding of a clinical programme's goals and how it operates. This opposition seems to stem from fear of a clinical programme taking away work from the profession. An attendee spoke about the opposition their programme faced when it was established, how local lawyers felt as though their livelihood was in trouble and they would face more competition for clients. The clinical programme had to *'justify why we're doing clinic and the type of clinic that we were running and ultimately, eventually, they came around and now they're many of our biggest supporters in the local legal profession.'*

If the resistance from the legal profession is broken down then the support they can provide for a clinical programme is invaluable. Clinical programmes are operating all over the world and many professionals can appreciate and encourage the work they do. This issue is one which most clinical programmes have faced in many countries. Even countries which now have a well established clinical presence in their legal education have faced this problem when setting up clinical programmes. For example, Giddings brings to light resistance from the profession in the early

Australia movement.⁵ Whilst this jurisdiction, and many others, have overcome resistance from the profession, this cannot be said of all jurisdictions, where it is still a major hurdle clinical programmes face. Wilson has discussed this issue in relation to Western Europe, in particular Germany. He states that clinical programmes, ‘...are seen as a threat to the earnings of those lawyers who have “paid their dues” by going through the rigorous process of admission to the bar.’⁶

This was addressed by another attendee, who stated that the work clinical programmes do does not really take work from the legal profession as ‘*we are doing something else.*’ This something else is arguably providing legal services to those who struggle for access to justice. However, providing this service does not mean competition for clients, as this attendee concluded, ‘*but I believe there’s no country in the world where the problems of access to justice would be solved in a way that we would really be competing to clients. We might be competing for clients in some segments, but not in a global way.*’ This is an opinion which has been argued before, particularly by Wilson. From his research in Germany he provides two rebuttals to the opposition from the profession. Firstly, clinical programmes *usually* do not represent clients who could not otherwise afford legal services, nor would they be awarded legal aid. Secondly, students are limited in the extent they can represent clients, stating that

⁵ Giddings J, 'Clinical Legal Education in Australia: A Historical Perspective' (2003) 2003 International Journal of Clinical Legal Education, pp. 9-10

⁶ Wilson RJ, 'Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education' (2009) 10 German Law Journal, p.834

they focus instead on 'a narrow range of matters.'⁷ A further rebuttal is the availability of legal services. For commercial reasons, the availability of legal services in a particular area of law may not be available. This may be due to the fact a case is not financially viable for law firms to pursue, or alternatively, it is not financially viable for a client to pay for the case regardless of their means. This would often be the case in low value disputes where the legal costs would outweigh the value of the claim.

There will always be a need for legal services for those who do not have access to it, making the competition with the legal professions low. Whilst some clinical programmes may be competitive with the legal profession, this is likely to be the exception rather than the rule.

An example of a potentially competitive clinical model would be the business clinic. It may be taking some work away from the profession as they are providing free services to those whose primary alternative option is to hire a lawyer. These clinical programmes will find it more difficult to rebut competition arguments and justify their programme as a need for the community. However, not all business clinics assist clients who can afford legal advice. There are clients in these programmes who cannot afford to pay heavy legal fees to help launch their business, and some programmes will establish this through a means test.

⁷ *Ibid*

Further, some business or transactional clinics may only assist charities. Whilst it is arguable that a charity, especially larger charities would pay for legal services, there is an argument that the wider social benefit is served by retaining money for charitable purposes rather than paying legal fees. Even law firms often provide assistance to charities on a pro bono basis recognising these wider social benefits.

There is also a strong argument for the pedagogical benefits this kind of clinical programme can give to students, allowing them to work in an area of law whereby they may not otherwise get an opportunity. As Campbell states, *'It would be a shame if clinics focusing on transactional work had to continually fight for acceptance, as a consequence of a perceived detachment of that kind of work from a social justice ideology.'*⁸ If a clinic is providing a sound education for students, we may ask whether we do *have* to use social justice as a justification for our clinics. Surely a good education and an introduction to practice can only benefit the profession, providing them with new lawyers who have some experience and equipped with the necessary skills.

It is important in growing the clinical movement to establish what resistance there is to clinical legal education from the profession across Europe, and the reasons for this resistance. We cannot address the problem unless we know the reason for it. However, the anecdotal evidence suggests that measures can be taken to lessen the resistance. Fundamentally, it is important to open a dialogue with the local legal

⁸ Campbell E, 'A dangerous method? Defending the rise of business law clinics in the UK' (2015) 49 *The Law Teacher*, p.175

profession and be clear about what you are doing and why you are doing it. If clinical programmes are seen as a benefit and not a threat, it is likely that they will attract support, rather than resistance.

Resistance/opposition from the academy

This issue is one which has surfaced in many institutions across the globe. When clinical programmes began to evolve there could sometimes be opposition faced internally as well as externally.⁹ This opposition seems to still be alive in some European clinical programmes, especially the newer programmes. One attendee stated that:

'...often academics within the faculty, within the school, can be resistant. Or, even if they're not resistant, uninterested. And I think that a clinic can work really well when everybody's convinced with its value, even if they don't work within it. And they know what the students are doing with it because it can affect their own teaching.'

⁹ For more information please see, Iya, P.F. 'Fostering a Better Interaction Between Academics and Practitioners to Promote Quality Clinical Legal Education with High Ethical Values', *International Journal of Clinical Legal Education*, Vol.3, 2003, pp.41-57.

Bloch characterises the tension in legal education as a 'conflict between theory and practice.'¹⁰ Whilst theoretical scholarship has an established place within the academy, with a clear status and role for those who engage, practice or clinical scholarship has struggled to establish legitimacy. Perhaps this struggle goes to the core of clinical legal education, and in particular the background of many clinicians. Many clinicians are lawyers, not traditional academics, and see their role as teaching legal skills. As such, clinicians may sense their role is practiced based, and not focused on publishing the theory. Thus, it is arguable that it is clinicians who have established the barrier, or at least contributed to it.

However, there are also cultural barriers to overcome if clinicians are to become an accepted member of the academy. Some law schools, especially in countries such as Germany, prefer the traditional teaching methods and do not think there is a place for practical legal teaching within their schools. This is better left for after a student has finished their degree.¹¹

It is necessary to consider that theory and practice are not mutually exclusive concepts. Whilst theory leads to practice, practice also leads to theory and teaching at its best shapes both research and practice.¹² Boyer posits that the term

¹⁰ Bloch F S, 'The case for clinical scholarship', *International Journal of Clinical Legal Education*, Vol.4, 2004, pp.7-21

¹¹ For example see Bucker A and Woodruff A, 'The Bologna Process and German Legal Education: Developing Professional Competence through Clinical Experiences' (2008) 9 *German Law Journal*, p. 609

¹² Boyer E L, 'Scholarship Reconsidered: Priorities of the Professoriate', *The Carnegie Foundation for the Advancement of Teaching*, 1990

'scholarship' should have 'a broader, more capacious meaning, one that brings legitimacy to the full scope of academic work.'¹³ In doing so, he identifies that academic work has four separate but overlapping functions: the scholarship of discovery; the scholarship of integration; the scholarship of application; and the scholarship of teaching.¹⁴

The scholarship of discovery is the closest element to "research". Boyer states that the scholarship of discovery 'contributes not only to the stock of human knowledge but also the intellectual climate of a college or university.'¹⁵ Scholarship of integration is connected to the scholarship of discovery but relates to the connections across disciplines and the knowledge is seen within a larger context.¹⁶ He goes on to state that the difference between "discovery" and "integration" can be understood in the questions asked. Academics engaged in discovery ask, "What is to be known, what is yet to be found?" However, academics engaged in integration ask, "What do the findings mean?"¹⁷ The third element, the scholarship of application, addresses how knowledge can be applied to consequential problems and help both individuals and institutions.¹⁸ Boyer is careful to point out that application is not a one-way

¹³ Ibid

¹⁴ Ibid

¹⁵ Ibid, p.17

¹⁶ Ibid, pp.18-19

¹⁷ Ibid, p.19

¹⁸ Ibid, p.21

street; knowledge is not merely discovered then applied. Indeed, new intellectual understanding can arise from the application of the knowledge; theory and practice interact so that one will renew the other.¹⁹ Finally, the scholarship of teaching is more than transmitting knowledge, it is “transforming” and “extending” it as well.²⁰ The scholarship of teaching is important as it not only educates but also entices future scholars.²¹

Hutchings and Shulman stated that the ‘scholarship of teaching’ has three ‘central features of being public (“community property”), open to critique and evaluation and in a form that others can build on’. They go on to state that there is a fourth attribute, namely ‘that it involves question-asking, inquiry and investigation, particularly around the issues of student learning.’²²

In applying the notion of scholarship of teaching to clinical scholarship, clinicians are uniquely placed to study the legal profession from a different perspective to their academic colleagues. Indeed Bloch highlights that that a ‘great strength of clinical legal education is that it embraces its ties to the “real world” of law practice. The clinical methodology gains much of its richness when student are immersed in

¹⁹ Ibid, p.23

²⁰ Ibid, p.24

²¹ Ibid, p.23

²² Hutchings P and Shulman L, ‘The Scholarship of Teaching: New Elaborations, New Developments’, The Carnegie Foundation for the Advancement of Teaching, 1999

actual lawyer work, with all of its complexities and ambiguities.”²³ It is thus important that clinical work is made public allowing others to scrutinise and build upon the work already undertaken. Whilst there has been an historic tendency for clinicians either not to engage in scholarship, or alternatively to talk over one another, this has hindered the development of clinical scholarship within the academy. By engaging in such scholarship, arguably clinical scholarship will become an accepted part of the academy and thus reduce internal friction.

However, there are also practical difficulties faced by clinicians if they are to be on equal footing to other academics. As well as running the clinic they may also have the same responsibilities and duties as the other academics within the institution, but will not get paid extra for this extra work or have their other workload lessened. This is an issue which could have an impact on the running and sustainability of clinical programmes. Clinical programmes are becoming an accepted form of legal education and the clinicians running them should be allowed the time and support to do so.

Whilst clinicians work extremely hard to make their programmes successful, there can be a lack of recognition. They may not be publishing as much as other members of academic staff or their achievements not as widely recognised. For example, Donnelly argues that, *‘[i]t is grossly unrealistic to hold clinicians to the same boilerplate*

²³ Supra n.7

*standard as our colleagues when seeking promotion, especially when there is still little recognition granted to clinical work.'*²⁴

The publishing element of a clinician's work provides another issue in the argument of scholarship. As lawyers, and not academics, some clinicians are not provided with, or encouraged, to undertake training in how to conduct research and publish it. This makes it difficult for clinicians to produce the work they would like to and push them further to this scholarship status.

Furthermore, even if this training is provided not every institution allows sufficient work allocation to conduct and write up research. If a clinician wishes to write research for publication this comes out of their own time, which they do not seem to have a lot of when running a clinic.

If clinicians are to have equal status within the academy, it is important that they undertake research or, clinical scholarship. As the clinical movement is growing it is imperative that we gather evidence as to the effectiveness of our practice and that we are sharing our experiences. By making our work public, we allow others to learn from our experience and build upon our work, thus improving the quality of the educational experience.

Considering these differences, clinicians have a choice as to whether they argue their work is different to that of traditional academics, or whether to argue it has the same

²⁴ Donnelly L, 'Clinical Legal Education in Ireland: Some Transatlantic Musings' (2010-2011) 4 Phoenix Law Review, p.15

status. Bloch states that if the distinction is rejected, this can result in ‘a “blood bath” at the time of promotion or tenure.’²⁵ However, acceptance of the distinction creates ‘an almost unavoidable second-class status for the clinical program and its faculty.’²⁶ It seems that if clinicians wish to establish their equal status within the academy, their work must be held as equivalent to that of traditional academics. If clinicians are engaged in scholarship, then this must surely have the same standing as others engaged in scholarship.

Further, it is only through engagement in clinical scholarship that clinicians can address the issues identified above. Examples include evidencing the benefits of clinical programmes, identifying and tackling the barriers to the clinical mission and enhancing the quality of the programme for the students. These are important issues when we ask why we do clinic.

As clinical programmes grow within Europe and with the knowledge that they can provide students with a rich legal education, we should consider whether there is a divide between academics and clinicians. There should be a mutual appreciation between academics and clinicians of the work done and the value it holds to a

²⁵ Supra n.7

²⁶ Ibid

university. Arguably with the recent educational reforms in Europe and the introduction of the Bologna Process²⁷ clinic will help with implementation of this.²⁸

WHERE DO WE GO NEXT?

As the European clinical movement develops, it is clear that there are challenges ahead. In addressing these challenges, clinicians need to reflect upon their own practice and establish their own identity.

This article merely highlights issues raised throughout the two days of the Workshop. We must establish a clear vision of the next steps to take and to keep the European clinical movement pushing forward. However, during the discussion there was not a consensus reached on certain issues, different attendees haven different experiences in their clinics. This may suggest that it is not possible to establish a single identity for a European clinical movement with each jurisdiction facing its own challenges. We cannot treat all jurisdictions in the same way, but it may be possible to establish a common thread or adapt the model as and when necessary.

²⁷ For more information on the Bologna Process and its implementation please see

http://www.ehea.info/Uploads/SubmittedFiles/5_2015/132824.pdf

²⁸ *Supra* n.6

Research in clinic should now be a leading agenda throughout Europe. We learnt during the last session of the Workshop that the amount of peer reviewed articles published in clinical legal education is vast. However, Europe does not produce as much as other continents. In order for our movement to keep growing we must share experiences, failures and successes. Publishing research is a great way to do this. Furthermore, the research we can produce will help to justify why we do clinic. As Tomoszek states:

*'The positive contribution of clinical legal education towards the overall outcome of legal education system still has not been proven by a rigorous empirical evidence-based study – it is mostly based on belief of clinical teachers and clinical students.'*²⁹

ENCLE provides the network to support and facilitate this agenda across Europe. Supporting the growth and quality of clinical legal education through, amongst other things, research and scholarship is at the core of the ENCLE mission.

Whilst this belief is strong and the claims of the benefits of clinical legal education are logical to make, there is still a need for the rigorous and empirical research to be conducted. This will help to make our argument and justifications even stronger.

²⁹ Tomoszek M, 'The Growth of Legal Clinics in Europe - Faith and Hope, or Evidence and Hard Work?' (2014) 21 International Journal of Clinical Legal Education, pp. 99-100

With sharing these experiences comes the opportunity to help develop clinical programmes throughout Europe. The opposition faced by clinical programmes is sometimes great and with help from other established programmes, and experienced clinicians, they can be overcome.