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STAKEHOLDER PERCEPTIONS OF CLINICAL LEGAL EDUCATION WITHIN
AN EMPLOYABILITY CONTEXT

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Abstract

The purpose of this paper is to examine how clinical legal education is perceived by current students, alumni, employers and clinic supervisors. The paper considers clinical legal education within the employability discourse in higher education and interrogates its place in the curriculum. With ever growing pressure on Higher Education providers to produce employable graduates in a challenging graduate marketplace this qualitative study seeks new insights into the role clinical legal education can play in preparing students for their transition from university into graduate careers.

There has been little empirical research in this area and so this article explores the literature around the employability discourse, with particular focus on the impact of clinical legal education on employability before reporting on the findings from the focus groups and reaching conclusions about the implications of the impact of clinical legal education on employability.

Introduction

Since 2008, higher education institutions (HEIs) in the UK have had to bear greater economic, political and environmental pressures. The introduction by HEIs of higher

¹ We are grateful to Rachel Dunn and Karla Prime of Northumbria University for their contribution to this article as research assistants.

tuition fees against a backdrop of low economic growth and the need to accommodate the shifting demands of student, employer and government expectations has created a highly competitive and challenging marketplace. A key element in securing ongoing success for HEIs is student employability and the recent introduction in the UK of the Teaching Excellence Framework² (TEF) has added a further dimension to this as it measures student satisfaction partly through employment outcomes metrics.³ With future funding linked to TEF rankings, HEIs and academic research will continue to focus on employability as a significant factor in the higher education agenda.

This article will highlight stakeholder perceptions drawn from a pilot empirical study of the role clinical legal education can play in an employability context and will interrogate a number of assumptions about the role of clinical legal education in preparing students for the transition into employment. There has been a huge increase in recent years in the number of law schools in the UK offering some form of clinical legal education⁴ yet there is little research on the interrelationship between clinical

² TEF is a system that assesses the quality of teaching in universities in England. It was introduced by the UK government in 2017 to provide a resource for students to judge teaching quality in universities and to increase the importance of teaching excellence (and bring it into line with research excellence) when rating institutions. Universities are classified gold, silver or bronze. These ratings are determined by six core metrics based on teaching, academic support and progression to employment: Department for Business, Innovation and Skills (2016) "Success as a knowledge economy: Teaching excellence, social mobility and student choice".

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/523546/bis-16-265-success-a-s-a-knowledge-economy-web.pdf

³ Based on DLHE (Destinations of Leavers from Higher Education) data available at www.hesa.ac.uk.

⁴ At least 70% of all law schools were involved in pro bono and/or clinical legal education: <https://www.lawworks.org.uk/sites/default/files/LawWorks-student-pro-bono-report%202014.pdf>.

experience and legal employability.⁵ There is research in abundance around the employability discourse generally⁶ but little research within a legal context⁷ and even less around clinical legal education and employability⁸.

As the legal sector becomes increasingly disjointed, legal educators need to engage in discourse with employers to adapt to the changing legal landscape⁹. This is particularly important now as UK university law schools face their biggest challenge in decades of managing a period of transition with the replacement of qualifying law degrees, Graduate Diplomas in Law and Legal Practice Courses with the new Solicitors Qualifying Examination¹⁰. This brings with it a great deal of uncertainty for

⁵ J Russell, 'Enhancing employability for LLB law graduates - initiatives with ILEX and Clinic at London South Bank University' (2011) *The Law Teacher*, 45:3, 348-360.

⁶ Philip Brown, Anthony Hesketh and Sara Williams, 'Employability in a knowledge-driven economy' *Journal of Education and Work* (2003) 16:2, 107-126. Michael Tomlinson, 'Investing in the self: structure, agency and identity in graduates' employability' (2010) *Education, Knowledge & Economy* 4(2), 73-88, 74. Michael Tomlinson, 'Graduate Employability: A Review of Conceptual and Empirical Themes' *High Educ Policy* (2012) 25: 407, 425.

⁷ One study explored factors that enhance employability with work experience being ranked as the most useful factor: P Childs, N Firth and H de Rijke, 'The Gap between Law Student Career Aspirations and Employment Opportunities' (2014) 48(1) *Law Teacher* 51-68, 58. Francis's research explored employability through the lens of legal work experience before arguing that it should not be seen 'as an uncontested good': Andrew Francis, 'Legal education, social mobility, and employability: possible selves, curriculum intervention, and the role of legal work experience' (2015) 42 *Journal of Law and Society* 173.

⁸ An Australian paper interrogates the connection between graduate employability skills and law clinics, Francina Cantatore 'The Impact of Pro Bono Law Clinics on Employability and Work Readiness in law Students' *International Journal of Clinical legal Education* (2018) 25:1, 147-172; and research in the UK that examines employers' awareness and understanding of clinical legal education, Linden Thomas, 'It Puts the Law They've Learnt in Theory into Practice: Exploring Employer Understandings of Clinical Legal Education' in Linden Thomas, Steven Vaughan, Bharat Malkani and Theresa Lynch (eds) *Reimagining Clinical Legal Education* (Hart Publishing 2018) 127-154.

⁹ E Dagilyte and P Coe, 'Professionalism in Higher Education: Important Not Only for Lawyers' (2014) 48(1) *Law teacher* 33-50, 34.

¹⁰ SRA, 'A new route to qualification: the Solicitors Qualifying Examination' (2017) www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page, accessed 6 June 2018.

law schools as to future student interest in law as an academic discipline without the professional accreditation.¹¹ It is therefore more relevant than ever to ensure stakeholder voices are heard and this research project focusses on stakeholder perceptions of the impact of clinical legal education on employability, offering a unique insight into the role clinical education can play within an employability context.

What do we mean when we talk about employability?

Rajan *et al.* opine that employability ‘is one of the few words that have gone from cliché to jargon without the intermediate stage of meaning’.¹² The prominence of the employability agenda has resulted in a large body of literature around the definition of employability but no single agreed definition. If employability is simply about ‘getting a job’, it can be measured using DLHE (Destination of Leavers from Higher Education survey) statistics¹³, however imperfect and unsatisfactory that proves to be. Being employable is obviously a pre-requisite to being employed but not all

¹¹ M Davies, ‘Changes to the training of English and Welsh lawyers: implications for the future of university law schools’ (2018) *The Law Teacher* 52(1) 100-125, 101.

¹² Amin Rajan, Penny Van Eupen, Karen Chapple and David Lane (2000) ‘Employability: Bridging the Gap between Rhetoric and Reality, First Report: Employer’s Perspective’ Create Consultancy/Professional Development Foundation, London.

¹³ The DLHE is an annual survey of UK recent graduates, aimed at finding out what they have gone on to do approximately six months after graduating.

employable people can transition to employment.¹⁴ Brown and Hesketh¹⁵ introduced the concept of the *duality of employability*, that employability is both an absolute and a relative concept, the acquisition of skills being the *absolute* and *relative* in that it depends on the laws of supply and demand in the market. Getting a job can be relatively easy if jobs are in abundance but when there are fewer jobs available, employers can afford to be very selective in getting the right person irrespective of their apparent employability. HEIs do not control the graduate recruitment process or the economy and there are a huge number of variables that come into play during the recruitment process such as educational background, race, religion, gender, social background and disability that HEIs cannot influence.¹⁶

So, if employability is not just about employment then what is it? Academics, politicians and businesses have conceptualised employability as a set of skills that graduates must acquire, albeit without much consensus as to what that actually means. The skills debate has unfolded over many years from when the Dearing Report¹⁷ referred for the first time to skills outcomes as well as knowledge outcomes (albeit that it only referred to communication, numeracy, the use of information

¹⁴ Mantz Yorke, 'Employability in Higher Education: what it is - what it is not' (2004, re-issued 2006) York: The Higher Education Academy.

¹⁵ Philip Brown, Anthony Hesketh and Sara Williams 'Employability in a knowledge-driven economy' (2003) *Journal of Education and Work* 16:2, 107-126, 110.

¹⁶ These variables reflect one of Holmes' conceptualizations of employability as 'positional' where employability is understood through social positioning. Leonard Holmes, 'Competing perspectives on graduate employability: possession, position or process?' (2013) *Studies in Higher Education*, 38:4, 538-554.

¹⁷ R Dearing 'Higher Education in the Learning Society' (1997) Report of the National Committee of Inquiry into Higher Education, London: HMSO.

technology and learning how to learn). This inclusion resulted in increased engagement from the UK HEI sector with initiatives to 'embed' skills within the curriculum and resulted in a wide range of studies identifying skills that graduates should possess as well as frameworks to embed employability within the curriculum and help students develop their employability (Knight and Yorke, USEM model (2003)¹⁸; Dacre Pool & Sewell, CareerEDGE model (2007)¹⁹). Employers too have contributed to the debate with the Confederation of British Industry (CBI) (along with the National Union of Students) defining employability as:

'A set of attributes, skills and knowledge that all labour market participants should possess to ensure they have the capability of being effective in the workplace – to the benefit of themselves, their employer and the wider economy'.²⁰

Thus, the skills-based conceptualisation of employability has dominated academic discourse as HEIs strive to ensure their students' skill-set meet ever shifting employer expectations. Our study sits within this conceptualization and interrogates stakeholder perceptions of the skills students can develop from clinical legal education as part of the student journey.

¹⁸ P Knight and M Yorke, 'Assessment, learning and employability' (2003) Maidenhead, U.K: Open University Press.

¹⁹ Lorraine Dacre Pool and Peter Sewell, 'The key to employability: developing a practical model of graduate employability' (2007) *Education + Training*, Vol. 49 Issue: 4, 277-289.

²⁰ Confederation of British Industry (CBI) (1999) 'Making Employability Work: An Agenda for Action', London: CBI.

Employability and legal education

It is held as axiomatic that students want to secure graduate employment, while employers want to employ graduates who have the skills, knowledge and attributes that they are looking for. In 2016, 25,155 UK students applied to study law at undergraduate level in England and Wales; 17,855 were accepted.²¹ These figures are disconcerting when taken in the context of how many law graduates continue on to either a training contract (5,728) or pupillage (474).²² While not all students have that goal in mind, research has shown that 70.98% of students had the intention of entering the legal profession when they started their law degree.²³ With increasing competition for training contracts and pupillages, a law graduate needs to be 'future fit'²⁴ and able to distinguish themselves from the rest of the crowd. They need to develop the skills that will prepare them for what employers and clients require.

²¹ The Law Society, 'Becoming a solicitor: Entry trends' (The Law Society, 2016), <https://www.lawsociety.org.uk/Law-careers/Becoming-a-solicitor/Entry-trends/>, accessed 23rd March, 2018.

²² In the year ending 31 July 2016, 5,728 traineeships were registered with the SRA (The Law Society, 'Becoming a Solicitor: Entry trends', <http://www.lawsociety.org.uk/Law-careers/Becoming-a-solicitor/Entry-trends/>). In 2016/17 there were 1424 students enrolled on the BPTC, but there were only 474 First Six pupillages registered, <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/pupillage-statistics/> accessed 4th June 2018.

²³ Melissa Hardee, 'Career Expectations of Students on Qualifying Law Degrees in England and Wales' (2014) HEA https://www.heacademy.ac.uk/system/files/resources/hardee_interimreport_2014final.pdf, accessed 21 June 2018. Hardee's study compares the first year data of her study with the results of an earlier study conducted for the UK Centre for Legal Education (UKCLE), where 79.1% of students had the intention of entering the legal profession.

²⁴ Andrew Francis, 'Legal education, social mobility, and employability: possible selves, curriculum intervention, and the role of legal work experience' (2015) 42 *Journal of Law and Society* 173, 177.

In employability discourses, graduates are often described as knowledge workers bringing with them skills, knowledge and intellectual capital that will ‘springboard them into desirable occupational positions’.²⁵ If we consider employability in relative and absolute terms, the ‘absolute’ requires the graduate to differentiate themselves within the hierarchy of job seekers through the development of knowledge and skills and the ‘relative’ will depend on the demand for graduates at any given time.²⁶ Law schools cannot change the ‘relative’ dimension of employability but can contribute towards the ‘absolute’ dimension.

The law curriculum has to manoeuvre a path that synthesizes substantive legal knowledge with practice based and employability skills. This has always been a challenge with proponents of a liberal legal education²⁷ querying the need for skills and employability type activities being encompassed within the undergraduate curriculum. However, the pressure from government, employers and students to produce ‘job ready’ graduates propels all but the most elite universities towards embracing this agenda. The move towards centrally set and marked assessments in England and Wales (Solicitors Qualifying Exam (SQE))²⁸ as a gateway to the solicitors’

²⁵ Michael Tomlinson, ‘Investing in the self: structure, agency and identity in graduates’ employability’ (2010) *Education, Knowledge & Economy* 4(2), 73, 74.

²⁶ Philip Brown, Anthony Hesketh and Sara Williams, ‘Employability in a knowledge-driven economy’ (2003) *Journal of Education and Work*, 16:2, 107, 110.

²⁷ For a discussion of what is meant by a liberal legal education see, for example Jessica Guth & Chris Ashford ‘The Legal Education and Training Review: regulating socio-legal and liberal legal education?’ (2014) *The Law Teacher*, 48:1, 5-19, DOI: 1080/03069400.2013.875304; A Bradney, ‘Conversation, Choices and Chances: The Liberal Law School on the Twenty-First Century’ (Oxford Hart Publishing 2003).

²⁸ SRA, ‘A new route to qualification: the Solicitors Qualifying Examination’ (2017) www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page, accessed 6 June 2018.

route into the legal profession is unlikely to alter that situation as law departments in England and Wales make strategic decisions on where to position themselves as they navigate this radical new approach to legal training. Under the SRA's new scheme, qualifying law degrees, law conversion courses (CPE/GDL) and Legal Practice Courses will be replaced by the SQE and with no SRA accreditation requirements to meet, law departments will in theory have greater freedom to redesign the curriculum.²⁹ However, such choices will depend on whether and to what extent SQE preparation will form part of their offer. Whatever choices are made, employability will retain its relevance and in fact may become even more important in what will be a period of change and uncertainty for both students and Law departments as to the value of having a law degree that no longer attracts SRA accreditation.³⁰

In order to blend substantive legal knowledge with practice based skills, an increasing number of law schools in the UK have clinics that offer live client work to law students as part of their legal education.³¹ Apart from improving the student experience, it also provides students with a glimpse of the 'legal environment that awaits them upon

²⁹ Although, the qualifying law degree will remain relevant for entry to the bar, Bar Standards Board, 'BSB Policy Statement in Bar Training' (2017), [/www.barstandardsboard.org.uk/media/1825162/032317_fbt_-_policy_statement_version_for_publication.pdf](http://www.barstandardsboard.org.uk/media/1825162/032317_fbt_-_policy_statement_version_for_publication.pdf), accessed 6 June 2018'

³⁰ See Mark Davies, 'Changes to the training of English and Welsh lawyers: implications for the future of university law schools' (2018) *The Law Teacher*, 2018 Vol. 52, No.1, 100-125. DOI:10.1080/03069400.2017.1394145, for a fuller discussion of these points.

³¹ For more information please see LawWorks Law School Pro Bono and Clinic Report 2014, available via <https://www.lawworks.org.uk/solicitors-and-volunteers/resources/lawworks-law-school-pro-bono-and-clinics-report-2014> Accessed 01.04.16.

graduation.’³² It provides a learning environment and experience that cannot be duplicated in the classroom. While CLE is becoming increasingly popular there remains some contention, and a lack of evidence, as to whether CLE provides students with the necessary skills and competencies to enhance their employability. We make logical claims that students working with live clients will enhance their employability, giving them experience of the law in a practical setting prior to starting training contracts or equivalent. However, there is little data, particularly for the UK, to support this³³.

In order to determine which skills our graduates should be equipped with and whether CLE can contribute towards the development of those skills, we undertook a pilot study to interrogate stakeholder perceptions of CLE within an employability context. This paper, whilst only a small study in Newcastle, UK, has attempted to do this. Northumbria University is a post 1992 university and the Law School has a long tradition of delivering vocational, practice focussed courses. The Law School is well placed to carry out this research with its award winning, internationally renowned clinic, known as the Student Law Office (SLO), which is an integral part of our MLaw course³⁴ and which offers a full casework in-house model with the capacity to provide

³² James Marson, Adam Wilson and Mark Van Hoorebeek, 'Necessity of Clinical Legal Education in University Law Schools: A UK Perspective' (2005) 7 *International Journal of Clinical Legal Educ* 29, 30.

³³ There is an Australian paper that interrogates the connection between graduate employability skills and law clinics, Francina Cantatore, 'The Impact of Pro Bono Law Clinics on Employability and Work Readiness in Law Students' (2018) *International Journal of Clinical Legal Education* 25:1, 147-172.

³⁴ For more information visit <https://www.northumbria.ac.uk/study-at-northumbria/courses/m-law-exempting-ft-uufmay1/>.

not just advice, but representation. For the majority of students, participating in the law clinic is a compulsory, credit bearing part of their studies.³⁵ Students work on cases under the supervision of members of academic staff who are legally qualified, with experience as lawyers in practice.

Methodology

The purpose of this research is to get a fuller insight into perceptions of CLE by interrogating participants' experiences as employers, alumni, students and clinical teaching staff to gain a better understanding of what employability skills can and perhaps cannot be gained from clinic in its current form. This study follows a subjectivist approach to studying social phenomena and used qualitative analysis from the focus groups. The research was inductive and interpretive and drew out themes from the data collected;³⁶ we were theory building as opposed to theory testing. In our analysis, we were conscious of moving back and forth between a more naïve and inductive content analysis and deductive testing of our own preconceived ideas and by using a participatory and open ended data collection tool we were able to collect experiential insights into the participants' perceptions.

³⁵ For more information, visit <https://www.northumbria.ac.uk/about-us/academic-departments/northumbria-law-school/study/student-law-office/>.

³⁶ John Dewey, (1933) 'How We Think: a restatement of the relation of reflective thinking to the educative process.'

In this study, four focus groups were used to examine the views of employers from local law firms (9 participants); alumni (8 participants) who had participated in the law clinic at Northumbria University and who were in employment locally; current students (6 participants) participating in the law clinic; and clinical teaching staff (10 participants). The employer group comprised employers who have employed Northumbria University graduates in the past and who had an understanding of what is meant by CLE having recruited Northumbria graduates over many years³⁷. Each focus group lasted approximately one hour and were recorded and then transcribed. The CBI/NUS model of employability was used, which lists the following skills and attributes: positive attitude, self-management, team working, business awareness, problem solving, communication, numeric awareness and basic information technology skills.³⁸ This list was shown to each group who were asked to comment on this in the context of the clinical provision at Northumbria, the Student Law Office. This approach was chosen to give the participants some structure to explore the themes without constraining their ideas, and they were able to add to the model or remove or vary anything within it.

³⁷ We appreciate that CLE is not universally understood, Linden Thomas, 'It Puts the Law They've Learnt in Theory into Practice: Exploring Employer Understandings of Clinical Legal Education' in Linden Thomas, Steven Vaughan, Bharat Malkani and Theresa Lynch (eds) *Reimagining Clinical Legal Education* (Hart Publishing 2018) 127-154, 141.

³⁸ CBI/NUS Working Towards Your Future (2011).

We were cognisant of our ‘insider’ status as lecturers undertaking research using alumni, peers and students as participants and were reflexive³⁹ in our approach to analysing the data. While one of the researchers played a major role in the law clinic, the other did not and that separation along with our recognition of potential bias from the ‘insider’⁴⁰ positioning created a consciously reflexive⁴¹ environment that enabled us to consider the data through a critical lens.

Results

There was agreement across the groups that all the skills in the CBI/NUS model were relevant to current law practice albeit some required greater emphasis than others. A key theme was communication in all its different forms with the employers highlighting how critical it is to client relations but that some trainees/paralegals ‘hide’ behind emails rather than picking up the phone. Alumni felt very strongly that their SLO experience gave them an edge when they first started in their firm as they had already been exposed to clients during their year in the SLO, with one alumni commenting:

³⁹ AL Cunliffe, ‘Reflexive inquiry in organizational research: Questions and possibilities’ (2003) *Human Relations* 56(8): 983-1003.

⁴⁰ B Bourke, ‘Positionality: Reflecting on the research process’ (2014) *The Qualitative Report*, 19(33):1-9; Sonya Corbin Dwyer and Jennifer L Buckle, ‘The space between: On Being an Insider-Outsider in Qualitative Research’ (2009) *International Journal of Qualitative Methods*.

<https://doi.org/10.1177/160940690900800105>; Elizabeth McNess, Lore Arthur & Michael Crossley, ‘“Ethnographic dazzle” and the construction of the “Other”: revisiting dimensions of insider and outsider research for international and comparative education’ (2015) *Compare: A Journal of Comparative and International Education*, 45:2, 295-316, DOI: [10.1080/03057925.2013.854616](https://doi.org/10.1080/03057925.2013.854616).

⁴¹ *The Sage Handbook of Qualitative Business and Management Research Methods* (Sage Publications 2017) Chapter 23.

I was happy to pick up a phone in my first seat on my first day, just ring someone up because of the SLO, I know trainees in my year, when we started on our first day were panicking over making a phone call because they'd never done it before.

The student group certainly shared this view and felt that they had developed their communication and client care skills and that their fear of calling a client had diminished as their exposure to clients grew, with one student saying:

It seems ridiculous now, but, like, if you were on a training contract and you hadn't had the SLO, imagine if you got told to ring a client, you'd be scared but now I just go 'yeah cool',

and another adding;

...being in the SLO kind of gives you that groundwork [when dealing with clients] and what you need to be able to build on so that you can deal with clients on a day to day basis as part of a firm.

Employers emphasised the importance of communication in its broadest form, which is congruent with other findings,⁴² and that they needed graduates who could adapt and deal with different types of people across a spectrum of levels. This related not just to clients but also other professionals including those within the employer organisation. Linked to that, alumni recognised the importance of building networks and this was an area along with business awareness that they felt they were not exposed to during their clinical experience. For employers, unsurprisingly, they

⁴² For example, David Rigg, 'Embedding Employability in Assessment: searching for the balance between academic learning and skills development in law: a case study' (2013) *The Law Teacher*, 47:3, 404-420; W Archer and J Davison, 'Graduate employability, "What do employers think and want?"' (2008) The Council for Industry and Higher Education. <http://www.cihe-uk.com>.

wanted graduates to be ‘commercial’ and work quickly and efficiently with an awareness of the costs for both the firm and the client. This emphasis on commerciality is shown in Thomas’s research too where the majority of the participants in the study ‘specifically mentioned commercial awareness as a desirable quality in future recruits’.⁴³

The SLO works on a pro bono model and does not have a financial imperative, as one alumni said:

I think there is a little bit that could be done maybe just to say ‘look guys, in real life, you’re not just going to be sitting there, being spoon-fed’ ...it’s not just a learning exercise, at the end of the day it’s a business,
with another adding,

in the SLO you could quite happily sit there for hours and hours and hours on the task that, you know, you get into a firm and you can’t really sit there for hours and hours doing it, that’s not profitable.

The student group was not ignorant of commercial realities, one student highlighted this;

I think more should be made of business awareness because I think most of it stems from that: if you understand how the business works and what the aims are for the customer or the client then the way you work and how you relate yourself to that job – it all stems from that...

While they had an appreciation that spending too much time on a small issue was not cost effective, it was clear that, for the students’ focus group, in a clinic, which is

⁴³ Linden Thomas, ‘It Puts the Law They’ve Learnt in Theory into Practice: Exploring Employer Understandings of Clinical Legal Education’ in Linden Thomas, Steven Vaughan, Bharat Malkani and Theresa Lynch (eds) *Reimagining Clinical Legal Education* (Hart Publishing 2018) 127-154, 141.

assessed for academic credit, assessment is the 'currency'. Their motivation was to gain the best mark and that was their primary driver and if that meant spending a lot of time on a small issue then they would always choose to do so in an educational environment. As one student said:

I think you know that's the case [that you need to work efficiently in real life] but then because it doesn't affect us we just carry on doing it. ...If in the real world you can only spend 20 minutes, I would spend an hour if it meant I get a top mark!

Clinical supervisors were well aware of commercial drivers, but they also saw the law clinic experience as providing intensive feedback and mentoring⁴⁴ that would enable students to be resilient enough to maintain their independence and autonomy in their future careers. Both the student and the staff groups highlighted an important element, that the SLO exposes students to the 'messiness of law', to the reality away from carefully crafted 'academic' problems to appreciate that client problems routinely do not 'neatly fit into any kind of straightforward legal answer'.

Another theme arising from these focus group discussions included the differing views of employers and students as regards the value of the law clinic experience on their employability skills. The impact of the clinical experience was clear from the alumni group, who were overwhelmingly positive about their experience in the law

⁴⁴ This view expressed by supervisors on the importance of the educational experience is reflected in the 2014 LawWorks survey, where 94% of the law schools who responded to the survey rated 'educational value' as 'very important': 'The Law Works Law School Pro Bono Clinic Report 2014', <https://www.lawworks.org.uk/sites/default/files/LawWorks-student-pro-bono-report%202014.pdf>.

clinic and spoke with great affection of this and how they continue to reflect on what they have learned there, with an alumni commenting:

I was so grateful to have the SLO because then I had a bit more confidence...because even though I didn't have much supervision [in their job], I had, sort of, an idea of what I was doing because I had done it previously.

One employer did not feel they could differentiate between those who came to them having had experience in the SLO, and those who have not, although amongst the alumni, this clinic experience was clearly greatly valued, not just by them but by their employers. Whilst proponents of CLE and students alike may hope their experience in clinic enables them to stand out to employers, there is also a value for many students from post 92 universities simply to be perceived as on a par with their peers, bearing in mind that many of those peers are likely to have significantly higher social capital.

There was also discussion within the employer, alumni and staff groups around how to 'sell' clinical experiences to prospective employers and the balance to be achieved between those who undersell and those who oversell. The alumni did highlight the importance of contextualising the clinic experience when discussing their skills with prospective employers, for example, by showing employers that they had an awareness of the ways in which clinic was not the same as legal practice, in terms of volume, speed, and level of supervision and feedback.

However, perhaps the most impactful aspect of the focus groups was the way alumni spoke with both passion and enthusiasm of their time in clinic, and the value to them

when they started as legal professionals, particularly in terms of confidence. One alumni said:

I feel that that's helped me a lot when I've then transferred into a firm because now I'm not scared to be thrown in the deep end and I'm not scared to go and try new things or be in difficult situations or argue a difficult case because I think it's built the confidence that I've needed to be able to do that,

with another adding:

I think the SLO is such a good stepping stone for that because you are put in that position where you do need to ask questions and you might not know the answer or you might have a different idea to what somebody else has said and it's having the confidence to put that across.

This idea of the law clinic as a valuable stepping-stone was reflected in another student comment;

I think there is quite a lot of difference between working in a firm and the SLO but I think it's a useful difference because I think the SLO is never going to fully replicate life in a firm but it provides something that a firm can't because you really have got people who have that time to give you really really thorough supervision where you have got that extra time to consider things fully and so you do get a bit more in-depth training.

It can be seen from these themes and comments that employability skills can and are being developed in the SLO, but that currently there is limited exposure to aspects of commerciality that would further enhance the students' employability. While 'confidence' does not fit within the NUS/CBI model of employability as a separate entity, the 'positive attitude' that is at the centre of the model is only possible if

individuals are confident and both the student and alumni group saw the clinic as pivotal in building their confidence when transitioning into employment.

Interrogating the relationship between CLE and employability

Our study sits at an intersection between ‘clinic’ and ‘employability’ and as such we will review the discourse emerging from the literature.

CLE provides an alternative context of the ‘meaning, operation and consequences of legal rules and doctrines’⁴⁵ and enables law students to learn by engaging with their studies in a live client environment.⁴⁶ Its primary intent is to engage students in ‘active rather than passive learning’⁴⁷ by providing contexts for learning that differ from traditional pedagogical legal education.⁴⁸ Amsterdam has criticised the narrowness of traditional methods which:

‘failed to develop in students’ ways of thinking within and about the roles of lawyers- methods of critical analysis, planning, and decision-making which are not themselves practical skills but rather the conceptual foundations for practical skills and for much else, just as

⁴⁵ Jonny Hall and Kevin Kerrigan, ‘Clinic and the wider law curriculum’ (2011) 15 *International Journal of Clinical Legal Education* 25, 30.

⁴⁶ Georgina Ledvinka, ‘Reflection and assessment in clinical legal education: Do you see what I see?’ (2006) 9 *International Journal of Clinical Legal Education* 29.

⁴⁷ Lord Chancellor’s Advisory Committee on Legal Education and Conduct 1st Report, April 1996, paragraph 2.2, cited in, Jonny Hall and Kevin Kerrigan, ‘Clinic and the wider law curriculum’ (2011) 15 *International Journal of Clinical Legal Education* 25.

⁴⁸ Richard Grimes, ‘Reflections on Clinical Legal Education’ (1995) 29 *Law Tchr.* 169.

case reading and doctrinal analysis are foundations for practical skills and for much else.’⁴⁹

In Amsterdam’s opinion, CLE could address the failings in traditional methods and provide students with the skill-set needed for modern practice where it was no longer possible to ‘impart to students a self-contained body of instruction in the law.’⁵⁰

After the boom of CLE in the US in the 1960/70s⁵¹ academics and clinicians began a discourse around skills teaching and its place in legal education in conjunction with a discourse around the importance of different legal skills in preparing law students for practice.⁵² These types of studies are beginning to emerge in the UK. Marson et al highlight the importance of incorporating CLE into law school curriculums,⁵³ stating that this kind of learning experience ‘invigorates’⁵⁴ students and provides them with real life examples of skills that employers require. Other studies, presented as conceptual papers, have concluded that CLE is the best teaching method to provide

⁴⁹ AG Amsterdam, ‘Clinical Legal Education – A 21st Century Perspective’ (1984) 34 J. LEGAL EDUC. 612.

⁵⁰ *ibid* 612.

⁵¹ FS Bloch (ed), ‘The Global Clinical Movement: Educating Lawyers for Social Justice’ (Oxford University Press 2011).

⁵² R Schwartz, ‘The Relative Importance of Skills Used by Attorneys’ (1973) 3 Golden Gate Law Review 321; D Benthall-Nietzel, ‘An Empirical Investigation of the Relationship Between Lawyering Skills and Legal Education’ (1975) 63 Kentucky Law Journal 373; LL Baird, ‘A Survey of the Relevance of Legal Training to Law School Graduates’ (1978) 29 Journal of Legal Education 264 ; S Bright, ‘What, And How, Should We Be Teaching?’ (1991) 25 Law Tchr.11; E Peden & J Riley, ‘Law Graduates’ Skills - A Pilot Study into Employers’ Perspectives’, (2007) Sydney Law School Research Paper NO. 07/81. Accessed via <http://ssrn.com/abstract=1034823>.

⁵³ James Marson, et al., ‘The Necessity of Clinical Legal Education in University Law Schools: A UK Perspective’ (2005) 7 International Journal of Clinical Legal Education, 29.

⁵⁴ *ibid* 31.

our students with the skills, attributes and knowledge they will need for practice, but, with no data to support these conclusions, there is a credibility gap.⁵⁵

The lawyering skills research continues but with the economic downturn, the increase in clinical programmes has attracted a new line of research triggered by a paper by Professor Yackee from the US, which proved highly controversial and sparked a lively exchange of views.⁵⁶ Yackee undertook an empirical examination of the link between law school experiential learning opportunities (i.e. CLE) and employment outcomes and concluded that ‘there is not much evidence that law schools that provide greater opportunities for skills training have substantively better employment outcomes than those law schools that provide fewer opportunities’.⁵⁷ His project focused on the narrower concept of employability being about ‘getting a job’ and, perhaps with an eye to anticipated criticism, said that he was not attempting to show that CLE is ‘wasteful, misguided, or otherwise undesirable’,⁵⁸ although he is clearly not a CLE proponent! He opines that his study suggests that the investment into CLE may not pay off and can actually be harmful to employment outcomes⁵⁹ although it could be argued that this was not in fact demonstrated. His reasoning is that law schools with

⁵⁵ For example, Russell discusses how changes to the LLB curriculum at London Southbank University to include extra-curricular clinic, which it was claimed would enhance employability, amongst other benefits. However, this was a descriptive piece, with no specific data to support these conclusions: J Russell, ‘Enhancing employability for LLB law graduates - initiatives with ILEX and Clinic at London South Bank University’ (2011) *The Law Teacher*, 45:3, 348-360.

⁵⁶ JW Yackee, ‘Does Experiential Learning Improve JD Employment Outcomes?’ (2015) *Wis. L. Rev.* 601.

⁵⁷ *ibid* 604.

⁵⁸ *ibid* 604.

⁵⁹ *ibid* 614.

poorer employment outcomes invest more into CLE,⁶⁰ and that the prestige of a law school is what drives employment outcomes, with the lower prestige bringing with it lower employment outcomes.⁶¹ The results of Yackee's study are based on graduates from the top 100 U.S. law schools who have gone on to become attorneys, and does not include other legal jobs, such as clerkships and paralegal. The failure to include other legal jobs and opportunities, which arguably do count towards legal employment, provides a limited picture. Perhaps this can be explained by his concluding sentence that there is a lack of evidence that CLE is likely to improve graduates' 'overall prospects of obtaining a quality job as a lawyer'.⁶² Thus, Yackee has gone from 'any employment' with a law degree to what he refers to as 'quality' jobs. Yackee acknowledged that the empirical analysis of a link between law school clinics and employment outcomes was preliminary and that the 'statistical model is admittedly thin'.⁶³ Kuehn certainly agreed and addressed a number of methodological concerns about Yackee's approach in his 2015 paper.⁶⁴ Kuehn used Yackee's methodology, with some adjustments, to highlight how Yackee's study could not draw reliable conclusions of the effect of law clinics and CLE on employability.⁶⁵ He concluded that Yackee's 'method does not support any conclusion about if or to what

⁶⁰ *ibid* 614-615.

⁶¹ *ibid* 612-613.

⁶² *ibid* 622.

⁶³ *ibid* 609.

⁶⁴ RR Kuehn, 'Measuring Clinical Legal Education's Employment Outcomes' (2015) Legal Studies Research Paper Series, Paper No. 15-12-01.

⁶⁵ *ibid* 646.

degree law clinic availability or experiences affect employment outcomes'.⁶⁶ Kuehn recommends that this kind of research should be done on a school-by-school basis⁶⁷ but does agree, however, that there needs to be more research conducted in this area before any strong conclusions can be drawn.

Kuehn argues that other studies have shown CLE helps graduates to secure employment, specifically referencing Findley's response to Yackee. Findley, in his conceptual paper, considers whether, if Yackee's conclusion that CLE does not seem to improve employment outcomes is correct, then we should be asking *why* employers aren't influenced by CLE and what do employers want in terms of CLE and skills training,⁶⁸ working with them so they understand what CLE provides law graduates with, in terms of skills, attributes and knowledge. Critiquing Yackee's methodology, he states that the data cannot tell us various other relevant answers, such as whether CLE helps graduates get their first choice of job or with a better salary.⁶⁹ Regardless of whether CLE helps employment outcomes, Findley highlights that '...data about the hiring rates of graduates from various law schools should not dominate discussions about the value of clinical education'.⁷⁰ If law schools work more with employers to enable them to understand what CLE can provide and for educators to

⁶⁶ *ibid* 647.

⁶⁷ *ibid* 664.

⁶⁸ KA Findley, 'Assessing Experiential Legal Education: A Response to Professor Yackee' (2015) Univ. Of Wisconsin Legal Studies Research Paper No. 1348 627, 628. Accessed via <http://ssrn.com/abstract=2592684> last cited 04/04/16.

⁶⁹ *ibid* 640-641.

⁷⁰ *ibid* 643.

understand the needs of employers then statistics around graduate employment will not be a driving factor, but equipping students with what they need to start practice competently will be. While Yackee's research certainly caused a scholarly 'rumpus', it did also open an interesting debate around the importance/relevance of clinical experience to American employers.

Turning now to the UK perspective, Francis⁷¹ has argued that legal employability was a 'negotiated and situated process' and had to be taken beyond the skills and attributes conceptualisation and understood through the psychological concept of 'possible selves'.⁷² Francis's study drew on empirical research looking at legal work experience, which challenged the 'notion of the legal market as a neutral sphere within which individuals succeed by virtue of their own merit'. Francis interrogated the impact of legal work experience on employability, and the influences of social and cultural reproduction on access into the legal profession⁷³. This study consisted of surveys and focus groups with pre and post-1992 university students and a survey distributed to 50 law firms. While Francis's response rate was low (16%), he stated responses were consistent with other studies (e.g. a study by Kings College London, who conducted a survey with 20 named magic circle law firms⁷⁴). His sample consisted of multinational, magic circle or large corporate law firms bar one regional

⁷¹ Andrew Francis, 'Legal Education, Social Mobility, and Employability: Possible Selves, Curriculum Intervention, and the Role of Legal Work Experience' (2015) 42 *Journal of Law and Society* 173.

⁷² H Markus and P Nurius, 'Possible Selves' (1986) 41 *Am. Psychologist* 954.

⁷³ Francis drew on the work of Bourdieu, and two of his key concepts, habitus and cultural capital, as a way of understanding an individual's social position - P Bourdieu, 'The Logic of Practice' (1990) 59.

⁷⁴ King's College London Law Employability Research, in partnership with The Times 2013.

law firm. Again, the focus is not on graduate legal jobs generally, but the ‘quality jobs’ similar to those mentioned in Yackee’s study.

Francis concluded from his study that social mobility and employability were not influenced so much by relevant work experiences as by social background. For students who are from a more privileged background the future is ‘knowable’ and this allows them to see their ‘future selves’⁷⁵ as lawyers. Students from pre-92 institutions were more likely to apply, multiple times, for formal legal work experience and students with family/friends connections to the legal profession were twice as likely to have secured work experience at an early stage as those without connections.⁷⁶ For students from less advantaged backgrounds the future is not ‘knowable’ and thus those students can’t use this future idea of themselves as lawyers as motivation to apply at all or to apply time and time again for informal work experience, vacation schemes etc. Students from ‘particular backgrounds’ or who have ‘attended particular educational institutions’⁷⁷ need more support to understand what firms are looking for, and to be able to access opportunities. Francis’ findings highlight that employers are looking for trainees who stand out and this is usually demonstrated through extra-curricular activities. While this may seem a neutral requirement, many students at post-92 universities are juggling jobs on top of their studies, which is a barrier not only to accessing extra-curricular activities but also to

⁷⁵ Andrew Francis, ‘Legal Education, Social Mobility, and Employability: Possible Selves, Curriculum Intervention, and the Role of Legal Work Experience’ (2015) 42 *Journal of Law and Society* 173.

⁷⁶ *ibid* 187-188.

⁷⁷ *ibid* 201.

gaining unpaid legal work experience. One of the employer participants in Francis' paper commented that "a burning ambition to whitewater raft on the Amazon" could be a legitimate reason why an applicant had not undertaken work experience,⁷⁸ demonstrating the type of alternative experience that is valued. As the LETR report has highlighted, graduates from non-elite universities and less privileged backgrounds are disadvantaged from developing the preferred CV to demonstrate the 'spark' so often referred to by elite recruiters, with a participant commenting, 'I'm sorry I couldn't go to Cambodia'.⁷⁹ Interestingly, King provides a view from practice as a manager from within a Magic Circle firm, and looks at the choice students may have between clinic (at institutions where this is optional rather than credit bearing) and sporting or charitable extra-curricular activities, without mention of the struggle many students have to manage work and studies.⁸⁰ Clearly, students from less-privileged backgrounds are indeed at a disadvantage in this highly complex and opaque elite recruitment process.

Francis also concludes that for law firms who are considering the value of CLE it is 'unlikely to be viewed as carrying the same cultural capital as traditional forms of

⁷⁸ Andrew Francis, 'Legal Education, Social Mobility, and Employability: Possible Selves, Curriculum Intervention, and the Role of Legal Work Experience' (2015) 42 *Journal of Law and Society* 173.

⁷⁹ LETR, *The future of legal services education and training regulation in England and Wales*, p235.

⁸⁰ Tony King, 'Clinical Legal Education: A View from Practice' in Linden Thomas, Steven Vaughan, Bharat Malkani and Theresa Lynch (eds) *Reimagining Clinical Legal Education* (Hart Publishing 2018) 117-126.

legal work experience'.⁸¹ The value of what is learnt is dependent on what a student is exposed to whilst engaging with CLE and 'the preparedness of the profession to recognize any distinction that such initiatives may bring'.⁸² These points have been re-examined in Thomas's research⁸³ which investigated the level of awareness and understanding of clinical legal education by legal recruiters. Thomas's research was in two phases, firstly there was a desktop review of 50 graduate recruitment webpages and, secondly interviews were carried out with 18 professionals involved in the recruitment of trainee solicitors and barristers. The interviewees came from a cross section of the legal market. From this research, Thomas concluded that there was a 'general lack of understanding displayed by interviewees on the subject'⁸⁴. However, in contrast to Francis's opinion, once the interviews has progressed and the legal recruiters had a better understanding of what was meant by CLE, 'The majority of interviewees appeared to draw little or no distinction between experience generated through a clinical programme and experience with a law firm or chambers.'⁸⁵

Given this is a period of seismic change for the legal profession where the effects of globalization and new technologies will continue to disrupt the status quo and new

⁸¹ Andrew Francis, 'Legal Education, Social Mobility, and Employability: Possible Selves, Curriculum Intervention, and the Role of Legal Work Experience' (2015) 42 *Journal of Law and Society* 173, 196.

⁸² *ibid* 195.

⁸³ Linden Thomas, 'It Puts the Law They've Learnt in Theory into Practice': Exploring Employer Understandings of Clinical Legal Education' in Linden Thomas, Steven Vaughan, Bharat Malkani and Theresa Lynch (eds) *Reimagining Clinical Legal Education* (Hart Publishing 2018) 127-154.

⁸⁴ *ibid* 137.

⁸⁵ *ibid* 143.

types of lawyers and legal employers have already and will continue to emerge.⁸⁶ We must develop our curriculum in accordance with what skills and competencies we would like our students to graduate with, helping to develop their employability. Ensuring law programmes are relevant and innovative will be critical in attracting students and clinical legal education can play a key role in this as it has proven to not only be a successful pedagogical approach in the context of legal education but is also highly regarded by students and prospective students. It is more important than ever for Law schools to work more closely with law firms to inform them of the benefits of CLE, as is engaging in dialogue to better understand what they are looking for in graduates, and by going further than the large corporate firms in London.

Conclusion

So how valuable is the law clinic experience in developing the skills necessary to transition to employment? Francis's work on legal work experience argues that whilst experiential learning in the form of clinical work can be 'an effective way to develop knowledge and skills,' in terms of the transformation of the employability of students from all backgrounds, 'the value of what is learnt will depend on the work to which they are exposed, the ability of the student to identify what they are learning, and, ultimately, the preparedness of the profession to recognize any distinction that such

⁸⁶ See Richard Susskind, 'Tomorrow's Lawyers: An Introduction to Your Future' (OUP 2013) for some examples of possible future roles.

initiatives may bring.’⁸⁷ He reflects that ‘legal recruiters instinctively saw traditional forms of informal traditional work experience as signaling “commitment” rather than valuing it for skills and attributes which might equally be developed in credit-bearing modules.’⁸⁸ Francis cites the importance of ‘additionality’, that is, the additional factor which makes students stand out to employers, and that ‘there is limited value in compulsory credit bearing ‘cultural capital’.⁸⁹ This makes somewhat depressing reading, when taken alongside the almost evangelical fervor with which students and ex-students talk of their clinical experiences at Northumbria University as part of such a compulsory, credit bearing module. However, it is clear not all legal recruiters share that view⁹⁰ and for those students in post-92 universities such as Northumbria, who can struggle to access appropriate work experiences, an in-house law clinic may have the potential to bridge this gap at least in part - but only if students are able to ‘frame’ this experience appropriately when engaging with employers in the recruitment process.

The enthusiasm with which alumni spoke of their experience in the law clinic, and the great value it was to them on entering employment in legal practice was striking; clearly clinic was worthwhile, and provided them with employability skills including

⁸⁷Andrew Francis, ‘Legal Education, Social Mobility, and Employability: Possible Selves, Curriculum Intervention, and the Role of Legal Work Experience’ (2015) 42 *Journal of Law and Society* 173.

⁸⁸ *ibid* 196.

⁸⁹ *ibid* 201.

⁹⁰ Linden Thomas, ‘It Puts the Law They’ve Learnt in Theory into Practice’: Exploring Employer Understandings of Clinical Legal Education’ in Linden Thomas, Steven Vaughan, Bharat Malkani and Theresa Lynch (eds) *Reimagining Clinical Legal Education* (Hart Publishing 2018) 127-154.

a level of confidence which enabled them to use the experience as a ‘real life bridge between academic study and practice’.⁹¹ The clinical experience appeared to have helped them to develop resilience in terms of dealing with new situations at the start of their legal careers. Whilst proponents of clinic may cite the skills development side of clinic, it is likely (according to Tomlinson) that success of graduates relies on the ‘extent to which they can establish positive identities and modes of being that allow them to act in meaningful and productive ways’⁹² and that experiences in clinic help to affirm their emerging sense of workplace identity, and to withstand some of the challenging and ‘potentially destabilising experiences’⁹³ they may have on entering graduate employment.

There was a multiplicity of views amongst employers about the value of clinic experience. Employers are managing a situation of over-supply where excellent academic qualifications are assumed. Increasingly these qualifications need to be accompanied by a range of ‘soft’ skills with considerable attention paid to interpersonal and communication skills.⁹⁴ The real task for employers is looking at areas of distinction and in this study, employers highlighted two such areas which were communication and commercial awareness. Communication was seen as not

⁹¹ Tony King, ‘Clinical Legal Education: A View from Practice’ in Linden Thomas, Steven Vaughan, Bharat Malkani and Theresa Lynch (eds) *Reimagining Clinical Legal Education* (Hart Publishing 2018) 117-126.

⁹² M Tomlinson, ‘Graduate Employability: A Review of Conceptual and Empirical Themes’ (2012) *Higher Education Policy*, 25(4), 407–431, 425. doi:10.1057/hep.2011.26

⁹³ *ibid* 423.

⁹⁴ Louise Morley, ‘The X factor: employability, elitism and equity in graduate recruitment, Twenty-First Century Society’ (2007) 2:2, 191-207, 205 DOI: [10.1080/17450140701325782](https://doi.org/10.1080/17450140701325782).

only an essential skill but as a broad concept, with the view of the employer group being that ‘communication covers everything. You want someone who can actually get along with people.’ As Brown et al highlight, this move towards the personality package⁹⁵ may create a system which relies more on habitus and socio-economic background than a meritocratic system. In relation to commercial awareness, the challenge for clinic is to provide more exposure to commercial realities.

Clinic experience can provide the skills to navigate the challenges of the world of work in a legal environment – if they can overcome the hurdle of securing employment. Clinic can help with that hurdle as it *should* provide students with a convincing narrative with examples of experience linked to the real world of legal work. But at the point of recruitment, it does not appear, from this and other studies, to provide an automatic advantage across the board and with ever increasing numbers of students undertaking some form of clinical experience, the ‘additionality’ it offered in the past may become ‘standard’. These results suggest that students should not place an over reliance on the clinic experience as some sort of passport to employment, but see it as a testing ground for them to explore their future work identities, and springboard into their engagement with employment.

⁹⁵ Philip Brown, Anthony Hesketh and Sara Williams 'Employability in a knowledge-driven economy' (2003) *Journal of Education and Work* 16:2, 107-126, 121.

This study covered a limited sample size of nine employers, but the responses echoed findings from other studies in relation to a mismatch between employer and student perceptions of work experience,⁹⁶ in this case, relating to experience in a law clinic.

By undertaking this pilot study, we have followed Findley's⁹⁷ advice by exploring stakeholder perceptions of clinical legal education, particularly those of employers, to ensure clinic equips students with the requisite skills to begin their legal careers. As a law school which has built a reputation for the high quality of teaching and learning in the law clinic, and that has received numerous accolades for engagement with the community, outstanding student experience, and working with the local profession, there is clearly still work to be done in ensuring that students' experience receives the recognition it deserves, and that students are fully aware of the recruitment environment, and utilise their clinical experience to its best effect.

⁹⁶ Andrew Francis, 'Legal Education, Social Mobility, and Employability: Possible Selves, Curriculum Intervention, and the Role of Legal Work Experience' (2015) 42 *Journal of Law and Society* 173.

⁹⁷ KA Findley, 'Assessing Experiential Legal Education: A Response to Professor Yackee' (2015) *Univ. Of Wisconsin Legal Studies Research Paper No. 1348* 627.