

## **LAW REFORM CLINICAL PROGRAMMES SHOULD BE PROMOTED IN LAW SCHOOLS: AN EXPLANATION**

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### **Abstract**

This paper suggests that experiential education involving law reform is particularly suited to the academic stage of legal training. We review the current extent of clinics engaged in law reform, provide examples from our own practice, and then explain why law reform clinics are particularly beneficial. This is for several reasons. These include (i) the range of desirable graduate attributes and skills developed through involvement in law reform; (ii) the understanding that law reform is a career option; and (iii) the benefits to law schools and society generally from better laws, from legal academics using their skills to push for law reform, and from students being introduced to the civic obligation of the legal profession to be involved in seeking to improve the law. We also provide guidance from our own experience as to what can be done to establish a law reform clinic, whether as a dedicated course or as a way of running an existing course, and set out the steps that should produce good suggestions for reform.

## **1. Introduction**

In this paper, we make the suggestion that law reform clinics should be more prominent and that if clinical legal education opportunities in a particular law school are limited, a law reform clinic is a good starting point. The structure of the article is first, to present a survey of the extent to which there are law reform-based clinics in three major jurisdictions, the USA, Australia and the UK; and second, to outline in more detail our own experiences of running law reform clinical processes in New Zealand. This is done in Parts 2 and 3 below. In Part 3 we explain how a law reform clinic can be organised as a distinct course or as a component of a more general clinical course or indeed as an experiential version of the commonly-offered independent legal research option and we outline a 10-step process for law reform that allows law reform projects to be carried out by successive cohorts of students.

We then develop, in Part 4, our case for why law reform clinics should be more prominent. In summary, we suggest that those who have accepted the value of experiential education as part of the academic part of a law school curriculum should be enthused by law reform clinics, but also that colleagues who do not see themselves as part of the clinical legal education movement are more likely to be introduced to it via a law reform clinic. Perhaps most importantly, we suggest that participation in the process of law reform is an excellent way of building the core graduate attributes that a law degree should aim for, whilst also providing additional skills, knowledge and exposure to values that are important. In addition, we suggest that law reform clinics

expand the student horizon in terms of understanding career opportunities that might be available and that they allow students to know that academic and practising lawyers have civic obligations to be involved in law reform.

## 2. The Extent of Law Reform Clinics

The Center for the Study of Applied Legal Education, hosted by the University of Michigan, regularly surveys the extent and types of clinical legal education in the USA. Its 2022-23 survey results, resting on responses from more than 1200 participants in 95% of US law schools, indicated that most in-house clinic work deals with litigation but 13% have a focus on “legislative or policy” work;<sup>1</sup> and 9% of field placements have the latter focus.<sup>2</sup>

There is a trend of growth in this. The first survey, for 2007-08, reported that 1% of in-house clinics, 8 of 809, and 2.9% of field placements, 26 of 895, were involved in legislative matters.<sup>3</sup> The figures for 2010-11 were 15 of 1036 in-house clinics, 1.3%, and 23 of 1393 field placements, 2.3%;<sup>4</sup> for 2013-14, 1.5% of 1322 in-house clinics and 3.3%

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<sup>1</sup> Robert R Kuehn et al, 2022-23 Survey of Applied Legal Education (Center for the Study of Applied Legal Education, Michigan, 2023, available at <https://www.csale.org/#results>) 25. The full figures are 49% litigation, 7% alternative dispute resolution, 18% transactional, 8% regulatory/ administrative law, 5% other, plus the 13% legislative or policy work.

<sup>2</sup> Robert R Kuehn et al, 2022-23 Survey of Applied Legal Education (Center for the Study of Applied Legal Education, Michigan, 2023, available at <https://www.csale.org/#results>) 40.

<sup>3</sup> David A Santacroce and Robert R Keuhn, Report on the 2007-2008 Survey (Center for the Study of Applied Legal Education, Michigan, 2008, available at <https://www.csale.org/#results>) 8 and 9; there was no reference to “policy”.

<sup>4</sup> David A Santacroce and Robert R Keuhn, The 2010-11 Survey of Applied Legal Education (Center for the Study of Applied Legal Education, Michigan, 2012, available at <https://www.csale.org/#results>) 7 and 8.

of field placements.<sup>5</sup> For the 2019-20 survey, 9% of in-house clinics had a primary policy or legislative focus and 9% of field placements.<sup>6</sup>

Another statistic helping to confirm the trend is the percentage of law schools offering an in-house clinic with a focus on legislative or policy work: this has grown steadily from 11% to 16% in the period from the 2013-14 survey to the 2022-23 survey.<sup>7</sup> Field placements in a legislative or policy setting are much more available, 82% of law schools offering such an opportunity at the time of the 2019-20 survey and 79% at the time of the 2022-23 survey,<sup>8</sup> which may suggest that involvement in this work is still viewed as primarily something that should be arranged and supervised outside academia.

In Australia, the Kingsford Legal Centre's Clinical Legal Education Guide to CLE courses offered in 2019/20 reveals that 26 law schools – the majority – have some form of clinical education.<sup>9</sup> Half of these mention issues of law reform or policy work when outlining what their clinics do. However, there are only limited instances of law reform being central to a clinical course. The opportunities at Macquarie University

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<sup>5</sup> Robert R Keuhn and David A Santacrose, 2013-14 Survey of Applied Legal Education (Center for the Study of Applied Legal Education, Michigan, 2015, available at <https://www.csale.org/#results>) 8 and 9.

<sup>6</sup> Robert R Kuehn et al, 2019-2020 Survey of Applied Legal Education (Center for the Study of Applied Legal Education, Michigan, 2020, available at <https://www.csale.org/#results>) 27 and 43 (though at 10 it is stated that 11% of placements are in legislative or policy settings). The 2016-17 survey report is not clear on what the precise figures are for that survey period.

<sup>7</sup> Robert R Kuehn et al, 2022-23 Survey of Applied Legal Education (Center for the Study of Applied Legal Education, Michigan, 2023, available at <https://www.csale.org/#results>) 7.

<sup>8</sup> Robert R Kuehn et al, 2022-23 Survey of Applied Legal Education (Center for the Study of Applied Legal Education, Michigan, 2023, available at <https://www.csale.org/#results>) 10.

<sup>9</sup> Kingsford Legal Centre, Clinical Legal Education Guide 2019/20 (UNSW Sydney, available at <https://www.klc.unsw.edu.au/publications/reports-guides>).

involve one working with various groups “to generate law reform proposals”, those at Monash University include reference to a placement with the Australian Law Reform Commission, and one of the clinical courses at the University of Sydney has a focus in one semester of working with non-governmental organisations (NGOs) to learn about law reform processes, and being involved in a campaign. In addition, one of the courses at the University of Technology Sydney also involves working with community groups with aims including introducing the “dynamics of law reform,” and potential outputs being a law reform submission. The University of Woollongong’s internship programme might include placement in a law reform commission. The majority of mentions of law reform do not portray it as the focus: rather, it is mentioned as a type of work that might be involved in a clinical course, with different levels of emphasis as to how prominent it might be.<sup>10</sup> Accordingly, the

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<sup>10</sup> In brief: (i) Australian National University: there is a law reform component referenced in an external placement with an environmental NGO, a clinic working with prisoners, and two community law placements; (ii) Deakin – law reform opportunities mentioned in several clinical areas (civil and commercial law, criminal law, employment law and family law), and one aim of a legal internship was exposure to law reform; (iii) Griffith – a partnership with an NGO included “public policy issues and the need for law reform”; (iv) James Cook University – its clinical course, which involves a community placement, includes legal reform projects as one of the options; (v) Macquarie – in addition to its specific law reform course, an international placement could involve policy or law reform; (vi) Monash – in addition to its Australian Law Reform Commission externship, appreciation of law reform is an intended outcome from placements in law clinics or a programme assisting people in family law disputes; (vii) University of Melbourne – an externship option involving various partners could include work on law reform; (viii) University of Adelaide – its clinical programme, involving placements in legal advice settings or externships with various bodies, notes that many of the projects focus on law reform; (ix) University of Queensland – of its multiple clinics, four reference the possible involvement of law reform or policy work (homeless persons, prison law, mental health law, environmental law); (x) University of Sydney – see its specific law reform option; (xi) University of Technology Sydney – see its specific law reform option; (xii) University of Woollongong – see its specific option as part of its internship programme; (xiii) UNSW Sydney – in addition to a programme overview referencing that placements could involve policy or law reform work, several of the clinics also expressly mention this (community law, employment law, human rights, police powers).

picture presented is, as with the USA, that there are various possibilities for involvement in law reform: but that it is not a premier focus for clinical legal education.

For the UK, LawWorks (formerly known as the Solicitors Pro Bono Group) occasionally surveys clinical and pro bono activities in law schools. Its 2020 survey showed that 30% of the law schools responding to the survey offered “law reform or research projects”; more prevalent were instances of advice or involvement in miscarriage of justice situations or public legal education/street law projects.<sup>11</sup> The Clinical Legal Education Handbook, which aims to be the text for those involved in clinical education in the UK, also makes various references to law reform work, albeit that there is not a dedicated section on it.<sup>12</sup> For example, Grimes and Rizzotto, in their guidance on assessment processes, note that a commonly-used assessment tool, a portfolio, “might ... include identifying shortcomings in the law and practice and how this might be reformed”.<sup>13</sup> They add that “there is nothing to prevent (and many reasons in favour) assessment of student performance by way of a substantial written submission on a topic relevant to the student’s clinical studies”, meaning that a

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<sup>11</sup> James Sandbach and Richard Grimes, Law School Pro Bono and Clinic Report 2020 (LawWorks, London, 2020, available at <https://www.lawworks.org.uk/solicitors-and-volunteers/resources/lawworks-law-school-pro-bono-and-clinics-report-2020>) 12.

<sup>12</sup> Indeed, in Part 1, which sets out the types of clinic, there is no mention of law reform clinics: there is, at the end of the chapter, reference to street law/public legal education and to doing research projects, which is the closest it comes: Lydia Bleasdale et al, Part 1 Law clinics: What, why and how? in Linden Thomas and Nick Johnson (Eds) *The Clinical Legal Education Handbook* (University of London Press, London, 2020) 54-56.

<sup>13</sup> Richard Grimes and Beverley Rizzotto, Part 3 Assessment in clinics: Principles, practice and progress in Linden Thomas and Nick Johnson (Eds) *The Clinical Legal Education Handbook* (University of London Press, London, 2020) 247.

student who has provided advice in an area may wish to consider law reform in the area and submit a dissertation on it, at least if one of the learning outcomes for the course is law reform.<sup>14</sup> Similarly, reflecting on regulatory changes that precluded university clinics from providing advice relating to consumer credit and debt, it was suggested that clinics could instead work with other legal advice organisations “in areas including the development of public legal education sessions, or on law reform projects”.<sup>15</sup> It is also noted that the CPD regime for barristers can be satisfied by them doing law reform projects:<sup>16</sup> this allows us to make the point that an introduction to law reform at the academic stage represents a useful skill for those who graduate into the profession.

What emerges from this survey is that law reform is more of a background feature in the clinical legal education space: in the USA, it is growing but more opportunities arise in externships, in Australia, there are mentions but it is not central, and in the UK, it is offered in a minority of law schools.

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<sup>14</sup> Richard Grimes and Beverley Rizzotto, Part 3 Assessment in clinics: Principles, practice and progress in Linden Thomas and Nick Johnson (Eds) *The Clinical Legal Education Handbook* (University of London Press, London, 2020) 249. The authors clearly mean to say “(and many reasons in favour of)” or “(and many reasons to favour)”.

<sup>15</sup> Lee Hansen, Part 2.16 Provision of debt advice by university law clinics in Linden Thomas and Nick Johnson (Eds) *The Clinical Legal Education Handbook* (University of London Press, London, 2020) 213; see also 218.

<sup>16</sup> Frances Rideout, Part 2.18 Regulation of barristers and university law clinics in Linden Thomas and Nick Johnson (Eds) *The Clinical Legal Education Handbook* (University of London Press, London, 2020) 237.

### 3. Our Experience of Law Reform Clinics in Aotearoa New Zealand

This background status is also true of New Zealand. Clinical legal education itself is best described as developing rather than established in the country, and our impression is that it depends more on the interests of individual academics rather than resting on any planned introduction in response to, for example, the legal profession calling for students to be more or less practice-ready on completing their LLBs,<sup>17</sup> or those leading on teaching and learning pointing out the educational value of experiential education.<sup>18</sup>

Nonetheless, we can point to a range of law reform projects that have been done by students in a clinical legal education context. Accordingly, the standard Clinical Legal Education course at AUT Law School is constructed to have a series of seminars on such topics as the purposes of law schools, the history and aims of experiential education in the law school setting, workplace dynamics and reflective practice, following which students undertake an externship placement in a social justice setting. Most often, students supplement the work of legal aid or law centre lawyers, but there have also been placements in law reform work. For example, several students have worked on a longer-term project under the auspices of the Aotearoa

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<sup>17</sup> See, for example, the account by Ramsden and Marsh of the call for more clinical legal education in Hong Kong as a way of making legal education fit for purpose, made in a report commissioned by the government there: Michael Ramsden and Luke Marsh, *Using Clinical Education to Address an Unmet Legal Need: A Hong Kong Perspective* (2014) 63(3) *Journal of Legal Education* 447-459. There has been nothing similar in New Zealand.

<sup>18</sup> Both authors are familiar with a plan in the middle of the last decade by the then Dean of Law at the University of Canterbury to require students to participate in some pro bono work as a graduating requirement: but this was not put into effect.



New Zealand Human Rights Foundation that is making the case for economic, social and cultural rights to be added to the main human rights statute, the New Zealand Bill of Rights Act 1990.

Placements may also be extended by combining this clinical legal education course programme with AUT's supervised research paper option; this can also be used as a stand-alone law reform paper. In short, the coverage of the supervised legal research paper was amended from one involving the traditional formulation of a student doing an extended essay on a legal topic agreed with the supervisor: now, in addition, students can – as part of the goal of building research and writing skills – take the experiential route of preparing a document relevant to a real-life situation or a simulation (such as mooting). The former can include such matters as involvement in an amicus brief or a submission as part of a law reform process. As with the traditional research paper option, the supervisor and student or students have to agree what is to be done, including as to the assessment process: this can include the marking of the submissions made, although reflective essays can also be important, perhaps particularly where students are working in groups. In this latter situation, working out how to give credit for what each member of a group has done may be difficult, though perhaps less so if the academic involved has had a close coordinating role.

An example of how these separate courses have been combined involved a group of students who worked with a charity and a local Member of Parliament assessing the

legal framework behind food waste and the barriers to having unused food diverted to address food poverty. Having completed this project as part of the Clinical Legal Education course, some of the students wanted to continue their work on this issue, and that was achieved by having them engage in a law reform process as part of the separate legal research paper. The end result was that they determined that an appropriate process for their aims was the development of a petition to the New Zealand House of Representatives. There is a process whereby anyone can present a petition to the New Zealand Parliament,<sup>19</sup> which can involve the petitioners then making submissions to the Select Committee that is assigned to consider a particular petition. The Select Committee can investigate the issues raised in the petition, hear evidence and then report the matter to a Minister or to Parliament.<sup>20</sup> The students also succeeded in getting support for their petition from the Human Rights Commission, New Zealand's statutory human rights watchdog.

Another example comes from the University of Canterbury's Clinical Legal Education course, which has developed a process (and manual) for multi-year law reform projects. This has also involved links, this time with the drop-in law clinic that is available for students and with external advocacy organisations, but also with

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<sup>19</sup> See <https://petitions.parliament.nz/>. Parliamentary practice in relation to petitions can be found at <https://www.parliament.nz/en/visit-and-learn/how-parliament-works/parliamentary-practice-in-new-zealand/chapter-36-petitions/>.

<sup>20</sup> The presentation of the petition and the questioning of the lead student was captured on the Committee's Facebook page: <https://www.facebook.com/petitionscnz/videos/petitions-committee-nz-parliament/637753224483486/>.

independent research options for students. As such, there are parallels with what has happened at AUT.

The focus at the University of Canterbury has been the regulation of tenancies, a matter of regular concern to students, and a topic raised frequently at the campus law clinic. One repeated problem was that landlords did not abide by requirements as to minimum standards. The enforcement mechanism, a Tenancy Tribunal, could order that work be done but would often instead accept an offer by the landlord to pay a small sum of damages to the tenant, permitted by s78(2) of the Residential Tenancies Act 1986. In 2017, the 1986 Act was amended by the Healthy Homes Guarantee Act 2017, which requires better standards in rental accommodation, and in 2019, the Residential Tenancies Amendment Act 2019 added s78A to the 1986 Act to preclude the use of s78(2) when there is a breach of healthy home standards unless there are exceptional reasons. In short, landlords cannot “buy out” of those standards. The steps taken by students that led to this amended regime were: (i) a student wrote an LLB Honours research paper on the problem, working with an NGO linked to the Anglican Church; and (ii) students in the Clinical Legal Education course then engaged in a variety of law reform activities as part of pushing for the statutory amendments to be made, including meeting government officials, liaising with interested NGOs, lobbying MPs, and making submissions to Parliament.

Having that success as a model, the project current at the time of writing involves seeking to amend the regime whereby bonds (deposits) paid by tenants at the outset of a tenancy are often unfairly or illegally retained in whole or in part by landlords at the end of the tenancy for various inadequate reasons: for example, contentions that the tenant has failed to have the leased premises professionally cleaned when this had not been a requirement of the tenancy and not necessary to abide by an obligation to leave the property in a reasonably clean condition. As part of this, and working with an academic colleague at the University of Canterbury who was formerly a Law Commissioner, a manual to identify the process of law reform has been developed, which allows students to see how their work fits with the entire process and to understand the wider picture. The stages are:

1. *Identify a source for law reform proposals*: in this case, it was repeated complaints for clients at a law clinic, suggesting that there was a systemic problem.
2. *Research and state the problem*: to know what has to be reformed, it is necessary to identify the root cause – an omission in the regulatory framework or other problems with the law is different from a failure to enforce, and may require a different approach to the relevant remedy.
3. *Issues Paper*: develop an Issues Paper to discuss such matters as whether new policies or improved practices within the existing legal framework might be sufficient, or whether legislative intervention will be needed.

4. *Research the issues further*: this may involve more in-depth research on the issues, interviewing advocacy groups and affected persons to gain further insights, and comparative research on overseas regimes to respond to any similar problem.

5. *Analyse potential solutions*: using a cost-benefit analysis to identify the preferred solution.

6. *Prepare a draft Law Reform Proposal report*: reflecting the Regulatory Impact Statement format used by Departments in the New Zealand government when proposing reform, the report should set out:

(i) an introduction setting out briefly the key reasons reform is needed,

(ii) a succinct summary of the exact problem to be rectified,

(iii) an analysis of the current legal framework and its shortcomings (policy, implementation, other),

(iv) a summary of research done as to solutions, including any surveys, focus groups or interviews done to collate relevant socio-legal material<sup>21</sup> and any comparative legal research done that might help to identify any best practice solutions, and

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<sup>21</sup> Naturally, in this context, care will have to be taken to determine the parameters of any research that is such as to require ethical approval. The evidential value of existing social science research, and hence introducing students to the prospect of relying on non-legal sources to explain why reform is needed and what it should look like, is also worth noting.

(v) an analysis of potential solutions and the identification of a preferred solution (with an explanation of the various cost-benefit elements), complete with any relevant draft legislative language.

7. *Circulate to stakeholders*: and seek feedback within a given timeframe.

8. *Prepare a final Law Reform Proposal report*: the final report modifies the draft report by responding to the feedback, explaining why the solution proposed was adopted and outlining support and opposition to it (with relevant commentary to counter the opposition).

9. *Draft a Law Reform Action Plan*: this plan is based on a project management template, in which the methods to secure law reform are identified and there is analysis of what will work best for the proposal made – the many options including lobbying interest groups (including law reform bodies within the legal profession) and/or developing media interest, approaching government officials or ministers, and identifying individual MPs who might champion reform. In accordance with good practice in project management, this plan will require timescales and review processes, and, in the context of a process which will proceed over several semesters and classes, a way of incoming students being briefed to carry on and build on what has already happened.

10. *Monitor progress*: continual monitoring of the progress of any proposals for legislation introduced into the legislature, including making relevant submissions to legislators where opportunities to do so arise.

#### 4. Why Should Law Reform Clinics Be More Prominent

The need for law schools to engage with societal policies has pedigree. In 1915, future Associate Justice of the US Supreme Court, Felix Frankfurter, noted that society was experiencing “a changing set of ideas” and “a change in direction”, which required an “immense work of readjustment, ... of assimilating social and economic facts, of adapting old principles to present needs, of working out modern premises necessitated by new conditions” that could not be done by the judges alone.<sup>22</sup> The response, he contended, was that law schools should be involved in “the work not merely of training practitioners ... equipped to become skillful practitioners” but also the work “of helping to develop the law, of participating in a great state service” by making clear to students that the law is “a vital agency for human betterment”.<sup>23</sup>

Similarly, Jerome Frank’s famous article calling for legal education to train lawyers for practice not just for discussions about theory,<sup>24</sup> which has been credited with playing an important part in the subsequent growth of clinical legal education in the USA,<sup>25</sup>

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<sup>22</sup> Felix Frankfurter, *The Law and the Law Schools*, (1915) 1 ABA J 532, 533 and 537.

<sup>23</sup> Felix Frankfurter, *The Law and the Law Schools*, (1915) 1 ABA J 532, 539.

<sup>24</sup> Jerome Frank, *Why Not a Clinical Lawyer-School?* (1933) 81 U PA L Rev 907.

<sup>25</sup> See Deena Hurwitz, *Lawyering for Justice and the Inevitability of International Human Rights Clinics* (2003) 28 Yale J Intl Law 505 at 523.

set out a 16-part plan. Point 13 was the need for students to understand that “an important part of their future task is to press for improvements of the judicial process and for social and economic changes through legislation, and wise administration”.<sup>26</sup>

Hence, calls for involvement in policy work more generally and law reform work more specifically have a significant history. From the material set out in Parts 2 and 3, it is evident that there are two broad formats that can be adopted to allow students to be involved in law reform projects as part of their legal education. There are examples of courses set up for the purpose of law reform but there are also examples of courses that are set up for all the reasons that experiential education is valued and which can be operated in the law reform space. It is our contention that law reform activities contribute strongly to:

(i) the pedagogical value of clinical legal education, namely active research and learning and the application of that to a practical situation; and

(ii) the social justice ethos that pervades clinical legal education, since by definition law reform is trying to make the situation better, by improving the regulation of an area (or matters such as enforcement of the law) to ultimately promote access to justice.

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<sup>26</sup> Jerome Frank, *Why Not a Clinical Lawyer-School?* (1933) 81 U PA L Rev 907, 922.



As such, law reform activities should be supported by those who have already made the commitment to clinical legal education as not only a valid but as an important part of law school teaching

Moreover, we contend that law reform activities have various features and functions that make them attractive even to those in the academy who are not involved in (or those who even object to) clinical legal education as part of the law degree, because:

- (i) anyone who can supervise a legal research project can supervise a law reform project, from old-school black-letter law traditionalists to the most innovative, student-focused of legal academics;
- (ii) they inevitably involve core academic skills, namely research – perhaps including comparative and socio-legal research - and persuasive writing,
- (iii) they invariably involve various other transferable skills that are usefully part of the law degree, including teamwork;
- (iv) they provide an introduction to career options that might not have been obvious to students, including involvement in policy and law reform work, and
- (v) they provide an introduction to a core obligation of both academic lawyers (the critic and conscience role) and of practitioners (civic responsibilities), which can be met through law reform.

Before developing these points, one thing that some colleagues may point out is that students can be involved in such things as law reform projects or working with NGOs

without these activities being linked to course credits: rather, they help to build a student's CV. This is true, and it is not our contention that *all* student involvement in such matters should be monopolised through some form of clinical legal education programme. However, particularly as many countries require students to pay fees for their education, many students also work significant hours in paid employment to seek to minimise their debt levels: it may be unrealistic for many students to engage in such activities without receiving credit.

#### *A. Active research and its application*

Experiential education is valuable for various reasons: it is an active rather than a passive process; it caters for those whose learning style is kinaesthetic (active learning with practical applications) whilst also usually involving reading, writing and, through explanations from supervisors, auditory learning experiences.<sup>27</sup> A law reform experience clearly is a form of active education, as is illustrated by the manual developed at the University of Canterbury: students are actively engaged in the analysis of a legal problem and grappling with potential solutions to it. Just about every lawyer will be familiar with being able to explain the law in the context of a matter that revealed a gap in the law, and a clinical course engaged in law reform has that at its core.

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<sup>27</sup> The popular VARK model of learning styles suggests that there are four types of learners, visual, auditory, reading/writing and kinaesthetic.

*B. Social justice*

Again, it seems self-evident that improving the law is providing a benefit to society. This meets the traditional association between social justice and clinical legal education. Naturally, this will be the case in a much wider variety of settings than might be common in a live-client clinic. Although some developments in clinical legal education under the pressure to create practice-ready law graduates may mean that not all clinical activities are true to its social justice tradition, the end-result of developing better laws should meet the 'benefit to society' criterion. Of course, there might be room to debate whether each instance of law reform is good for society: for example, there will no doubt be people who argue that the tenancy law reform mentioned above distorts the market and, from their perspective, causes harm to society generally.

Another aspect to the social justice component associated with clinical legal education should be noted. One reason for concern about live-client clinics is that they reduce the pressure for adequate funding of the system, because governments may point to basic needs being met by these clinics. It can be argued that this leads to the creation of a two-tier system in which some people have and pay for lawyers of their choice, and others are left with the assistance of students who may be doing their best and are supervised, but do not have the same legal expertise as more experienced lawyers in private practice.

We are not arguing against live-client clinics, particularly as the dominant political model of neoliberalism means that adequate legal aid funding is unlikely in most countries in the foreseeable future: we are simply pointing to a concern that filling the gap helps to justify decisions by those in power who are not concerned about the gap. This does not fully apply in the context of law reform, because funding mechanisms such as legal aid have never had as their primary role the provision of assistance in relation to law reform.

### *C. Expanding the pool of legal clinicians*

The fact that law reform can be applied in any legal area means that practically any member of the academy can become involved in a clinical legal education project involving law reform. The core skills required are: the abilities to form a view that an area of law needs reform, to consider what might represent an improvement, and to communicate the research and writing process to be followed. This might mean that it is possible to have a dedicated law reform course that is staffed in different semesters or years by different lecturers, or there might be a team of lecturers who can offer a range of choices to students. This could be particularly beneficial in opening up the value of experiential learning to different parts of the legal curriculum. This might be important, since students invariably have different primary interests: some will want to do social justice law, but others will want to do constitutional or public law, or criminal law, or areas of private or commercial law. Some will want to cover a variety of areas, and some will not have a particular preference and may use elective

courses to help to determine a career path. As such, the wider the range of options made available to students, the better.

Since law reform can occur in any area of law, colleagues who do not consider themselves to be clinical legal educators could find that they indeed become legal clinicians by default by teaching a law reform course where the reform identified is in one of their areas of expertise. This can be put into practice through a collaborative approach between subject lecturers and clinical teachers, using various models. For example, the initial law reform issue might be identified by the subject lecturer, and then the process of implementation of the actual law reform is done under the auspices of the legal clinician. The level of engagement of the subject lecturer would depend on their practical expertise, preferred extent of engagement, and the relevant course structure. They could be a consultant to the clinical course or a co-teacher, building experience that might lead to their involvement in further projects.

In addition, it is always possible that elements of law reform can feature in a more traditional black-letter law course, for example by allocating time to consider a law reform proposal as part of a capstone element to a course.

#### *D. Meeting core graduate attributes and skills*

Law reform projects done well will assist the development of core skills in students that will feature in any statement of graduate attributes required by the completion of

a law degree.<sup>28</sup> These skills will include identifying problems, legal research (primarily doctrinal research, but also including types of qualitative, quantitative, comparative and socio-legal research that are less common in law curricula), and persuasive writing. In addition, law reform as a focus for clinical legal education is likely to develop various other multi-disciplinary graduate attributes that can be split into areas of useful knowledge, skills and also values.

Taking these in turn, the useful knowledge that should be acquired relates to various parts of the law, in addition obviously to the learning about the area of law that is the subject of the law reform project. The question of how to go about law reform will illustrate features of the modern state: although the discussion above has focussed on legislative reform, the problem might be one of interpretation (and so perhaps open to be solved by litigation designed to secure a changed interpretation), or it might be enforcement (which allows discussion of the constitutional role of the executive to enforce the law and a realisation that lawyers might have to challenge enforcement). In addition, students will learn about the machinery that exists for law reform, including within governments, legislatures and the NGO sector; and there will be a reminder of the process of legislation and an exposure to how it operates in practice.

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<sup>28</sup> Indeed, to take an example from Victoria University of Wellington in New Zealand, its current statement - <https://www.wgtn.ac.nz/law/study/graduate-attributes> - references as the first of 9 attributes the Faculty seeks to secure in its graduates that they will “Have a specialised and contextualised understanding of core legal principles, important legal concepts, and law reform processes”.

A variety of skills should be acquired through a law reform project. In addition to the research and advocacy skills noted above, there could also be exposure to and hence the development of skills in relation to legislative drafting, project management (which reflects the fact that legal work is not all about simple cases), teamwork in both the narrow sense of working with colleagues in a team, and in the wider context of collaborating with other stakeholders interested in the same reform project objectives, and lobbying skills.

In addition, law reform allows students to assess their personal values, and also the values and wider principles that underpin the law. By definition, asking questions about whether a particular law is working or not turns on an assessment of its objectives and the societal values it supports. If one uses the example from the University of Canterbury of residential tenancies, whether landlords should be required to meet relevant standards or be able to “buy out” from compliance may be answered differently from a law and economics perspective than from the perspective of securing human dignity: the law reform process and experience requires students to confront the higher-level values, some of which will be jurisprudential, to assess where they stand, and enable them to make comparative value judgments. By having a focus on a recurring problem rather than an individual case, law reform requires people to step back and review the role of law in regulating society for the general benefit.

### E. *Introducing additional graduate opportunities*

There is a good deal of popular culture relating to lawyers, and so law students will be familiar with – and many will have been motivated to come to law school by – the role of the lawyer dealing with clients. But there are many other roles for which legal training is beneficial, including policy roles, advocacy within campaigning organisations, and working for law reform organisations. Law reform clinical opportunities will illuminate these possibilities.

### F. *Explaining professional obligations*

A final area we suggest is an important outcome of engaging in law reform projects as part of the academic journey is that it helps to illustrate that “pro bono publico” is a core component of the legal profession. This is true both for academic lawyers in light of one of the central features of university status, but also true for practitioners.

Taking the academic role first, New Zealand has a handy statutory codification of an important aspect of the role of academic generally: namely the critic and conscience role in society. This was recently restated in s268 of the Education and Training Act 2020 (NZ), which inter alia sets out that an institution can only qualify to call itself a university if it accepts “a role as critic and conscience of society”. By noting that this is a role, and hence an obligation, the New Zealand legislature has confirmed neatly that is not just a role than is *permitted* (and reinforced by rights to freedom of expression) but it is a legal *obligation*. It may be that the university is publicly funded, in which case the public benefit is not just the teaching of students, but this wider



function of seeking a better society. Of course, many universities are private but will often have charitable status, which comes with many benefits (such as no or reduced taxation) for which the quid pro quo is the similar obligation to assist society.

An obvious part of the critic and conscience role for academic lawyers is engagement in law reform. Many colleagues will do that through critiquing cases and legislative developments. Engaging in an active process of law reform through making submissions to law reform bodies and legislatures is also an obvious thing for academic lawyers to do. It is something we should be able to do because of the supposed freedom we get to stand back and review the forest as well as the trees. Developing a law reform clinical opportunity allows this overall obligation to be combined with the role of teaching, supervising and developing opportunities for law students to be involved in law reform.

In addition, the legal profession is a key stakeholder in law reform. Again, in New Zealand, this is on a statutory footing in that the New Zealand Law Society is required by s65 of the Lawyers and Conveyancers Act 2006 (NZ) “to assist and promote, for the purpose of upholding the rule of law and facilitating the administration of justice in New Zealand, the reform of the law”. Section 4 of the same statute points out that one of the fundamental obligations of a lawyer is “to uphold the rule of law”, and another is “to facilitate the administration of justice”. As such, for the good of the public, law reform is a professional obligation of those who join the profession. This being so, it is arguably a deficiency in a law school curriculum if students are not properly equipped

to participate in law reform: or to put it another way, experiential courses on law reform should be seen as an important introduction at the academic stage to skills relevant to law reform and inculcating a mindset that involvement in it is part of the civic duty of a member of the profession.

## **5. Summing Up**

In Part 2 above, we have noted from reviewing materials relating to the USA, Australia and the UK that law reform is accepted as a component of clinical legal education but that it has a relatively low prominence. In Part 3 above, we have outlined our own experiences of working on law reform with our students in New Zealand: as such, we are clearly enthused by its possibilities. As a result, we have sought in Part 4 to explain our enthusiasm. This turns on a variety of features that can be categorized as to the benefits they bring law students, the law school and society (which benefits obviously also overlap with each other).

From the student perspective, law reform projects require a deep dive into an area of law, building research skills and including exposure to research beyond the usual review of cases and statutory language. The application of comparative legal research, and other research skills not normally applied in law schools, is likely to be of huge future benefit to students. There is a requirement to engage with putting law in context: to move beyond the question of describing the law, to asking the question of whether it is fit for purpose and how it can be improved. This in turn exposes students

to jurisprudential frameworks and systems of values that allow a judgement to be made about what is the best route to achieve law reform objectives. Their conclusions then have to be turned into persuasive writing and advocacy, again core skills. This whole process occurs in the context of raising students' eyes from the micro-level of individual cases and decisions, to the macro-level of assessing whether the law works in societal context, by identifying causes of failure and what techniques may lead to improvement. After all, as we noted in the opening to Part 4, the role of law in regulating and improving society has led to long-standing calls for law schools to train students not just to know the law but to know how to improve the law and improve the way society is regulated by law.

The overall outcome should be more rounded and multi-skilled graduates, with a deeper understanding of how the law really works in society, as well as getting exposure to the option of law reform as a potential career, whether as a lawyer, academic, government official, NGO member or a politician. In addition, many soft skills, including teamwork skills and working on large projects, should be acquired.

From the perspective of the law school, the benefits of a law reform clinic are that it is something that any academic can do with minimal training, even if they do not view themselves as clinical teachers. It allows research expertise to be brought into teaching; and it allows the law school to play its "critic and conscience" role and often to do so in conjunction with a range of partners from the profession and the community. It is also relatively easy to set up in two respects. First, objections that might be raised

about the academic side of legal education maintaining its independence from the more practical focus of professional training courses should be much reduced because law reform – critiquing the current law and suggesting how to improve it – is very much core to the academy. Second, the university administration concerned about budget implications can easily be persuaded of its value, as law reform components of courses can be established by any academic with minimal training and guidance.

From society's perspective, the benefits of more rounded and critically-aware law graduates, and of law schools carrying out their critic and conscience role, are supplemented by the utility of having better laws for the benefit of society - especially the promotion of access to justice in all its iterations.

In short, a law reform clinic is experiential education at its best.