

Legal Education in the US, Case Study method of training and public interest litigation

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Abstract

In the US the medium of instruction at law schools is the case law method that was inaugurated by Harvard University and which teaches both the substantive law and procedural rules. There has been criticism of this form of legal education because it is considered as overly academic, despite its clinical training and emphasis on preparing students for the private sector, There is scope for induction in public interest litigation in the ABA approved law schools that teach the Juris Doctor that is followed by the State Bar examination. The question posed by this paper is whether the legal training is exclusively intended for the market or if the clinical legal education programmes in law schools offer the opportunity for those students who want the experience of practice in the public sector. This enables the newly qualified attorneys to become part of non-profit ventures when they become practitioners and they can provide their expertise in public interest litigation. The argument here is that there is an increasing access to justice modules available by means of involvement in clinical legal education that are an extension of the case law method of study, but that they lead to debt problems for students post qualification, and a means has to be found for the concession for students who study law from less privileged backgrounds.

Keywords: Harvard case law method, Public Interest Litigation, Community Development Clinic.

Introduction

In the US there is a fused profession in which the legal practitioner is certified to practise in the jurisdiction of the licensing state. There is a necessary process of attaining a legal qualification to practise as attorneys after completing legal education and satisfying the requirement of good character before being admitted to the state bar. The issue is if legal education in public interest

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litigation, during graduation, is sufficiently utilised. Because of the need for students to service their debt after they complete their academic studies, students have to attain employment that generates a sufficient income for its repayment.

The significance of practising law is that each state has its own judiciary and appellate courts; and the Supreme Court approves the state bar examination, codes of practice and licensing of attorneys. The ethics of the profession are formulated by the rules that have been developed by the American Bar Association (ABA) Standing Committee on Legal Education, which has the power to recommend courses of study that state and local bar associations should require for admission to the practice of law. The bar examination syllabus is governed by the National Conference of Bar Examiners (NCBE) under the Uniform Bar Examination that provides a common standard to be attained for those intending to practise law.¹ The ABA formulates the guidelines for law schools in the US which are comprehensive, and take account of practical training. The ABA has published the Standards and Rules of Procedure for Approval of Law Schools 2020–2021 for legal education and admission to the bar. Chapter 3 sets out the Objectives of the Program for Legal Education as follows:

Standard 301. (a) A law school shall maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession. (b) A law school shall establish and publish learning outcomes designed to achieve these objectives.

Standard 302. A law school shall establish learning outcomes that shall, at a minimum, include competency in the following: (a) Knowledge and understanding of substantive and procedural law; (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context; (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and (d) Other professional skills needed for

¹ Overview of Bar examination 26/6/18.

https://www.americanbar.org/groups/legal_education/resources/bar_admissions/bartests/

competent and ethical participation as a member of the legal profession. The other professional skills are determined by the law school and may include skills such as, interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation.²

The framework exists for public interest litigation to be taught within clinical legal education modules that will provide the student with contact of real-life circumstances and problems confronted by litigants who are on welfare. Law students in the US are from diverse backgrounds. This increases their horizons and scope for knowledge. The ABA does not recommend any undergraduate majors or group of courses to prepare for a legal education and students are admitted to law school from almost every academic discipline.³

Students who want to practise law undertake study in a non-law subject for their bachelor's degree prior to taking the Law School Admission Test (LSAT) preparation exam for law school.⁴ The next stage is the academic training in earning the Juris Doctor (JD) which takes 3 years and that is followed by the Bar examination which if successfully completed leads to a certificate to practise law as an attorney. The Bar examinations are conducted on a state-by-state basis, and a lawyer qualified in one state is not necessarily qualified to practise in another. However, many states have reciprocal agreements accepting admission to the bar from other states as qualification for admission to their own bar ("admission on motion").⁵

There are "six primary practice settings where lawyers can work in the public service that capitalize on their legal training, analytical skills, and writing

² American Bar Association. Standards and Rules of Procedure for Approval of Law Students.

https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2020-2021/2020-21-aba-standards-and-rules-chapter3.pdf

³ American Bar Association. Pre law, Preparing for Law School

https://www.americanbar.org/groups/legal_education/resources/pre_law/#:~:text=Undergraduate%20Education,from%20almost%20every%20academic%20discipline.

⁴ The Law School Admissions Council (LSAC) prepares and administers the Law School Admissions Test (LSAT) for prospective law students. <https://www.lsac.org/>

⁵ Comprehensive Guide to Bar Admission Requirements 2019. American Conference of Bar Examiners. p 39. <https://www.ncbex.org/assets/BarAdmissionGuide/NCBE-CompGuide-2019.pdf>

ability". These include "serving as the chief executive officer for a non-profit organization or philanthropic foundation; working to implement programs at a non-profit organization that does not provide legal services to clients; proposing policy changes as a staff member of a legislative representative's office or other governmental entity; serving as a public official (whether elected or appointed) or reporting on legal issues for a media outlet" such as Public Radio Service.⁶

A Yale Law School study has found that it is more onerous to find a permanent public interest job than getting a large firm job because the "public interest organizations (and small firms) tend to have occasional openings (versus 50 new associates each year in a large private sector law firm) and have limited funds. They don't hire recruitment people, they don't join the National Association for Law Placement (NALP), they don't visit law school hiring fairs, and they may not send law schools notices of their openings."⁷ Moreover, "U.S. Attorneys' Offices and impact litigation organizations such as the American Civil Liberties Union (ACLU) ... require at least two years of experience, with some offices requiring more"⁸ post law school. This militates against the newly admitted lawyers from opting to work in public interest litigation and they chose private firms.

This paper considers the framework of legal education from its origins and its structuring by the case method of instruction developed by the Harvard Law School. It will include discussion about the evolution of the case law method that is the norm in the law schools as a medium of instruction. Community based Clinical Legal Education is an essential platform for students who want to practise in public interest law and its broadening framework is examined, including the contribution of not-for-profit law firms in the public interest litigation. This issue is examined in the framework of the discussion of whether this prepares the students to enter the field of law or if the social differentiation caused by student debts makes it more onerous for the benefits of this form of legal training to be availed.

⁶ Careers in Public Interest and Government. Stanford Law School. <https://law.stanford.edu/levin-center/careers/>

⁷ Fact or Fiction: Public Interest Careers. Yale Law School. <https://law.yale.edu/student-life/career-development/students/career-pathways/public-interest/fact-vs-fiction-public-interest-careers>

⁸ Ibid

Inception of the case law method and practical training

The source of the US legal system is the English common law and its principles spring from Anglo Saxon jurisprudence. This was by the assimilation of legal writings of Blackstone that were received in the form of Commentaries in 1771, and along with Coke's Second Institutes became the essential reading in the libraries of colonial America.⁹ The legal induction has been described in the State of Virginia law libraries as follows:

"The primary sources of the law represented in the identifiable tides are the reports of judicial decisions and editions of the statutes of Parliament and of the Virginia General Assembly. The secondary sources of the law are abridgments, digests, and treatises prepared by practicing lawyers, law publishers, and, beginning late in the eighteenth century, legal academics, the first and foremost of whom was Sir William Blackstone (1723-1780). Those were works of legal theory, legal history, legal philosophy, and jurisprudence."¹⁰

This was the original concept of textual reference in the training of lawyers in the US. There was no university degree that was required for admission to the bar and "[i]nstead of passing a standardized, written test, prospective lawyers relied on apprenticeships, self-studying and oral examinations. The first state to employ a written version of the bar exam was Massachusetts, in 1855".¹¹ The late 19th century saw railway connections from coast to coast, and the incorporation of industry and finance serving the business regulatory sector. This led to the legal market and a supply and demand for the litigation in the private sector and the development "created pressures for more thorough and rigorous intellectual training in the law" and the occupational requirements of

⁹ William Twining, *Blackstone's Tower: The English Law School* (Stevens and Sons/Sweet and Maxwell 1994), at p 1; Martha Rice Martini, *Marx not Madison: The Crises of American Legal Education* 41 (University Press of America 1997), Robert Stevens, *Legal Education in America: from the 1850's to the 1980's* 1 (University of North Carolina Press 1983) p t 44.

¹⁰ W. Hamilton Bryson, *Law Books in the Libraries of Colonial Virginians*, in "Esteemed Bookes of Lawe" and the Legal Culture of Early Virginia (Warren M. Billings & Brent Tarter eds., 2017) p 31.

¹¹ *The Evolution of the Bar exam*. 3 February 2015. blog.adapt.bar.com/the-evolution-of-the-bar-exam.

registered lawyers working in partnership as a law firm.¹² The emergence of “[b]usiness leaders needed skilled and effective lawyers to maximize their opportunities and manage their interests”.¹³

Law schools began to recruit students in this period and the curriculum was formulated in order to train professionals in a structural academic method to meet this objective. Enrollment in law schools increased exponentially and the method used was to train students as apprentices.¹⁴ The regulators at the state bar suggested a more profound requirement "part of which might be ‘served’ in law school, and an effective bar examination.”¹⁵

It was also at this time that there was a law teaching method pioneered by the Harvard Law School that was by assimilation and debate which became the law school instruction manual. It has also been defined as premised on the "Socratic method" of reasoning and education in teaching theoretical subjects.¹⁶ The benefits of the case method study of law are that “[c]ase learning is particularly useful for dramatizing abstract theoretical concepts, making seemingly distant events or issues seem more 'authentic' or 'real,' demonstrating the connection between theory and practice, and building critical-thinking and problem-solving skills.”¹⁷

¹² Susan K. Boyd, *The ABA’S first section : Assuring a Qualified Bar (ABA 1993)*, quoting Samuel Thurman, “To What Extent Should Pre-law Education be Prescribed?,” a speech before a joint session of the ABA Section of Legal Education and Admissions to the Bar and the National Conference of Bar Examiners (NCBE), August 25, 1959. pp. 60–61.

¹³ Philip Gaines, *The “True Lawyer” in America: Discursive Construction of the Legal Profession in the Nineteenth Century*, 45 *Am. J. Legal Hist.* 132,132 (2001)

¹⁴ Robert Stevens, *supra* note 10, pp. 24–25.

¹⁵ *Ibid* at 25.

¹⁶ The Socratic method is premised on "First, an instructor poses an open-ended question or has the student ask a question of him/her. Alternatively, the student or teacher can put forth a claim or argument as the topic to be examined. The purpose of this step is two-fold: (1) to provide a central topic into which one can inquire and (2) to produce a sense of wonder in the student. When asked broad, open-ended questions about virtues such as justice, good, evil, and truth, people have the tendency to try to answer for themselves and their own knowledge". Amanda J. Grondin, *Effectiveness of the Socratic Method: A Comparative Analysis of the Historical and Modern Invocations of an Educational Method* (2018). Senior Theses. 253. pp. 6-7

https://scholarcommons.sc.edu/senior_theses/253

¹⁷ Matthew Krain, “Putting the learning in case learning? The effects of case-based approaches on student knowledge, attitudes, and engagement,” *Journal on Excellence in College Teaching* 27(2) (2016) pp. 131-153.

Professor Christopher C Langdell who introduced this “set of academic meritocratic reforms” reasoned that “[t]he principles of law are ‘embodied’ in cases” and the best way of discovering these principles is by studying them to analyse the opinions of judges. They comprise the matter of the science of law.”¹⁸ This was an analogy of law with an organic science with several guiding principles rather than as a series of facts and rules to be memorized and it was law professor’s job to decipher the text of appellate cases to formulate the “general principles of law”.¹⁹

This medium of instruction altered the content and nature of legal study in American law schools with the result that by the “beginning of World War 1, 40% of American law schools had adopted this method”. There were “24 % who had partially accommodated this method” with potential full implementation and “36 % of law schools who did not” were down the teaching scale and “marginalised”, but “they would convert” to this method of teaching “in the next decade”. These concomitant meritocratic reforms would transform legal education and augment professional education for the bar.²⁰

The case law technique was refined by another academic lawyer, William Keener, who viewed the law as more complex and underpinned by a varied methodology.²¹ This placed less emphasis on the utility of the case method as a means of teaching the substantive principles of law, but to convey the power of analysis in the mind of the student. The intention was to provide the power of reasoning of a legal practitioner by fostering “the skill of thinking like a lawyer and methodology rather than substance that became the nub of the system”.²²

This approach which enhanced reasoning emphasised that the case method can be an effective medium for achieving educational benefits, but it required more endeavour than reliance on academic learning. The comprehensive manner of understanding law and its application compelled the student to be conscious of the “politics, the strands of class, religious, racial and national attitudes woven

¹⁸ Martha Rice Martini, *supra* 10 , at p 58 at p 58

¹⁹ Mark Bartholomew, *Legal Separation: The Relationship Between the Law School and the Central University in the Late Nineteenth Century*, 53 *Journal of Legal Education* 368, 377 (AALS 2003).

²⁰ Bruce A. Kimball, *The Proliferation of Case Method Teaching in American Law Schools: Mr. Langdell’s Emblematic “Abomination,” 1890-1915*, *History of Education Quarterly* Vol. 46, No. 2 (Summer, 2006), pp. 192-247

²¹ *Ibid.* at p 55

²² *Ibid.*

into the values and patterns of behavior with which law dealt; he needed some appreciation of the balance of power within the community, the clash of interests, and the contriving of economic institutions, as all these influenced and were influenced by the effort to order the society under law."²³

The assimilation of the case law method in process in practical training in law schools received encouragement from the US Department for Education, which took over funding and invested \$87 million on clinics that proliferated in law schools between 1978 and 1997.²⁴ This was augmented by the American Bar Association's influential MacCrate Report in 1992²⁵ which established "10 fundamental lawyering skills and 4 fundamental values of the legal profession".²⁶ It advised students and practitioners in their "self-assessment and self-development decisions" to create consultation "leading to a refined knowledge and understanding of shared fundamental skills and professional values"; and to promote "law schools and other educational providers" with improved "programs for educating students and practitioners in fundamental skills and values".²⁷ Law schools were invited to ingratiate professional skills for law students which led to the formation of the Clinical Legal Education Association (CLEA) in the same year, which had 1,000 teacher members and also published an academic journal as the *Clinical Law Review*.²⁸

Law school pedagogy on case law analysis was further motivated by the Carnegie Report,²⁹ authored by Sullivan, et al, that mapped the future course of legal education. This prioritised the clinical aspect of law and concentrated more on its environment and less on doctrinal principles. The report argued that students should evaluate the problems by being involved in the "systemic

²³ Martini, *supra* note 10,20, at p 59

²⁴ Peter A. Joy, *The Cost of Clinical Legal Education*, 32 *B.C.J.L. & Soc. Just.* 309 (2012), <http://lawdigitalcommons.bc.edu/jlsj/vol32/iss2/5>

²⁵ American Bar Association, *Legal Education and Professional Development- An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap.*, July 1992 Report". <https://www.corteidh.or.cr/tablas/28961.pdf>

²⁶ *Ibid* 135.

²⁷ *Ibid* 123.

²⁸ CLEA organized a workshop on the MacCrate report during the 1993 Association of American Law Schools -ALLS Annual Meeting. *Clinical Legal Education Handbook and New Clinical Teacher.* (2015) p 7 <https://www.cleaweb.org/Resources/Documents/2015CLEANewCliniciansHdbk.pdf>

²⁹ William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, and Lee S. Shulman, *Educating Lawyers: Preparation for the Profession of Law (The Carnegie Report)* The Carnegie Foundation for the Advancement of Teaching (Stanford: Jossey-Bass) (2007).

processes" which included "cognitive, ethical, and practice" which, therefore, should be organised around foundational professional skills and the contexts for applying those techniques.³⁰ The logical progression for law students proposes a time span of three years degree for graduates that develops the three lawyering apprenticeships of knowledge/understanding, practice expertise, and professional identity/judgment in which formal knowledge and practical skills are integrated to focus on developing ethical, competent legal professionals.³¹

The Carnegie report concluded that there would be "unintended consequences" of almost exclusive reliance on the case law method of instruction.³² It proposed "a framework for a bolder, more integrated approach to legal education" where "each aspect of the legal apprenticeship — the cognitive, the practical, and the ethical-social — takes on part of its character from the kind of relationship it has with the others."³³ The three approaches that it identified in terms of learning by apprenticeships were the framework for establishing a legal curriculum which would be based on "wise judgment" by the law school.³⁴

The study corroborated previous findings that study of law of law required problem-solving in real life situations of clients. The Carnegie report concentrated on the skills needed for practice, as the MacCrate report did before it. David Thomson considers the Carnegie sponsored report "as perhaps the most influential document in current debates about the future of legal education".³⁵ He argues that it affirmed the first year curriculum, "in inculcating students in the principles of the first apprenticeship through the case method of study, which it called the 'signature pedagogy' in law schools". In terms of "practical apprenticeship, the report expressed concern that there was not enough teaching of legal doctrine in the context of practice" which was required as "MacCrate report did before it".³⁶

However, the main issue it identified was "the lack of intentional development of its students in the third apprenticeship, the ethical-social, which it also

³⁰ Ibid 191.

³¹ Ibid 208.

³² Ibid 188.

³³ At 194.

³⁴ At 191.

³⁵ D. Thomson, 'Defining Experiential Legal Education' in *Journal of Experiential Learning*. Vol 1, Issue 1, Article 3 (2015):

<https://digitalcommons.tourolaw.edu/jel/vol1/iss1/3>

³⁶ Ibid 9.

referred to as the students' formation of professional identity as a lawyer". The apprenticeship of professional identity would include the "conceptions of the personal meaning that legal work has for practicing attorneys and their sense of responsibility toward the profession that would make a significant and lasting impact".³⁷

This has also drawn criticism from law librarians in the context of the Carnegie report and they contend that law schools have not placed enough importance on increasing research skills in training lawyers which would also be a form their apprenticeship. They argue that "the ABA Section on Legal Education has consistently failed to enforce its accreditation standards with respect to legal research instruction". There is an obligation that "legal research should be given much more attention than it has received in accreditation decisions, including during site visits and in written materials submitted as part of the law school's accreditation process. The lack of enforcement of Standard 302(a)(1) perpetuates the inattention paid to this fundamental skill by law schools across the country and undermines the entire accreditation system's purpose to serve the public interest."³⁸

There is an imperative "as law schools come under more pressure to reform legal education by providing more opportunities for skills instruction, the need to tap the underutilized resource represented by law librarians to help meet these needs becomes more obvious".³⁹

The case law method in training lawyers had negated the use for apprenticeships which was considered to be an inferior method in giving law students the grounding necessary in professional practice.⁴⁰ Harvard Law School's method was based on the economies of scale which meant that in this forum law teaching consisted of the faculty-student ratio of one professor for every seventy-five students. This combined with the encouragement of a critical approach in which the argumentation and case analysis was integral to the lectures increasing the quantum of students in the lecture theatre. The object

³⁷ *Ibid* 10.

³⁸ Barbara Bintliff and Duncan Alford, *Teaching Legal Research*, published as 28 *Legal Reference Services Quarterly* (combined issues 1 and 2, and 3 and 4, 2009); also published as a monograph, *Teaching Legal Research* (Routledge)(2010).

³⁹ *Ibid*.

⁴⁰ Stephen Ellmann, *The Clinical Year*, 53 *N.Y.L. SCH. L. REV.* 877 (2008/2009); Jessica Dopierala, *Bridging The Gap Between Theory And Practice: Why Are Students Falling Off The Bridge and What Are Law Schools Doing to Catch Them?* 85 *U. DET. MERCY L. REV.* 429 (2008).

was to ensure that "law schools could be self-supporting" and this was in the interest of the faculty administrators.⁴¹ The impact of these studies was immense and case law method become pervasive and by 2010 almost all law schools in the US have multiple clinics for Clinical Legal Education.

The critical approach considers that the current system of legal education "invites a deeper examination of law school curricula and pedagogy, with a focus on sequencing of doctrine, skills and values across the curriculum designed to prepare students for practice...." This is because legal education is at a "crossroads, uniquely ripe for innovative curricular and pedagogical change".⁴² This discussion is based on the economic, social and legal variables in the form of legal education, its utility in terms for preparing students for public interest litigation and the accumulation of debts which will determine the choice of working for private firms at the expense of not-for-profit sector. However, there needs to be a more detailed insight into the case law method and how it has been integrated with the clinical legal education that is for problem solving in the community.

Clinical awareness of community legal problems

The legal education based on the Harvard case law method for potential attorneys inaugurated at the end of the 19th century is still the foundation of the training of lawyers in the US. Clinical Legal Education in the US is a "catchall term for a wide variety of practices and methodologies not easily summarised".⁴³ This has integrated the case law method formula that has been accepted by the ABA which formulates the conduct rules and disciplinary codes which operate on the national scale. The ABA is granted the power to accredit and approve law schools and regulate them by the US Department of Education under Title 34, Chapter VI, Part 602 of the Code of Federal Regulations. The Council of the ABA Section of Legal Education and Admissions to the Bar (the "Council") is recognized by the federal Department

⁴¹ Stevens, *supra* note 10, 16, at p 63.

⁴² Karen Tokarz, Antoinette Sedillo Lopez, Peggy Maisel, and Robert F. Seibel, *Legal Education at a Crossroads: Innovation, Integration, and Pluralism Required!*, 43 *Wash. U. J. L. & Pol'y* 11 (2014), https://openscholarship.wustl.edu/law_journal_law_policy/vol43/iss1/7

⁴³ R. Sandefur and J. Selbin, *The Clinic Effect*, *Clinical Law Review*, 16 (2009), at p 58 <http://ssrn.com/abstract=1498844>

of Education (ED) as the accrediting agency for programs that lead to the J.D. degree.⁴⁴

The Best Practices for Legal Education report by Roy Stuckey, et al has made recommendations on how to improve legal education. These have been set out as designed for "improving law school professionalism training in Teaching and Learning Professionalism". By their implementation, the "faculty must become more acutely aware of their significance as role models for law students' perception of lawyering; greater emphasis needs to be given to the concept of law professors as role models of lawyering in hiring and evaluating faculty; adoption of the pervasive method of teaching legal ethics and professionalism should be seriously considered by every law school; every law school should develop an effective system for encouraging and monitoring its ethics and professionalism programs; the use of diverse teaching methods such as role playing, problems and case studies, small groups and seminars, storytelling, and interactive videos to teach ethics and professionalism, should be encouraged; law book publishers should consider adopting a policy requiring that all new casebooks and instructional materials incorporate ethical and professionalism issues."⁴⁵

The report also suggests that the law publishers should also "publish more course-specific materials on legal ethics and professionalism issues as part of new casebooks, new editions of old casebooks, supplements to casebooks, compilations of supplemental readings, and compendiums, law schools need to develop more fully co-curricular activities, policies, and infrastructures that reflect a genuine concern with professionalism."⁴⁶

The JD is an onsite 3-year program for graduate students the format of which is mirrored across universities in all the states. The first-year's curriculum provides a "solid intellectual foundation on which to build their legal education, covering core principles and concepts, theory, and skills of legal practice and providing a thorough grounding in fundamental legal reasoning and

⁴⁴ American Bar Association. The Accreditation Process.

https://www.americanbar.org/groups/legal_education/accreditation/schools-seeking-aba-approval/

⁴⁵ Roy Starkey and others, Best Practices for Legal Education. A Vision and a Road Map. Clinical Legal Education (2007) .p 75. cleaweb.org/Resources/Documents/best_practices-full.pdf.

⁴⁶ Ibid

analysis".⁴⁷ The subjects taught include "courses in civil procedure, constitutional law, contracts, criminal law, legislation and regulation, property, and torts, which collectively provide a foundation for understanding the common law tradition and governing structures of the U.S. legal system and the role of statutes and regulations within that system."⁴⁸

In the second year, there is focus on other activities such as mock trials, moot court, and other extra-curricular activities that offers a simulated environment. There are seven optional studies in public interest litigation which are: Law and Government; Law and Social Change; Law and Business; Law and History; Criminal Justice; International and Comparative Law; and Law, Science and Technology – developed by the Law School faculty to provide pathways through the upper-level curriculum". These offer students guidance on structuring an academic program that will give them extensive exposure to the law, policy, theory, and practice in their chosen areas of focus".⁴⁹ In the third year the students are encouraged to partake "in a capstone learning experience: advanced seminars, clinical practice, and writing projects that call on students to use the full extent of their knowledge, skills, and methodological tools in a field to address the most interesting and complicated legal problems of today".⁵⁰

The final two years of the degree course comprises the Clinical Legal Education which becomes an important part of training for potential attorneys. The students are taught a wide range of professional skills that have a public interest litigation dimension. "Public interest" law has been broadly defined to include law-related work for governmental agencies, legal services, prosecutors, public defenders, and non-profit organizations which provide legal assistance, conduct research, or engage in other activities aimed at advancing the common good. The law schools have established the Public Interest Centers that either oversee a law school's clinical legal education or focus on a particular public law issue, such as poverty or environmental law where advice is offered pro bono. These projects may be financed by the school or dependent upon outside funding.⁵¹ The majority of law faculties offer this

⁴⁷ Harvard Law School, J.D Program, 2019-20 [his harvard.edu/depts/academics/degree-programmed/-d-programs/](https://www.harvard.edu/depts/academics/degree-programmed/-d-programs/)

⁴⁸ Ibid

⁴⁹ Ibid

⁵⁰ Ibid

⁵¹ American Bar Association, Public Interest Clinics, <https://www.americanbar.org/groups/center-pro->

form of training for law students with a combination of public interest and clinical legal education.

There are pertinent examples of the community law basis for the potential development of students under the supervision of the legal academic. Albany Law School's (ALS) Clinical Legal Studies program "consists of in-house projects, field placement programs, and one-hour practicum courses and there are a maximum of 12 credit hours six specialty law projects: Domestic Violence, Litigation, Health Law, Civil Rights & Disabilities, Low Income Taxpayer and Securities Arbitration that combine classroom education with hands-on legal experience while providing a free public service to the abused, discriminated against and disadvantaged in the community. Legal presentation by law students under supervision by faculty attorneys is provided to the victims of domestic violence, disabled children denied access to appropriate health care or education, HIV/AIDS infected parents planning for their children's future, the unemployed and low income taxpayers."⁵²

ALS's Justice Centre has a proactive program, and its students are actively involved in pro bono assistance. In 2017-18 there were 172 second and third year law students from Albany Law School who in the academic year provided direct legal representation to about 175 clients. They provided legal assistance of thousands of hours to under- served and low- income residents. The time used up was 42,000 pro bono hours of the graduating class who offered direct law services to clients who otherwise could not afford to be represented.⁵³ There is a wider public dimension which is based around the Community Development Clinic (CDC) that has facilitated "dozens of nonprofits and small businesses with key business law and transactional legal representation". In the spring semester alone, CDC students created one for-profit and three non-profit organizations, and assisted three non-profit organisations in applying for tax-exemption status.⁵⁴ The legal input went further in terms of the partnership with

bono/resources/directory_of_law_school_public_interest_pro_bono_programs/definitions/pi_pi_clinics/

⁵² Albany Law School, The Justice Centre, <https://www.albanylaw.edu/centers/the-justice-center>

⁵³ 'A welfare for many. Albany Law School continues tradition of problem work'. Times Union, Jenifer Patterson 13/11/18. . <https://www.timesunion.com/local/article/Law-Clinic-Justice-Center-a-lifeline-for-many-13388950.php>

⁵⁴ There are two broad categories of non-profit organizations: charitable non-profits, as described under Section 501(c)(3) of the Internal Revenue Code or a service and membership organizations formed under other subparagraphs of Section 501(c). In order to create a nonprofit corporation, state laws and federal rules will require a very specific

the "business improvement districts and community organizations throughout the Capital Region to provide free legal workshops educating residents on the legal issues that could come up during the lifecycle of a business including standalone events on commercial leasing and doing business online".⁵⁵

The CDC also partnered with other public charities such as "The Legal Project, Innovate 518, and the Community Loan Fund of the Capital Region to provide brief legal consultations to small businesses."⁵⁶ These were integrated with public law and administration with "drafting a white paper for a trade association on capital access models for under-resourced manufacturers; creating organizational documents for a tech-focused startup; and creating terms of use and a privacy policy for an online-based company".⁵⁷ The CDC has moved outside its parameter of "the Capital Region by partnering with a dozen other law school transactional clinics to study barriers to entrepreneurship through a grant from the Kauffman Foundation".⁵⁸

There was direct correlation between the pro bono assistance and the scholarship to the bar examinations. The students practised conducting hearings and trials in local courts under the supervision of experienced defense attorneys/prosecutors; advised inventors and reviewed patent applications under practising attorneys at the SUNY Research Foundation; assisted in the Governor's Counsel's Office by researching and advancing legislative and policy proposals; drafted legal memoranda and other documents for the U.S. Attorney's Office; performed legal research and drafted proposed decisions for judges in state and federal courts. The Pro Bono Scholars Program fast tracked 10 students to take the state bar exam before graduation and then they spent their final semester of law school assisting public interest organizations on behalf of low-income clients who were helped in this scheme.⁵⁹

Boston College Law School offers structured clinical courses in the Civil Litigation Clinic, Juvenile Rights Clinic, Entrepreneurship Clinic, Immigration

purpose clause and they require more than one initial director.

<https://www.usa.corporate.com/new-business-resources/nonprofits/>

⁵⁵ Years of Impact: Capital Justice Centre provides lifeline to the Underserved and spurs development in Capital Region. 29/6/19. Albany Law School.

<https://www.albanylaw.edu/about/news/2018/Pages/Year-of-Impact-Justice-Center-Provides-Lifeline-to-the-Underserved-in-Capital-Region.aspx>

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

Clinic, Community Enterprise Clinic and Appellate Program Clinic.⁶⁰ This offers an opportunity to work with practising lawyers representing actual clients. The Civil Litigation Clinic offers induction in cases with a public law and justice element including (i) landlord and tenant disputes; evictions; issues with subsidized housing (ii) state welfare benefits (EAEDC, TANF; SNAP; food stamps; Men's health) (iii) Divorce and Paternity Cases with a history of domestic violence).⁶¹

There was also provision of Clinical Legal Education in the public sector by Boston College in the form of the BC Ninth Circuit Appellate Program that provides pro bono services. This is based on the "criticism of immigration law is that it treats hundreds of crimes the same, failing to take into account that state and federal judges consider specific offenses not serious or deserving of probation instead of incarceration. The clinic's mission is to use federal court advocacy to restore proportionality and common sense into the immigration consequences of criminal convictions."⁶²

This clinic avails the very "unique opportunity provided by the US Ninth Circuit Court of Appeals that screens pro se petitions filed by non-citizens to identify meritorious (and often novel) issues, accelerates the briefing schedule to coordinate with the academic school year, and permits law students to present oral argument to a sitting panel of judges in the spring of each year."⁶³

The success is not measured on the scale of victories in the Court but will be based "on the amount of material learned, the types of appellate skills mastered, and the contact with the client to help them navigate a case" upon which their outcome to remain in the US is in jeopardy.⁶⁴

The significance of this form of vocational training has been cited by appellate judges and Supreme Court Justices in their opinions. Justice Thomas relied upon the amicus brief of the Clinical Legal Education of the Chapman University's Claremont Institute that has a Constitutional Jurisprudential Clinic (CJC) in his dissenting opinion in *Arizona v. The Inter*

⁶⁰ Boston College, Law Community Enterprises. <https://www.bc.edu/bc-web/schools/law/academics-faculty/experiential-learning/clinics/community-enterprise.html>.

⁶¹ Ibid.

⁶² Kari Hong, NCAP Supervising Attorney and Clinic Founder, bclawlab.org/ncap

⁶³ Ibid

⁶⁴ Ibid.

Tribal Council of Arizona, 133 S.Ct. 2247, 2266 (2013) (Thomas, J. dissenting). The clinic's brief in another case was cited by Ninth Circuit Judge N. R. Smith in his dissent in *American Trucking Associations v. City of Los Angeles*, 660 F.3d 384, 412 (9th Cir. 2011) (N.R. Smith, dissenting). The CJC is ranked 6th nationally among organisations that regularly acts as amicus curiae and files briefs in reviews before the Supreme Court.⁶⁵

The Law School has benefited from the expertise of the Pacific Legal Foundation, a not-for-profit law firm that specialises in property rights and economic liberty cases that has provided the platform for serving the amicus curiae for the courts in cases dealing with property and individual rights.⁶⁶ The Pacific Legal Foundation (PLF) has also invested heavily in the educational programs offered by Berkeley Law School. The Seminar & Field Placement was launched at Berkeley Law School in August 2018 by PLF offering a unique opportunity to reach students at one of the country's most prestigious law schools—where students are not typically exposed to discussions about the importance of individual liberty. These seminars conducted by the PLF Executive Vice President and General Counsel John M. Groen concentrate on strategic constitutional litigation and the evolution of key legal principles, such as the regulatory takings doctrine, that impact property rights and economic liberty.⁶⁷

The Berkeley Policy Advocacy Clinic itself is a proactive centre with interdisciplinary teams of law and public policy students who pursue non-litigation strategies to address systemic racial, economic, and social injustice. The clinic's approach is ground based drawing from “lives of real people, problem-based addressing pressing social issues, and client-driven accountable to advocacy organizations. The students support local and state change

⁶⁵ Adam Chandler, *Cert.-stage amicus “all stars”: Where are they now?*, Scotus Blog (Apr. 4, 2013, 3:00 PM), <https://www.scotusblog.com/2013/04/cert-stage-amicus-all-stars-where-are-they-now>

⁶⁶ In *Shelby County v. Holder*, 570 U.S. 529 (2006) a constitutionally important law case dealing with the discriminatory law inherent in section 5 of the Voting Act 1965, the Supreme Court heard the challenge after the Pacific Legal Foundation filed an amicus curiae. This resulted in the Court awarding a certiorari and declaring the provision as a nullity because it was 40 years and against the basic principle of equality enshrined in the First amendment.

⁶⁷ Berkeley Seminar & Field Placement at Berkeley Law School, *Pacific Legal Foundation*, pacificlegal.org/law-school-programs

campaigns while exploring the capacities and limits of law and public policy to solve problems.”⁶⁸

The contemporary programs have a remit that covers the "state and national" level and are intended to "reduce the harmful and racially discriminatory impact of fines and fees on low-income people in the criminal justice system, with a special emphasis on the interests of youth and people experiencing homelessness". In this range of induction the "students learn substantive law and policy skills. They interview clients and experts, conduct legal and social science research and analysis, and consult stakeholders (community members, policy and advocacy organizations, public officials, academics)."⁶⁹

Harvard Law School has a comprehensive program for law students to become trained through clinical legal education. The school offers both internal and external clinical programs, and there were 416 students on clinical placements in more than 21 cities across the US from this university. The law faculty offered Externship Clinics in the 2018-19 academic year which included the Capital Punishment Clinic; Child Advocacy Program; Criminal Justice Appellate Clinic; Criminal Prosecution Clinic; Democracy and the Rule of Law Clinic; Employment Law Clinic; Government Lawyer: Attorney General Clinic; Government Lawyer: United States Attorney Clinic; Government Lawyer: Semester in Washington; Judicial Process in Trial Courts Clinic; Sports Law Clinic; and Supreme Court Litigation Clinic.⁷⁰

The training program for this particular clinical legal education syllabus is rigorous, and for those who elect to take the Democracy and the Rule of Law option there are 12 studentships per year. Final year students work in conjunction with the 'Protect Democracy Project' a not-for-profit organisation founded by White House and Department of Justice attorneys for potential scholars who want to practice in this area of law. This is dedicated to "holding the President and the Executive Branch accountable" to the legal system through both the "Democratic and Republican" political party led administrations. The emphasis is on "litigation" and on "ensuring the impartial application of the rule of law; safeguarding healthy civic institutions that allow

⁶⁸ Experiential Education, law.berkeley.edu/experimental/clinics/policy-advocacy-clinic

⁶⁹ *Ibid.*

⁷⁰ Externship Clinics, hls.harvard.edu/dept/clinical/clinics/externships-clinics/

for public participation in political debate; prohibiting official corruption and challenging governments if it targets" groups in society.⁷¹

The experience gained is similar to apprentices in their training in law firms except that it is in a clinical legal environment.⁷² The dual form of training equips the law student with hands-on training in public law such as procedures of "[d]eveloping and submitting Freedom of Information Applications (FOIA) requests, including identifying recipients", processing the "administrative FOIA appeals" and correspondence with agency Inspectors General, the Office of Special Counsel, or state Attorneys General" to inform them of future inquiries". The litigation techniques are also enhanced by formulating "legal theories and possible causes of action, and assessing approaches to overcome justiciability barriers drafting complaints and preliminary injunction motions and briefs", and assisting with "discovery" and "depositions" in the entire pleadings all way up to the Supreme Court.⁷³

The necessity of public sector training has been recognised by the formalisation of public interest law and community justice in Clinical Legal Education in this field. This has been achieved by public sector not-for-profit organisations integrating themselves with educational institutions and establishing a think tank for research and data collection. The National Centre for Access to Justice (NCAJ) is headquartered in New York, at Fordham Law School, provides the academic community by the integration of public interest litigation with law schools in the universities. The NCAJ is a hybrid organisation that has an extensive pro bono program which "partners with faculty members and students on courses, guides students on research projects, and hosts public gatherings that advance access to justice movement". Its preamble states "it

⁷¹ Democracy and the Rule of Law Clinic, hls.harvard.edu/dept/clinical/democracy-and-the-rule-of-law-of-the-clinic/

⁷² The Public Law Project has defined Clinical Legal Environment as premised on "University law clinics that are a developing tool for both legal skills-based education and academic education. As well as providing students with experience of law in action and a practical base for academic enquiry, law clinics are, and should be supported as, an important means of providing practical legal work experience; especially where they can provide experience of working with clients who face social problems that many students may never face themselves". Public Law and Clinical Legal Environment, Public Law Project. 5 April 2018 <https://publiclawproject.org.uk/resources/public-law-and-clinical-legal-environments/>

⁷³ *Ibid.*

relies on data to expand access to justice in the civil and criminal justice systems".⁷⁴

The flagship program of the NCAJ is the Justice Index – a web-based resource supporting justice system reform and facilitates a high powered convergence of private sector and public sector organisations. It includes the Pfizer Inc. and the Pfizer Legal Alliance (PLA) of 15 law firms, Deloitte, MSDS, attorneys and staff at Skadden Arps and at Kirkland and Ellis, students at Cardozo School of Law and University of Pennsylvania School of Law, along with attorneys and staff at UBS Corp. The utility for the law students who are inclined to public interest litigation is that the accumulated data shows the extent to which "each of our 50 state-based justice systems has "adopted best policies for assuring access to justice for all". This evaluation includes the empowerment of judges, legislators, executive branch officials, court administrators, legal aid reformers, Access to Justice Commissions, reporters, academics and activists in their respective and diverse efforts to improve our justice system.⁷⁵

The findings of the Justice Index have been published and been collated on "four aspects of state based justice systems: the number of civil legal aid lawyers per 10,000 low income individuals in each state; systems in place to support self represented parties in state courts; systems in place to support people with limited proficiency in English in state courts; and systems in place to support people with disabilities in state courts".⁷⁶ The NCAJ raised enquiries with "state justice system officials to respond to an extensive set of questions about laws, rules, and policies for assuring access to justice in every state, the District of Columbia and Puerto Rico".⁷⁷ There were "five law firms (contributing more than 50 lawyers) who worked pro bono with NCAJ staff to conduct a rigorous Quality Assurance Review of the proposed findings recommended by the states."⁷⁸

The evidence points to the US law schools preparing their students to serve the public through the final stages of their academic qualification. They have established curriculums that provide the education and training for the students

⁷⁴ <https://ncforaj.org/wp-content/uploads/2019/07/National-Center-for-Access-to-Justice-one-pager-7-23-19-pdf.pdf>

⁷⁵ *Ibid.*

⁷⁶ Justice Index, National Centre for Access to Justice. <https://ncaj.org/state-rankings/2021/justice-index>

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

to become practitioners in the field of public interest litigation. This form of teaching is heavily emblematic of the case study method introduced in the Harvard Law School, that has by its reasoned approach, increased the discourse of assisting the community that is in need of legal assistance. The educational goals and methods of the law schools are designed to initiate students for practice with not-for-profit organisations in preference to the large corporate firms that are in private practice.

Practitioner goals and reality of public interest employment

The training of students by means of Clinical Legal Education does not make them successful as practitioners in the field of public interest litigation. There has been strong criticism of US law schools for the rapidly rising costs of legal education that prevent the students from lower income families to attain the level of practicing Attorneys. This is because they will accumulate large debts and have limited employment prospects after pursuing a law school education.⁷⁹

The Ivy league list who have compiled the top 5 schools in the US have a monopoly in finding employment over those who have graduated from a public law based education and training. At Columbia Law School employment ratio amounted to 78 % of the 2013 graduates, according to the Schools report to the ABA. Nationally the figure for graduates of ABA -accredited schools is about 16 %, but at low ranked law schools that figure is sometimes radically lower.⁸⁰ The selection process sustains the upper strata of society which contribute "tax-exempt donations, connecting their disproportionately wealthy students to lucrative job opportunities, and fostering exclusive social networks of the rich and powerful".⁸¹ There is a cost critique of legal education, and how it may be affecting social mobility of students from lower strata of the income generating population.

⁷⁹ "In recent years, legal jobs for new law-school graduates have fallen into a markedly bimodal salary distribution. Most such jobs pay between \$40,000 and \$65,000, with the exception of associate positions at the largest law firms, which generally pay about \$160,000. (The high-five-figure-salary jobs that many prospective law students imagine they will settle for if they aren't hired by a big firm basically do not exist.)". Paul Compos, *The Law School Scam*, *The Atlantic*, September 2014.
<https://www.theatlantic.com/magazine/archive/2014/09/the-law-school-scam/375069/>

⁸⁰ -. *Ibid.*

⁸¹ *Breaking the Ivy League Monopoly*. *The American Interest*. 11-2-15. the-american-interest.com/2015/11/02/breaking-the-ivy-league-monopoly.

The Legal Education "Best Practices" Report findings showed that "in 1990, private law school tuition averaged \$11,000, about three times more than the approximately \$3,500 average tuition at a public (state supported) law schools. The 1990s and until early 2000s the law school tuition at both private and public law schools increased at rates that sometime exceeded 10 per cent per year". The upshot is that educational debt has had "a significant impact on practice options graduates pursue" and those "students who may otherwise wish to practise as public interest lawyers by working for non-profit organizations or the government often seek higher paying jobs in private firms and companies in order to repay student loans. To assist students who want to dedicate their legal careers to public service, many law schools developed loan repayment assistance programs, known as LRAPs, given the absence of significant federal loan assistance."⁸²

The Report states further that "since the economic downturn in 2008, most law schools have continued to increase tuition fees between 3 to 5 % annually even though the cost of living in the U.S. has remained at an even level" and the data shows that "average law school education debt amount is approximately \$90,000 and students who have taken out loans for their undergraduate educations often have combined debt loads in excess of \$120,000".⁸³ This increase in law school fees and willingness of "law students to incur such high debt was fueled by near 100% employment rates at or within six months of graduation and relatively high salaries in the 1990s and early 2000s, with some entry level salaries above \$160,000 per year by 2008 and since then the "number of such high paying positions has dropped significantly and employment rates have been reduced".⁸⁴

The salary that the law graduate earned reflected the law school that they attended and correlated with the reputation of the university. The salary that the private sector graduate earned was \$180,000 and the median salary for the private law school graduate earned was \$77,500. The income from this sector varied greatly and in 2019 graduate salaries from the 182 ABA ranked law

⁸² Margaret Martin Barry, Jon C. Dubin, and Peter A. Joy Legal Education "Best Practices" Report, US, 2011 in the Europeanization of Clinical Legal Education: How Clinical Legal Education is Being Adopted for European Law and European Issues (2018) in A Alemanno & L. Khadar (Eds), *Reinventing Legal Education: How Clinical Legal Education is Reforming the Teaching and Practice of Law in Europe* (2011) pp 126-207. Cambridge University Press.

⁸³ *Ibid.*

⁸⁴ *Ibid.*

schools varied from \$50,000 to as high as \$190,000. The median starting salaries of J.D. graduates who entered the public sector in 2019 were considerably lower than those of their peers in the private sector. Among the 182 ranked law schools that reported these data, the median public sector salary was \$57,908, with median salaries ranging from a low of \$40,000 to a high of \$70,250.⁸⁵ The "majority of lawyers work in private and corporate legal offices and some work for federal, local, and state governments but most work full time and many work more than 40 hours a week" and the "median wage of lawyers in May 2020 was \$122,960".⁸⁶ The implication of the report is that U.S. law schools can and should do more to prepare students to become effective and ethical lawyers.

It has been argued that a legal education brings a "wealth of non monetary benefits " which includes "knowledge, personal enrichment that cannot be measured in crude cost benefit analysis."⁸⁷ However, that does not alter the fact that there is a sizeable debt that public law school graduates accumulate when they acquire their degree. In 2007, the federal government enacted the College Cost Reduction and Access Act (CCRAA), to provide purposeful loan forgiveness assistance scheme for the lower income bracket.

The CCRA has "two separate and distinct components: Income Based Repayment Plan (Section 203) - If your debt is high and your income is low, regardless of whether you work in public service, you are entitled to pay back your federal loans through the Income Based Repayment plan (IBR), beginning July 1, 2009 and the remainder of your debt will be forgiven after 25 years. Loan Forgiveness (Section 401) - If you work full-time in public service for a cumulative 10 years, at the end of the 10 years (or after you have made 120 qualifying payments while working in public service) the remainder of the Federal Direct Consolidation loans will be forgiven".⁸⁸

⁸⁵ Ilana Kowarshi, Price, Payoff of Law School before enrolling, US news 12/3/19 <https://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/law-school-cost-starting-salary>

⁸⁶ US Bureau of Labor Statistics, Occupational Outlook Handbook. May 2019, [bls.gov/ooh/legal/lawyers/htm](https://www.bls.gov/ooh/legal/lawyers/htm)

⁸⁷ Brian Z. Tamanaha, Is Law School Worth the Cost? *Journal of Legal Education*, Vol. 63, No. 2 (November 2013), pp. 173-188.

⁸⁸Information about the Cost Reduction and Access Act. College of Arts and Sciences. Loyola University, New Orleans. <http://cas.loyno.edu/information-about-college-cost-reduction-and-access-act>.

This has not offered a solution for students who qualify through public sector education. They have financial burdens despite 34 % of community college students receiving grants or loans whose debts may increase if they pursue a JD degree or enrol at the graduate school. Furthermore, the increase in the Pell Grants of only \$500 is not adequate to cover the costs facing low-income college students. The college loan providers small- to medium-sized lenders will be forced out of business without the subsidies and the decreased competition will harm students in the long run.⁸⁹

The debt problems that arise from student loans have increased for public law schools over the private law teaching institutions. The average low debt tuition statistics show an increase for those who have studied at public law schools rather than private law schools. The average total debt/tuition in 2004 across \$85,000 in which 87% borrowed, the average private school graduate debt being \$32,484, and the average public school graduate debt being \$13,742; in 2008 it was \$84,230 in which 89% borrowed, the average private tuition being \$36,424 and average public tuition being \$17,880. In 2012 average total debt was \$121,890 of which 86% borrowed, and average private tuition was \$41,985 and average public tuition was \$23,879. The transformation in this calculus is that total debt accumulated from 2004–2012 was 43% of which average private law school student debt increased 29% and average public school student debt went up 74%.⁹⁰

Public legal education relies heavily on grants and scholarships which, as statistics show, is on the increase.⁹¹ This impacts on the law schools because the "growth in scholarships gives rise to a few problems because these scholarships tend to go to applicants with high LSAT scores" which assists the students who are "wealthier and less diverse as a group than applicants with lower numbers".⁹² There are first year law students for whom the scholarships "are eliminated or reduced" which are termed as 'exploding scholarships' leaving them with debt after they finish education. There is a "problem of 'exploding' scholarships" which are not renewed unless the student maintains a

⁸⁹ Grace Chen, Community college review, 3/4/19, communitycollegereview.com/blog/the-college-cost-reduction-and-access-act-of-2007 .

⁹⁰ David Lat, Everything That's Wrong With Legal Education — According To Law School Deans, 17/5/16 , abovethelaw.com/2016/05/everything-thats-wrong-with-legal-education-according-to-law-school-deans

⁹¹ Digest of Education Statistics, National Center of Education Statistics. 2015.

https://nces.ed.gov/programs/digest/d15/tables/dt15_401.30.asp

⁹² *Ibid.*

certain GPA(Grade Point Average), which the schools are aware will not happen" because of the grading curve", giving law school the opportunity to offer degrees on a "bait-and-switch" basis which leads a higher cost in terms of incurring debts in the long run.⁹³

The increasing debt problems particular for those who are in public law schools means that after completing education they have limited career paths because only certain jobs can generate enough income to service such debts. This dissuades the qualified attorneys from taking up public sector jobs or working for not-for-profit organisations. They have to prioritise servicing their debts and this requires working for larger firms where the clinical public education that they have gained experience for in Community supported legal aid will not be utilised.

Glenn Reynolds offers proposals to terminate the influence of Ivy League by suggesting that the government should:

- (i) eliminate the tax deductibility of contributions to schools having endowments in excess of \$1 billion. That won't end all major donations to the Ivy League, but it will doubtless encourage donors to look at less wealthy and more deserving schools, such as Northern Kentucky University, recently deemed 'more inspirational than Harvard' in the London Times Higher Education magazine,
- (ii) require that all schools with endowments over \$1 billion spend at least 10% of their endowment annually on student financial aid. That will make it easier for less wealthy students to attend elite institutions, and
- (iii) should require that university admissions be based strictly on objective criteria such as grades and SAT/ACT scores, with random drawings used to cull the herd further if necessary. That will eliminate the Ivy League's documented discrimination against Asians.⁹⁴

The responsibility is of the ABA to set up a mechanism to redistribute the income that the universities generate to lessen the burden on public law school graduates who have a greater difficulty in locating employment, repaying debt

⁹³ Ibid.

⁹⁴ Glen Reynolds, To reduce inequality abolish the ivy league. <https://eu.usatoday.com/story/opinion/2015/11/01/glenn-reynolds-reduce-inequality-abolish-ivy-league-elitist-discrimination-column/74998648/> (internal references deleted).

and fulfilling their potential in litigation. The ABA Task Force has, in the past, been instrumental in devising clinical legal education for law schools through its 1992 report.⁹⁵ The Task Force conducted further research on the economic impact of public legal education and its disparities and issued its findings on the steps necessary to ease debt problems of law students.⁹⁶ The survey issued the findings in 2015 in which it acknowledged that the training of lawyers provides "public value" and that was the reason for "more concern today with problems in law schools and legal education than with problems in education in other disciplines" such as business administration.⁹⁷ It also accepts that legal training has "private value" and that it provides "skills, knowledge, and credentials that will enable" those equipped to earn a livelihood. It presupposes that legal education is part of the "market economy and law schools are subject to market conditions and market forces in serving students and shaping programs".⁹⁸

It is with this concept of private value that the ABA approaches this problem to respond to "consumer preferences", irrespective of those within the law school, at least in order to ensure the continued financial sustainability of their programs. The Report identifies nine areas where there could be a revision for better delivery of legal education and service by professionals. The first point deals with the "financing of law-related education" and recognises that "financing legal education has many deficiencies" which encourages "constant tuition increases, high student debt, and subsidization" of less deserving students by better qualified students.⁹⁹

The recommendation that the ABA has made in order to override high cost of legal education is the coordination between the "access to careers in law, availability of lawyers and legal services, financial commitments of the federal government, the national economy" all in order to achieve an 'integrated

⁹⁵ ABA Section of Legal Education & Admissions to the Bar, *Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* 138-141 (1992), available at https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_maccrate_report.authcheckdam.pdf

⁹⁶ *Ibid* 734-740.

⁹⁷ American Bar Association Task force on The future of Legal education, *Report and Recommendations* (January 2014), available at http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf.

⁹⁸ *Ibid* at 14.

⁹⁹ *Ibid*.

system". The improvement will flow from the "efficiency increases, and cost containment" brought about by professionals and the "law schools are slowly moving to use them; regulators, who are more intimately connected with the business world, are likely in an even better position to use these tools to improve their part of the system for producing new lawyers".¹⁰⁰

The value system that the ABA is invoking is the market and it is based on encouragement of the universities to be "self-supporting" and self-generating in their incomes.¹⁰¹ This is to continue the revenue cycle of the Ivy League and other top tier colleges and promotes the interest of the professors or the academic lawyers in the equation of market feasibility. The emphasis is on better debt financing for students, better procedures and applications to the Department of Education, and improving the law school curriculum.

However, it is not primed for the beneficial impact of Clinical Legal Education which the students undertake by providing them job opportunities and long term prospects in careers in public interest litigation. The legal training in pro bono work should ensure that the students are able to gain employment with law firms and not-for-profit organisations which serves practitioner interests. A possible manner in which it might be achieved is by redistributing income and transfers of wealth from private universities to public universities for higher fees tariffs and reversing the financial burden problems that restrict student choice in the public sector employment.

Conclusion

The legal training of lawyers in the US is premised on the original Langdellian case method which has a humanities focus, initially through the introduction of case law, and subsequently through the development of clinical methods. The case law method developed and promoted by Harvard Law School is more intensive in problem solving and adopts the rational approach to teaching that is based on reasoning and emphasises debate over dictation. This was accepted by the ABA, which was delegated the task of implementation of a national system of education and the JD degree which encouraged the study of a range of subjects to provide knowledge for the practice of law.

¹⁰⁰ Ibid at 17.

¹⁰¹ Stevens *supra* 10, 16 and 43 at 268.

The scheme of clinical legal education adopted in law schools across the US focuses on empirical training of ingrained knowledge through the process of understanding case scenarios of individuals with real life problems. Law schools adopted their curriculum for final year students, and they may have accreditation on their degree outcomes by their involvement in the community based programmes. These have been supported by the not-for-profit organisations and law firms that have gained universal acceptance in the field of public interest litigation.

This has to consider the problem of student indebtedness and its impact on the diversity of the profession and the reluctance of JD graduates to go into public interest practice because of remuneration which is considerably lower in the public sector than in the private sector. The sources of wealth in the system are various and include the commercial law firms, the high-status university law schools, the families of the already privileged, and those who have gained entry through veterans' programmes. There needs a proportionate payment of fees for those graduates who have not come through the elite programmes, and they should gain discounted fees. The lack of any effective mechanisms for achieving such a redistribution is hindering those who want to specialise in public interest litigation and working for non-profit organisations. This replicates the existing power relationships in the unequal society where public sector work will never be a priority for law graduates.

This method of legal training in the US includes the academic, vocational, and professional stages of qualification. While attaining a legal qualification is still a Herculean task the system sanctioned by the ABA does provide a fusion of applied legal principles that that can be utilised with experience of clinical legal education. The variety and the increasing volume of access to justice programs establish the basic grounding for those who want to specialise in public interest litigation and to achieve their goals. The need for increasing job opportunities in the not-for-profit sector should enable lawyers to avail the benefits of legal training gained in the clinical education provided they are relieved of overburdening debts.