

Addressing implicit bias: a theoretical model for promoting integrative reflective practice in live-client law clinics[†]

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Abstract

Clinical Legal Education programmes now take place in most law schools in England and Wales. However, legal education continues to be predominantly focused on the analysis and application of rules, doctrines, and theories to hypothetical scenarios or essay questions. This form of pedagogy either minimises or ignores the role of the client in terms of supplying lawyers with knowledge pertinent to their case. In other words, it overlooks the fact that the lawyer's acquisition of knowledge is not confined to technical rationality. This article seeks to achieve three broad aims. First, to contribute to the debate concerning the epistemology of reflective practice. Second, to develop a theoretical reflective cycle, informed by Kant's transcendental idealism, which seeks to maximise knowledge acquisition in legal education, namely knowledge supplied by the client. Third, to address implicit bias using the proposed reflective cycle. An optimal pedagogy for using this cycle is Clinical Legal Education, namely live client clinics.

Keywords: Legal Education; Clinical Legal Education; Kant; Implicit Bias; Reflective Practice.

[†] Our thanks to Emma Roberts (University of Salford) for her valuable feedback on an earlier draft of this article and to the anonymous reviewers for their helpful suggestions.

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Introduction

Despite the proliferation of university law clinics in England and Wales,¹ legal education and training remains a predominantly theoretical undertaking. Consequently, many aspiring lawyers who wish to become legal practitioners may not have had the opportunity to deal with clients or to apply the ‘law in books’² in a practical context. Instead, law students are assessed on their knowledge of the law and procedure, mainly through essay-based questions and hypothetical scenarios.³ A key element of a lawyer’s work, which is absent from these forms of assessments, is the client.⁴ It is worth noting from the outset that our focus is on legal education and training at undergraduate, postgraduate, and professional training levels.⁵

The consequence of omitting experiential education which closely reflects the realities of legal practice is that the application of primary and secondary sources of law is replaced by the need to respond to clients with real problems.⁶ Moreover, essay-focused questions and scenario-based assessments do not accurately reflect the realities of legal practice, namely that ‘legal problems beget other legal problems’.⁷ Outside of live-client clinics, students rarely

¹ James Sandbach and Richard Grimes, *Law School Pro Bono and Clinic Report 2020 LawWorks and CLEO (Clinical Legal Education Organisation)* (LawWorks 2020) < https://www.lawworks.org.uk/sites/default/files/files/LawWorks%20Law%20Schools%20Report%202020_1.pdf > accessed 20 April 2024; LawWorks, *Clinics Network Report Analysis of clinic activity between January 2021 – December 2021* (LawWorks 2022), 9, < <https://www.lawworks.org.uk/solicitors-and-volunteers/resources/lawworks-clinics-network-report-2021> > accessed 20 April 2024.

² Roscoe Pound, ‘Law in Books and Law in Action’ (1910) 44 *American Law Review* 12.

³ Patrick R Goold, ‘The Legal Judgment: A Novel Twist on the Classic Law School Problem Question’ (2022) 56(3) *The Law Teacher* 368, 370.

⁴ For a critique of legal education see, Alison Bone and Paul Maharg, ‘Introduction: Legal Education Assessment in England’ in Alison Bone and Paul Maharg (eds), *Critical Perspectives on the Scholarship of Assessment and Learning in Law* (ANU Press 2019), 40; Laura Bradley and Omar Madhloom, ‘Exploring the value of Autonomy in Clinical Legal Education’ in Jill Dickinson and Teri-Lisa Griffiths (eds), *Professional Development for Practitioners in Academia: Pracademia* (Springer 2023) 243.

⁵ For recent critiques of the new route for aspiring solicitors, the Solicitors Qualifying Examination, see Luke Mason, ‘SQEzing the jurisprudence out of the SRA’s super exam: the SQE’s Bleak Legal Realism and the rejection of law’s multimodal truth’ (2018) 52(4) *The Law Teacher* 409; Omar Madhloom, ‘Biopolitics and the Solicitors Qualifying Examination’ in Luca Siliquni-Cinelli and Thomas Giddens (eds), *Biopolitics and Structure in Legal Education* (Routledge 2023) 40 – 56.

⁶ Austin Sarat, ‘Lawyers and Clients: Putting Professional Service on the Agenda of Legal Education’ (1991) 41 *Journal of Legal Education* 43, 43.

⁷ Orla Drummond and Gráinne McKeever, *Access to Justice through University Law Clinics* (Ulster University Law School 2015) 8.

engage with clients in situations of stress and are, therefore, not provided with an opportunity to respond to clients and their legal problems in a manner that reflects the realities of legal practice.⁸ In other words, theory-centric legal education does not accurately reflect what Schön refers to as the ‘indeterminate zones of practice’ which represent the uncertainties and complex realities of professional practice.⁹ In addition to theoretical knowledge, aspiring lawyers will also be required to engage with and manage knowledge acquisition that is provided by the client.

University clinics fall within the definition of Clinical Legal Education (CLE). While there is no universally accepted definition of CLE, it has been described as ‘a curriculum-based learning experience, requiring students, who operate in role and interact with others in their roles, to take responsibility for the resolution of a potentially dynamic problem’.¹⁰ Authors such as Giddings¹¹ and Wizner¹² highlight that CLE is a method for teaching students to represent their clients effectively. In other words, CLE provides students with the opportunity to engage with aspects of a case and conduct this as it ought to be conducted in the ‘real world’.¹³ Accordingly, the client appears to play a key role in CLE. However, CLE also encompasses a broad spectrum of models, ranging from simulations to live-client clinics.¹⁴ The focus of our inquiry is on CLE models which involve taking instructions from the client, such as live-client clinics and public legal education.

⁸ Sarat (n 6) 43.

⁹ Donald Schön, ‘The Crisis of Professional Knowledge and the Pursuit of an Epistemology of Practice’ (1992) 166 *Counterpoints* 183, 186.

¹⁰ Andrew Boone, Michael Jeeves & Julie MacFarlane, ‘Clinical Anatomy: Towards a Working Definition of Clinical Legal Education’ (1987) 21 *Law Teacher* 61, 68.

¹¹ Geff Giddings, *Promoting Justice Through Clinical Legal Education* (Justice Press 2013) 14.

¹² Stephen Wizner, ‘The Law School Clinic: Legal Education in the Interests of Justice’ (2002) 70(5) *Fordham Law Review* 1929, 1930.

¹³ Richard Grimes, ‘The theory and practice of clinical legal education’ in Julian Webb and Caroline Maughan (eds), *Teaching Lawyers’ Skills* (Butterworths 1996) 138.

¹⁴ For a discussion on the taxonomy of CLE, see Rachel Ann Dunn, ‘The Taxonomy of Clinics: The Realities and Risks of All Forms of Clinical Legal Education’ (2016) 3(2) *Asian Journal of Legal Education* 174, 175.

Although the value of CLE has been widely acknowledged,¹⁵ as a teaching method, its strengths and weaknesses are determined by the extent to which the instructor exploits CLE's learning potential.¹⁶ Therefore, it is incorrect to assert that, CLE, on its own, is sufficient to instil in students an enhanced sense of their professional role towards their clients.¹⁷ This article, therefore, seeks to add to the epistemology of CLE by developing a theoretical framework in relation to the acquisition of knowledge supplied by the client. One of the authors of this article, who is both a clinician and a solicitor, has highlighted how Kant's ethics can be used to develop reflective practitioners.¹⁸ This article seeks to build on this research by developing a reflective cycle aimed at addressing bias that may taint or distort knowledge acquired by the client.

It will be argued that CLE, namely live-client clinics, is an optimal methodology for training students to reflect on the process of knowledge acquisition in relation to their clients. Clinical scholarship has highlighted the value of including reflection in CLE. While some CLE authors have applied established reflective cycles such as those of Gibbs and Kolb,¹⁹ others have argued for philosophical approaches to developing reflective practice.²⁰ However, there is a dearth of research in relation to providing law students with a theoretical model which seeks to promote the student's reflection in relation to the acquisition of client knowledge. This article aims to construct a theoretical model to develop the student's reflection in relation to the acquisition of knowledge supplied by the client.

¹⁵ Frank S Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice* (Cambridge University Press 2010), Linden Thomas, Steven Vaughan, Bharat Malkani and Theresa Lynch (eds), *Reimagining Clinical Legal Education* (Hart 2018), Omar Madhloom and Hugh McFaul (eds), *Thinking About Clinical Legal Education: Philosophical and Theoretical Perspectives* (Routledge 2022).

¹⁶ James C Hathaway, 'Clinical Legal Education' (1987) 25 *Osgoode Hall LJ* 239, 239.

¹⁷ *ibid.*

¹⁸ Omar Madhloom, 'A normative approach to developing reflective legal practitioners: Kant and clinical legal education' (2019) 53(4) *The Law Teacher* 416; Omar Madhloom, 'A Kantian Moral Cosmopolitan Approach to Teaching Professional Legal Ethics' (2022) 23(8) *German Law Journal* 1139.

¹⁹ Anna Cody, 'Reflective practice: The essence of clinical legal education' in Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Peter Joy, Mary Anne Noone and Simon Rice (eds), *Australian Clinical Legal Education: Designing and operating a best practice clinical program in an Australian law school* (Australian National University, 2016) 153-177.

²⁰ Madhloom, 'A normative approach to developing reflective legal practitioners: Kant and clinical legal education' (n 18).

We contend that there is a need for lawyers to be aware of the values they hold as these may impact on their acquisition of new knowledge, namely knowledge provided by their client.²¹ The need for such an awareness is predicated on the assumption that lawyers are generally unaware of the values and assumptions that guide their decision-making.²² Argyris and Schön sought to address these assumptions through their ‘espoused theory’ and ‘theories-in-use’.²³ The former refers to values and beliefs which a person believes guides their actions.²⁴ Espoused theories are what we communicate to others.²⁵ Theory-in-use, on the other hand, includes ‘assumptions about self-others, the situation, and the connections among action, consequences, and situation’.²⁶ Few individuals are aware of their theories-in-use or that these are not always aligned with the theories they espouse.²⁷ For example, a lawyer’s espoused theory might be to act in the best interest of their client. However, rather than adopt, for example, a Kantian approach which requires treating the client as an end in themselves,²⁸ the lawyer’s theory-in-use might be to promote their own view about what is best for the client because the lawyer’s assumption is that they have more legal knowledge than their client. In this example, the potential harm to the client is that the student adopts a paternalistic approach by placing themselves as the primary decision-maker, which may result in their failure to promote the client’s autonomy. To avoid such an outcome and provide effective advice to the client, it is essential for the congruence of espoused theory and theories-in-use.²⁹ To achieve this conceptual alignment, it is necessary for lawyers to be aware of the values they hold and the influence

²¹ Timothy Casey, ‘Reflective Practice in Legal Education: The Stages of Reflection’ (2014) 20 *Clinical Law Review* 317.

²² Riki Savaya and Fiona Gardner, ‘Critical Reflection to Identify Gaps between Espoused Theory and Theory-in-Use’ (2012) 57(2) *Social Work* 145, 145.

²³ Chris Argyris and Donald Schön, *Theory in Practice: Increasing Professional Effectiveness* (Jossey-Bass 1974).

²⁴ *ibid*; Riki Savaya and Fiona Gardner, ‘Critical Reflection to Identify Gaps between Espoused Theory and Theory-in-Use’ (2012) 57(2) *Social Work* 145, 145.

²⁵ Argyris and Schön (n 23).

²⁶ *ibid*.

²⁷ *ibid*.

²⁸ Immanuel Kant, *Groundwork for the Metaphysics of Morals* (first published 1785, HJ Paton tr, Hutchinson & Co, 1969) 4:429.

²⁹ Jenny Harnett, ‘Reducing discrepancies between teachers’ espoused theories and theories-in-use: An action research model of reflective professional development’ (2012) 20(3) *Educational Action Research* 367; and Savaya and Gardner (n 24) 145.

those values can have on their decision-making.³⁰ This can be achieved through ‘integrated reflective practice’,³¹ which enhances students’ learning by developing metacognition,³² reflective judgement, critical evaluation, and higher-order thinking.³³

What follows is an outline of our reflective cycle (see Figure 1) which we hope will assist educators, students, and legal practitioners. In the initial phase of the reflective cycle, students are invited to engage in a thorough introspection to evaluate how their existing knowledge base influences their assimilation of new information. Drawing on the principles derived from Kant’s Transcendental Idealism (TI), this stage is designed to foster awareness of the potential for students’ preconceived notions and experiential learning to colour their interpretations and understandings of novel information. Educators are urged to create an environment that encourages students to recognise how their prior knowledge and understanding might distort newly acquired information, thereby cultivating a critical self-awareness that is essential for their development as reflective practitioners.

The second phase of the cycle introduces students to dialectical reasoning, which is aimed at enhancing their analytical and evaluative capabilities. This phase is inspired by Hegel’s exploration of dialectics and compels students to engage with and critically evaluate contrasting viewpoints. In doing so, students will refine their argumentation skills and deepen their comprehension of the scope of positions that can be adopted in complex legal issues. Practically, this involves not only articulating their own viewpoints but also engaging meaningfully with the contributions of their clients, respecting their

³⁰ Mark Baldwin, ‘Critical reflection: Opportunities and threats to professional learning and service development in social work organizations’ in Mark Baldwin and Nick Gould (eds), *Social work, critical reflection and the learning organization* (London: Routledge, 2004) 41; Mary Isaacson, ‘Clarifying Concepts: Cultural Humility or Competency’ (2014) 30 *Journal of Professional Nursing* 251; Debra Chopp, ‘Addressing Cultural Bias in the Legal Profession’ (2017) 41(3) *NYU Review of Law and Social Change* 367.

³¹ Michele M Leering, ‘Integrated Reflective Practice: A Critical Imperative for Enhancing Legal Education and Professionalism’ (2017) 95(1) *Canadian Bar Review* 47, 50.

³² Metacognition is the process of thinking about one’s own thinking. See, John H Flavell, ‘Metacognition and cognitive monitoring: A new area of cognitive–developmental inquiry’ (1979) 34(10) *American Psychologist* 906; John H Flavell, ‘Speculations about the nature and development of metacognition’ in Franz E Weinert and Rainer H Kluwe (eds), *Metacognition, Motivation and Understanding* (Lawrence Erlbaum Associates, 1987) 21–29.

³³ Michele M Leering, ‘Perils, pitfalls and possibilities: introducing reflective practice effectively in legal education’ (2019) 53(4) *The Law Teacher* 431, 438.

clients' autonomy and the insights provided by their unique lived experiences. This reciprocal engagement is pivotal in shaping a legal practitioner who is both insightful and empathetic.

In the third phase, the cycle guides students through a deconstructive analysis, inspired by Derrida's work on challenging the precedence of certain forms of knowledge or values. This critical examination compels students to identify and interrogate their inherent preferences in their reasoning processes. By systematically dismantling these preferences, students are enabled to achieve a more accurate, balanced, and equitable understanding of the cases they handle, ensuring their approach to legal analysis is both comprehensive and ethically sound.

The penultimate phase of the cycle leads on from preferences to look more closely at cognitive biases. It is dedicated to addressing and identifying explicit, implicit, and structural cognitive biases that may pervade legal education and practice. It is imperative that students are equipped to recognise these biases and adjust their behaviour and reasoning accordingly. This awareness is crucial in ensuring that their professional judgments and interactions with clients are not adversely affected by unacknowledged preconceptions, predispositions, and biases, thereby upholding the integrity of their practice.

The final phase in the cycle focuses on the critical role of effective communication with particular focus on the nuances of language. Students must become cognisant of the potential misunderstandings that can arise from linguistic differences, which may be further complicated by diverse cultural backgrounds and varying lived experiences. This stage emphasises the importance of enhancing communicative clarity and precision, ensuring that students can convey meanings accurately and sensitively in their interactions with clients. The ability to navigate these linguistic challenges is indispensable, especially in contexts where the clients' experiences or first languages differ significantly from those of the student.

The aim of this reflective cycle is to ensure that students' acquired knowledge, namely knowledge provided by the client, is not tainted by bias or their predetermined values. Through this process, students are prepared to become not only competent legal professionals but also perceptive and humane advocates for their clients.

This paper will next argue that there is a need for adopting a constructivist approach in relation to reflective practice in legal education. It will then proceed by examining moral reasoning in Kant's ethics, namely Kant's Categorical Imperative, and its role in promoting client care through concepts such as impartiality and client dignity. It will then proceed to construct an integrative reflective model, at the metacognition level, which is inspired by Kant's TI.

An epistemology of integrative reflective practice

Established models of reflection, such as those of Gibbs,³⁴ Johns,³⁵ and Driscoll³⁶ guide the student through a cyclical model of reflection that focusses on experience, emotional responses, and analysis.³⁷ What these reflective cycles do not offer is space and a structure to allow the student to consider the impact their pre-existing knowledge, or implicit bias, may have on the acquisition of new knowledge. These reflective models focus on experience and not the intrinsic link between a student's predicate knowledge (their knowledge base) and the new knowledge that they are experiencing. Other reflective models, such as those suggested by Bain et al and Ryan, also do not specifically address the issue of student bias and its potential impact on acquired knowledge. These authors highlight the complex stages of reflection, ranging from the descriptive to the application of theory and experience to explain, evaluate, and transform practice.³⁸

Reflection, which ostensibly involves a conscious objective and is required to display evidence of learning,³⁹ must 'reach the critical level for deep, active

³⁴ Graham Gibbs, *Learning by Doing: A Guide to Teaching and Learning Methods* (Further Education Unit 1988).

³⁵ Christopher Johns, *Engaging reflection in practice: A narrative approach* (Blackwell Publishing 2006).

³⁶ John Driscoll, *Practising Clinical Supervision* (2nd edn, Balliere-Tindall Elsevier 2006).

³⁷ Tony Ghaye, 'Into the reflective mode: bridging the stagnant moat' (2000) 1(1) *Reflective Practice* 5-9, 7.

³⁸ John Bain, Roy Ballantyne, Colleen Mills and Nita Lester, *Reflecting on practice: Student teachers' perspectives* (Post Pressed 2002); Mary Ryan, 'The pedagogical balancing act: teaching reflection in higher education' (2013) 18(2) *Teaching in Higher Education* 144.

³⁹ Jennifer A Moon, *Learning Journals: A Handbook for Reflective Practice and Professional Development* (Routledge 2006).

learning to occur'.⁴⁰ Critical reflection involves giving reasons 'for decisions or events which takes account of the broader historical, social, and/or political contexts'.⁴¹ This holistic approach to critical reflection can be applied to live-client clinics to facilitate the evaluation of historical, social, and political issues relating to a particular client.

Some commentators distinguish between reflective practice and reflexivity because each concept has a different meaning depending on the context of its application.⁴² This article incorporates reflexivity within the broader definition of reflection. Reflexivity, which is a contested term in social theory, is defined as 'the regular exercise of the mental ability, shared by all normal people, to consider themselves in relation to their (social) contexts and vice versa'.⁴³ According to Archer, 'subjective powers of reflexivity mediate the role that objective structural or cultural powers play in influencing social action and are thus indispensable to explaining social outcomes'.⁴⁴ This definition encompasses two elements: an introspective dimension which Archer refers to as 'internal conversation',⁴⁵ and an awareness that this internal conversation is social in nature and is, therefore, linked to human agency.⁴⁶ Agency involves 'the process of conscious and purposive human action'. In the context of CLE, reflexive practice can be said to require a student to engage in inner speech, which then directs their agency. The focus here is on metacognition within reflective practice, as it considers the strategy of adopting a critical perspective on the process of acquiring and evaluating new knowledge.⁴⁷ In this respect, metacognition can be applied in CLE as a means of enhancing reflection by

⁴⁰ Mary Ryan and Michael Ryan, 'Developing a Systematic, Cross-Faculty Approach to Teaching and Assessing Reflection in Higher Education' (Strawberry Hills, New South Wales: Australian Learning and Teaching Council, 2011) 3.

⁴¹ Neville Hatton and David Smith, 'Reflection in Teacher Education: Towards Definition and Implementation' (1995) 11 *Teaching and Teacher Education* 33, 41.

⁴² Lynelle Watts, 'Reflective Practice, Reflexivity, and Critical Reflection in Social Work Education in Australia' (2019) 72 *Australian Social Work* 8

⁴³ Margaret S Archer, *Making Our Way through the World: Human Reflexivity and Social Mobility* (Cambridge University Press 2007) 4.

⁴⁴ *ibid* 5.

⁴⁵ Margaret S Archer and Pierpaolo Donati, 'The Plural Subject versus the Relational Subject' in Pierpaolo Donati and Margaret S Archer, *The Relational Subject* (Cambridge University Press 2015) 61.

⁴⁶ Norbert Wiley, 'Inner speech and agency' in Margaret S Archer (ed), *Conversations about reflexivity* (Routledge 2010) 17–38.

⁴⁷ Paul Pintrich, 'The Role of Metacognitive Knowledge in Learning, Teaching, and Assessing' (2002) 41(4) *Theory into Practice* 219; Casey (n 21)346.

encouraging students to think about the acquisition and construction of client knowledge.

Constructivist theory of education postulates that knowledge cannot exist outside a person's mind; truth is not absolute; and knowledge, rather than being discovered, is constructed through experience.⁴⁸ Informed by the ideas of Dewey, Piaget, and Vygotsky, constructivist pedagogy's roots can be traced to the philosophies of Visco and Kant.⁴⁹ Constructive learning involves a self-regulatory process of resolving conflict between existing viewpoints of the world and new insights which contract this outlook. Resolving such conflict entails constructing new representations of the world through cooperative social activity and debate.⁵⁰ Constructivism is, therefore, a theory of learning, rather than a theory of teaching.⁵¹

Experiential methods such as live-client clinics are examples of constructivist learning.⁵² Due to the subjective nature of constructivist learning, 'meaning, knowledge, and conceptual structures'⁵³ are constructed differently by each student. Consequently, students should be cognizant that they may view phenomena such as world events, words, and cultural norms differently from their clients. Students, therefore, require a framework which can guide their construction of acquired knowledge. However, such a model, to enhance constructivist learning, should not prescribe a set of rigid rules.⁵⁴ To engage in constructivist learning, it is necessary to examine the role of moral reasoning in Kant's philosophy.

Moral reasoning

Moral reason, which underscores Kant's central thesis, 'must be both a cognitive and a conative power, entirely by itself able to determine how we

⁴⁸ Kaya Yilmaz, 'Constructivism: Its Theoretical Underpinnings, Variations, and Implications for Classroom Instruction' (2008) 86 *Educational Horizons* 161, 162.

⁴⁹ *ibid* 165.

⁵⁰ Catherine Twomey Fosnot, 'Constructivism: A Psychological Theory of Learning' in Catherine Twomey Fosnot (ed), *Constructivism: Theory, Perspectives and Practice* (Teachers College Press 1996) ix.

⁵¹ *ibid*; and Yilmaz (n 48) 168.

⁵² Yilmaz (n 48) 169.

⁵³ *ibid*.

⁵⁴ David Gijbels and Sofie M M Loyens, 'Constructivist Learning (Environments) and How to Avoid Another Tower of Babel: Reply to Renkl' (2009) 37 *Instructional Science* 499, 500.

should act and also able to motivate us to act on those judgments without relying on any prior desires'.⁵⁵ Kant put forward the Categorical Imperative (CI) as the supreme principle of morality: 'Act only on that maxim through which you can at the same time will that it should become a universal law'.⁵⁶ The CI is an unconditional, objective and rationally necessary principle which must be followed despite one's natural inclinations or desires to the contrary.⁵⁷ Philosophical rationalism involves '[a] commitment to reason as opposed to faith, prejudice, habit, or any other source of conviction considered to be irrational'.⁵⁸ Kant's rationality can, therefore, be equated to impartiality.⁵⁹ Impartiality can be achieved in one of two ways: by ensuring that persons acquire certain virtues such as fairness and non-discrimination; and by adopting certain principles or 'action guides' designed to lead to impartiality.⁶⁰ Kant's philosophy can contribute to developing impartiality by combining these two approaches.

In the second part of the *Metaphysics of Morals*, entitled The Doctrine of Virtue, Kant defines virtue in several ways. Common elements found in these definitions are the notions of self-constraint or self-mastery and a distinction between virtue and holiness.⁶¹ Kant defines a 'holy (superhuman) being'⁶² as a form of moral perfection for a rational person, who is resistant to contra-moral actions and, consequently, does not require any constraints to act in accordance with the moral law.⁶³ Virtue, on the other hand, expresses itself in the form of resistance to inclinations and, thus, is a form of self-constraint.⁶⁴ Kant acknowledges that human beings cannot possibly be expected to avoid acting on their inclinations because of the 'frailty (fragilitas) of human

⁵⁵ Roger J Sullivan, *Immanuel Kant's Moral Theory* (n 67) 45.

⁵⁶ Kant *Groundwork for the Metaphysics of Morals* (n 28) 4:420-421 (emphasis in original).

⁵⁷ Robert Johnson and Cureton Adam, 'Kant's Moral Philosophy' in Edward N. Zalta (ed), *The Stanford Encyclopedia of Philosophy* (Spring 2021 Edition) < <https://plato.stanford.edu/archives/spr2021/entries/kant-moral/> > accessed 20 April 2024.

⁵⁸ Antony Flew, 'A Dictionary of Philosophy' (2nd edn, St. Martin's Griffin 1984), see 'Rationalism'.

⁵⁹ Bernard Gert, *Morality: Its nature and justification* (Oxford University Press, 1998).

⁶⁰ Albert W Musschenga, 'The Debate on Impartiality: An Introduction' (2005) 8 *Ethical Theory and Moral Practice* 1.

⁶¹ Kant *Groundwork for the Metaphysics of Morals* (n 28) 6:405; Anne Margaret Baxley, 'Kantian Virtue' (2007) 2 *Philosophy Compass* 396, 398.

⁶² Kant *Groundwork for the Metaphysics of Morals* (n 28) 6:405.

⁶³ Anne Margaret Baxley, 'Kantian Virtue' (2007) 2 *Philosophy Compass* 396, 398.

⁶⁴ Kant *Groundwork for the Metaphysics of Morals* (n 28) 6:405.

nature'.⁶⁵ Accordingly, 'a human being's striving after this end always remains only a progress from one perfection to another'.⁶⁶ In other words, virtue is not something a person fully achieves, but rather strives for.

How should a person exercise self-constraint? The answer involves examining Kant's second formulation of the CI, the formula of respect for the dignity of persons.⁶⁷ According to this formula: 'Act in such a way that you always treat humanity, whether in one's own person or in the person of another, never simply as a means, but always at the same time as an end'.⁶⁸ This formula is often interpreted as Kant's law of justice by prohibiting acting in ways that deny respect to others, including oneself.⁶⁹ The second formula 'is a norm of impartiality' in the sense that it abstracts the information that underpins one's subjective preferences.⁷⁰ This formula, therefore, not only promotes impartiality but also holds that 'every person is equal with others'.⁷¹ This commitment to equality ensures that every client is worthy of respect, regardless of their character.⁷² The second formula can, therefore, act as a powerful reminder that students ought to act in an impartial manner and to treat every client with equal respect. Acting impartially, in the Kantian sense, does not equate to requiring students to dismiss all emotions as morally irrelevant.⁷³ Kant does not regard feelings and inclinations as morally irrelevant. He holds that a person should actively cultivate moral emotions: 'it is a duty to sympathize actively in [the] fate [of others]; and to this end it is therefore an indirect duty to cultivate the compassionate natural (aesthetic) feelings in us'.⁷⁴ Consequently, Kantian rationality neither require that students disconnect themselves from all emotions, nor does it neglect their moral value.⁷⁵

⁶⁵ *ibid* 6:446.

⁶⁶ *ibid*.

⁶⁷ Roger J Sullivan, *An Introduction to Kantian Ethics* (Cambridge University Press 1994) 29.

⁶⁸ Kant *Groundwork for the Metaphysics of Morals* (n 28) 4:421 (emphasis in the original).

⁶⁹ Roger J Sullivan, *An Introduction to Kantian Ethics* (n 67) 66.

⁷⁰ *ibid*.

⁷¹ Roger J Sullivan, *Immanuel Kant's Moral Theory* (n 55) 45. See, Kant *Groundwork for the Metaphysics of Morals* (n 28) 6:451.

⁷² *ibid* 6:465.

⁷³ John Paley, 'Virtues of autonomy: the Kantian ethics of care' (2002) 3 *Nursing Philosophy* 133, 139.

⁷⁴ Kant *Groundwork for the Metaphysics of Morals* (n 28) 6:457.

⁷⁵ Paley (n 73) 140; Daniel Guevara, *Kant's Theory of Moral Motivation* (Routledge 2020); Regarding apathy, see Lara Denis, 'Kant's Cold Sage and the Sublimity of Apathy' (2000) 4 *Kantian Review* 48.

Respect entails being cognizant of a person's dignity. Something has a dignity if it is 'exalted above all price and so admits of no equivalent'.⁷⁶ Dignity, in the Kantian sense, has an intrinsic value.⁷⁷ In other words, the second formula dictates against treating oneself or others as only instrumentally valuable.⁷⁸ Kant conceives dignity as both an empowerment (intrinsically valuable) and as a constraint (instrumentally valuable because human dignity has no price).⁷⁹ The latter dimension rejects the argument that respecting a person's dignity is necessary for respecting their autonomy.⁸⁰ The concept of dignity can give rise to paternalism in circumstances where a student concludes that the client's instructions might infringe on that client's dignity or self-worth. Dworkin defines paternalism as 'the interference with a person's liberty of action justified by reasons referring exclusively to the welfare, good, happiness, needs, interests or values of the person being coerced'.⁸¹ It is, therefore, necessary to distinguish dignity, which concerns self-worth from autonomy, which denotes self-governance.⁸² Kant's notion of autonomy is based on reason rather than what a person might desire, it is conceived as self-determination by reason and morality.⁸³ However, this does not mean that a student is entitled to act paternalistically where a client fails to act according to their duty to the moral law. For present purposes, Kant's autonomy is replaced with the concept advanced by Beauchamp and Childress: 'autonomy encompasses self-rule that is free from both controlling interference by others and limitations that prevent meaningful choice, such as adequate understanding'.⁸⁴ To promote client autonomy and ensure that the acquired knowledge from the client is not corrupted by factors, such as, the students' values and/or bias, it is instructive to examine Kant's work in relation to knowledge acquisition. This leads us to the conclusion that there is a need for an integrative model of reflection which

⁷⁶ Kant *Groundwork for the Metaphysics of Morals* (n 28) 4:434.

⁷⁷ *ibid* 4:435.

⁷⁸ Roger J Sullivan, *An Introduction to Kantian Ethics* (n 67) 69.

⁷⁹ Roger Brownsword, 'Bioethics Today, Bioethics Tomorrow: Stem Cell Research and the Dignitarian Alliance' (2012) 17(1) *Notre Dame Journal of Law, Ethics & Public Policy* 15, 27.

⁸⁰ Jonathan Herring, *Medical Law and Ethics* (7th edn, Oxford University Press 2018) 21.

⁸¹ Gerald Dworking, 'Paternalism' (1972) 56(1) *The Monist* 64, 65.

⁸² Suzy Killmister, 'Dignity: not such a useless concept' (2010) 36(3) *Journal of Medical Ethics* 160.

⁸³ Alan J Kearns, 'A Duty-Based Approach to Nursing Ethics & Practice' in P Anne Scott (ed), *Key Concepts and Issues in Nursing Ethics* (Springer 2017) 18.

⁸⁴ Tom L Beauchamp and James F Childress, *Principles of Biomedical Ethics* (Oxford University Press 2019) 58.

is prospective in nature, reflecting on the impact that a student could have in a live-client clinic, rather than reflection *ex post facto*.

Constructing an integrative reflective model

Stage 1 – Looking-within

The first stage in the proposed reflective cycle is one of self-reflection, viz. reflection on the knowledge that one already possesses and the impact of the thinker on the process of acquiring new knowledge. This is the foundation of the reflective cycle and is based on Kant's TI.

TI attempts to demonstrate that the student is a factor which can disrupt and interfere with the acquisition of new knowledge. A person understands the world that they observe and rationalise by applying preceding relevant knowledge to the process of rationalising that which is new. To show the limits of knowledge, Kant first explains how persons can come to know the world and what counts as knowledge.⁸⁵ He sought to achieve this through his doctrine of TI.⁸⁶

For Kant, the term 'transcendental' refers to the transcendental ego,⁸⁷ the part of a human that synthesises sensations and, in doing so, helps them understand the world which they perceive.⁸⁸ Inclusion of the term 'transcendental' leads to the conclusion that, *prima facie*, Kant considers idealism from the position of the transcendental ego – from the position of the person's own understanding which is predicated on their sensory experience of the world around them. Kant posits that the only knowledge that can be true is knowledge derived from reason and understanding, because all sensory and experiential knowledge is merely an illusion of knowledge.⁸⁹ By rejecting Hume's causality and the Leibnizian system, Kant concludes that, separately, experience and reason are not able to provide knowledge.⁹⁰ He, therefore, rejects the empiricists' claim that one can infer that all knowledge arises from experience on the basis that

⁸⁵ Roger J Sullivan, *Immanuel Kant's Moral Theory* (n 55) 11.

⁸⁶ Immanuel Kant, *Critique of Pure Reason* (Everyman 1993) A491/B519.

⁸⁷ Saurabh Todariya, 'Synthesis and Transcendental Ego: A Comparison of Kant and Husserl' (2020) 37 *Journal of Indian Council of Philosophical Research* 265.

⁸⁸ David Carr, Kant, 'Husserl, and the Nonempirical Ego' (1977) 74(11) *The Journal of Philosophy* 682.

⁸⁹ Immanuel Kant, *Prolegomena to Any Future Metaphysics* (Paul Carus tr, revised by James Ellington, 2nd edn, Hackett Publishing Company 2001) 107.

⁹⁰ Roger Scruton, *Kant* (Oxford University Press 1982) 17.

all knowledge has its foundation in experience.⁹¹ It is only in the amalgamation of experience and reason that knowledge is possible.⁹² This form of knowledge is said to be ‘genuine and objective’ because it transcends one’s point of view and ‘makes legitimate claims about the independent world’.⁹³ However, it is ‘impossible to know the world ‘as it is in itself’, independent of all perspectives’.⁹⁴ In other words, a person cannot cognize objects beyond the limits of possible experience.⁹⁵ In the following passage, Kant considers the impact of space and time on knowledge:

Space is not something objective and real, nor a substance, nor an accident, nor a relation; instead, it is subjective and ideal, and originates from the mind’s nature in accord with a stable law as a scheme, as it were, for coordinating everything sensed externally.⁹⁶

Here, space is not referred to in the cosmological sense, rather, in the sense of a physical state in which everything resides. Kant, along with many of his successors, argues that space is a cognitive function in order that a person can arrange the world around them.⁹⁷ In other words, this cognitive approach⁹⁸ holds that persons actively seek out experiences from their environment for the purposes of making sense of the world around them.⁹⁹

Kant’s argument is transcendental because it is concerned with the elements of human cognition, which are not strictly empirical but based on sensation and

⁹¹ Kant *Critique of Pure Reason* (n 86) B1.

⁹² Scruton (n 90) 18.

⁹³ *ibid.*

⁹⁴ *ibid.*

⁹⁵ Nicholas F Stang, ‘Kant’s Transcendental Idealism’ (Spring 2021 Edition) in Edward N Zalta (ed), *The Stanford Encyclopedia of Philosophy*, available at <https://plato.stanford.edu/archives/spr2021/entries/kant-transcendental-idealism/> accessed 20 April 2024.

⁹⁶ Immanuel Kant, ‘On the Form and Principles of the Sensible and the Intelligible World’ in *Theoretical Philosophy: 1755-1770* (D Walford and R Meerbote tr, Cambridge University Press 1992).

⁹⁷ Such as *ibid* and Lorne Falkenstein, *Kant's Intuitionism: A Commentary on the Transcendental Aesthetic* (University of Toronto Press 1995).

⁹⁸ There is not one universal theory of cognition but a multiplicity of approaches. See Kevin Wheldall (ed), *Developments in Educational Psychology* (2nd edn, Taylor & Francis 2009).

⁹⁹ Caroline Maugham and Julian Webb, *Lawyering Skills and the Legal Profession* (2nd edn, Cambridge University Press 2005) 38.

intuition.¹⁰⁰ ‘Sensation’, in the Kantian sense, denotes any experience of knowledge, be that sensory or by virtue of reasoning and, therefore, forms part of one’s conscious recognition.¹⁰¹ In the context of live-client clinics, a student’s sensation could be multifaceted: their knowledge of a client; the information provided by the client; or the reasoning the student employs to devise a theory of the case.

Kant also uses the term ‘transcendental’ to refer to ‘transcendental objects’.¹⁰² By observing an object, or attempting to understand a sensation, a person imposes themselves and all of the pervasive flaws of their knowledge on the object of their inquiry.¹⁰³ In Kant’s terminology, an object in itself is referred to as the ‘noumenon’, while the object as we perceive it is the ‘phenomenon’.¹⁰⁴ This ability to recognise phenomena over noumena when presented with a sensation or source of new knowledge is essential in reflecting on the impact that students have on the process of knowledge acquisition. This sensation itself is already altered to some degree before the student begins to rationalise its meaning and impact on their knowledge base, and so in any mode of reflection, it must be recognised that the thinker is, in fact, a source of knowledge-corruption. Kant’s TI, therefore, argues that there is little that is perceived or known in its raw state, the mind imposes on an object or sensation, a set of values in order that we might understand and make sense of them. Without recognising that the student is themselves a potential source of knowledge corruption, any metacognitive reflective cycle will have inherent limits viz. the student’s own ability to corrupt the cycle by not recognising that the student’s experience needs to be rationalised to be understood. The first stage of the proposed cycle is intended to facilitate students being able to recognise the impact that their rationalisation of experience can have on the acquisition and potential corruption of that knowledge, namely knowledge provided by the client.

¹⁰⁰ Kant, *Critique of Pure Reason* (n 86).

¹⁰¹ Lorne Falkenstein, ‘Kant’s Account of Sensation’ (1990) 20(1) *Canadian Journal of Philosophy* 63.

¹⁰² Immanuel Kant, *Critique of Pure Reason* (n 86) A108. See also, Henri E Allison, ‘Things in Themselves, Noumena, and the Transcendental Object’ (1978) 32(1) *Dialectica* 41.

¹⁰³ NB There is little consensus in the vast body of literature surrounding Kantian ethics and so this description should be seen as a simplification and a cautionary note sounded over its position on Kant’s work. See Lucy Allais, ‘Kant’s One World: Interpreting ‘Transcendental Idealism’ (2004) 12(4) *British Journal for the History of Philosophy* 655.

¹⁰⁴ Immanuel Kant, *Critique of Pure Reason* (n 86) B26-B27.

The knowledge that comes to a student's appreciation can only be understood when they apply the basic aggregate of all relevant knowledge that they possess to date to the sensation and learning process. This application creates a veneer which coats all new knowledge with the student's prevailing understanding of the world. Any imperfections in the student's knowledge base are applied to the new knowledge by virtue of this veneer, and so all knowledge is potentially flawed by imperfections in preceding relevant knowledge.¹⁰⁵ A student reading a client's witness statement will attempt to reconcile the new knowledge with the predicate knowledge that the student possesses. This process of reasoning and synthesis requires, to a greater or lesser degree, the application of a portion of the student's predicate knowledge to the sensation. This creates a barrier between the client's statement and the student's appreciation or understanding of the facts as they are experienced by the client. The student can engage in reflecting on their own knowledge base to understand how it affects the acquisition and assimilation of the new knowledge, derived from the client, as a sensation.

The prospective nature of this reflective cycle enables the student, prior to the client interview, to reflect upon the impact they are about to have on the interview to lessen that impact and, in doing so, give effect to the autonomy and dignity of their client. The student will need to rely on pre-existing knowledge in the interview; however, it is important to reflect on the integrity of that pre-existing knowledge to seek out gaps associated with relevant legal knowledge, client-specific knowledge, or general knowledge which is necessary for the fullest understanding of the client and their legal issue.

As elements of the client's 'story', which are acquired during the initial client meeting or the client's witness statement, are assimilated into the student's knowledge base, the totality of their relevant knowledge develops and so the veneer that they impose on the next client also develops. It is impossible to draw a zero-sum equation in terms of reviewing one's epistemological flaws using TI.¹⁰⁶ The more one becomes accustomed to identifying a veneer applied to new knowledge, the more one creates a form of new knowledge which may also be pervasively flawed or skewed by the incumbent knowledge base. The

¹⁰⁵ Annabel Evans and Bryan Rooney, *Methods in Psychological Research* (Sage Publications 2008) 2-6.

¹⁰⁶ Transcendental reflection itself is not new. For example, see: James Tully, 'Wittgenstein and Political Philosophy: Understanding Practices of Critical Reflection' (1989) 17(2) *Political Theory* 172.

process of applying TI through critical reflection to one's own knowledge would create an infinite regress,¹⁰⁷ a process of continually addressing the disfiguring of knowledge by incumbent knowledge, yet always aware that knowledge precedes knowledge in order that one should be able to identify knowledge. This threat of an infinite regress is necessary; Bouzanis argues that an infinite regress is a plausible possibility in reflective thinking.¹⁰⁸

By observing a sensation, one may gain an appreciation that their predisposed knowledge is required to attend to the sensation and, attending to a new sensation produces new knowledge which is predicated on that which is already 'known'. This could be likened to standing on a cliff edge and looking at a rope that disappears down into the abyss below; the end of the rope is not visible from the cliff edge. However, it is not necessary to reach the end of the rope to appreciate it extends into the depths, it is only necessary to peer into the darkness and understand that the rope extends beyond our view. If we trace the rope as far as necessary to engage in meaningful reflection, then we can avoid the nihilistic tendencies which lurk in the darkness. The way to achieve this 'happy medium' may lie here in application of Hegelian dialectical reasoning¹⁰⁹ and irregular progress which is used in the second stage of this cycle – working collaboratively with the client and viewing them as an integral, autonomous, and valuable element in the lawyering process.¹¹⁰

Stage 2 – Looking at one another

Dialectical reasoning can assist a student engaging in transcendental idealist reflection to resist the collapse into an infinite regress.¹¹¹ Hegel states that fear from 'falling into error' introduces a sense of distrust in the process of thinking critically and reflecting on the basis of knowledge.¹¹² He suggests that this fear of deep critical reflection is little more than a phobia, an irrational fear of discovering the truth through the processes of critical thinking and reasoning. Rather than fearing the critical search into the unknown, students ought to

¹⁰⁷ Christoforos Bouzanis, 'For reflexivity as an epistemic criterion of ontological coherence and virtuous social theorizing' (2017) 30(5) *History of the Human Sciences* 125.

¹⁰⁸ *ibid.*

¹⁰⁹ Georg Wilhelm Friedrich Hegel, *The Phenomenology of Mind* (James Baillie tr, 2nd edn, George Allen and Unwin 1971).

¹¹⁰ These are the words of Hayek, though are used in a very different context. The original can be found here: Friedrich Hayek, *Capitalism and the Historians* (Routledge 1954, reprinted 2003) 14.

¹¹¹ Hegel, *The Phenomenology of Mind* (n 109) 132-133.

¹¹² *ibid.*

embrace it as a search for an analytical understanding of the limits of their knowledge.

Hegel's dialectics can be described as a battle between two combatants, both sustained by one thinker.¹¹³ Hegel, much like Plato, believed that the world and human progress consists of attempts to reconcile opposites.¹¹⁴ Neither of these combatants can exist without their opposing number.¹¹⁵ Reasoning and human development are arguably much the same in Hegel's mind. The student may acquire or devise an argument (a thesis) and, in seeking to make progress, will acknowledge an opposing or inconsistent argument (antithesis). They may find some ideas which contribute to the original argument, making it 'better' overall (synthesis); thus, creating a never-ending chain of irregular progress and knowledge, based on combatants or opposites.¹¹⁶ It should be noted here that Hegel did not directly refer to thesis-antithesis-synthesis in his work and that the 'textbook' Being-Nothing-Becoming is far closer to the arguments posted in his own work¹¹⁷; however, post-Hegelian dialectics adopted the 'thesis-antithesis-synthesis' formula which is now commonly associated with Hegelian Dialectics. In fact, Hegel sees the dialectics as being inherent in the sensation itself. It is the thinker's role to dismantle the familiarity that one has with the object, and to assess the component parts of the dialectical approach.¹¹⁸ Hegel writes:

Analysis is, however, the progression from the immediacy of perception to thought, insofar as the determinations, which

¹¹³ Clement Charles Julian Webb, *History of Philosophy* (Williams and Norgate 1915) 221.

¹¹⁴ Ellen M Mitchell, 'The Platonic Dialectic' (1888) 22(1/2) *The Journal of Speculative Philosophy* 212

¹¹⁵ Clement Charles Julian Webb, *History of Philosophy* (Williams and Norgate 1915) 221.

¹¹⁶ John McTaggart and Ellis McTaggart, *A Commentary of Hegel's Logic* (Cambridge University Press 1910); Geoffrey Reginald Gilchrist Mure, *A Study of Hegel's Logic* (Oxford University Press 1950); and, Michael Kosok, 'The Formalization of Hegel's Dialectical Logic: Its Formal Structure, Logical Interpretation and Intuitive Foundation', in Alasdair MacIntyre(ed), *Hegel: A Collection of Critical Essays* (University of Notre Dame Press 1972). For more recent discussions see: Jon Stewart, *The Unity of Hegel's "Phenomenology of Spirit": A Systematic Interpretation* (Northwestern University Press 2000); and, JM Fritzman, *Hegel* (Polity Press 2014).

¹¹⁷ Michael Forster, 'Hegel's Dialectical Method' in Frederick C Beiser(ed), *The Cambridge Companion to Hegel* (Cambridge University Press 1993) 130-170.

¹¹⁸ Georg Wilhelm Friedrich Hegel, *Encyclopedia of the Philosophical Sciences in Basic Outline, Part I, Science of Logic* (first published in 1817, K Brinkmann and D O Dahlstrom trs, Cambridge University Press 2010) 80.

the object analysed contains amalgamated within itself, receive the form of universality by being separated...

This, however, is only one side, and the chief point consists in the unification of what has been severed.¹¹⁹

The aim of dialectics is the process of recognising the whole as the ultimate end goal and having a deep and critical understanding of the inherent dialectics that exists within the whole. If analysis is the application of thought to knowledge, to break it down into its component parts, then synthesis is the process of reorganising those parts into the whole and recognising that there is more to be understood from the whole than simply the sum of its component parts. It is not sufficient to tear apart a sensation and lay it bare, declaring that one has reflected on it and gained a critical knowledge of it. It is a higher-level responsibility of the student to reform the sensation and understand it as a whole and as more than the sum of its parts. When faced with a client, the student's legal education has trained them to focus on the acquisition of material facts and positive law. In doing so, it is easy to lose sight of the fact that the client's version of events represents their lived experience. Reducing a client to a set of material facts potentially overlooks the nuances of that particular client, their situation, and the 'indeterminate zones of practice'¹²⁰ that were outlined earlier in this article. For example, when reflecting on information that a client has provided, a student should consider what constituent parts of that information are pertinent or material to establish the basis for advice. However, in separating those component parts, Hegel's theory suggests that a person develops a knowledge of those parts in isolation at the expense of knowledge of the whole client or their situation which is more than the combination of their component parts. Hegel indicates that people retreat to the comfort of the certainty that comes from simply understanding something presented to them.¹²¹ This pacifies by leading a person to conclude that they 'understand' but this is achieved at the expense of developing knowledge which is obtained through the application of critical and reflective reasoning.¹²² This fear of critical reasoning (misology) leads us to a reductionist form of thinking, which is seeking simply to obtain some

¹¹⁹ *ibid.*

¹²⁰ Schön (n 9) 186.

¹²¹ Hegel, *Encyclopedia of the Philosophical Sciences in Basic Outline, Part 1, Science of Logic* (n 118) 11.

¹²² *ibid.*

immediate understanding of a sensation or observation.¹²³ Students, as critical and reflective thinkers, ought to resist this search for the immediacy of understanding and to apply themselves to the critical reflection of their knowledge and the basis for it.

Reflective cycles and processes are predominantly concerned with the dismantling of information, and this is necessarily the case in live-client clinics. Constructing the factual theory of the case from the client's story is necessary for the student to apply the relevant law to the client's case. However, in doing this it is possible to lose sight of what students learn from the entire situation and the client. As we have set out above,¹²⁴ there is the potential to lose holistic knowledge when separating the client from the 'facts' into their component parts which may result in the student failing to recognise the client's humanity,¹²⁵ and the general complexities of human interactions and relationships which are apparent in the 'indeterminate zones of practice'.¹²⁶

It is a natural progression to turn to Foucault at this point, to further support the point above, given that Foucault recognised the impact that Hegel had on his own work.¹²⁷ Foucault has alluded to this reducing of a client to a set of component parts, albeit in a different field of investigation. Foucault developed the concept of the 'medical gaze' in *The Birth of the Clinic*.¹²⁸ He suggests that the medicalisation of a person leads students to see only a failing organ or an ailment, and not the person as a whole. In the context of law clinics, this leaves a student with an unacceptable knowledge of the client, in that they purport to know only a part of the client and proceed to engage with that part with less regard for the client as a whole. Foucault argues that this process of gazing upon a patient and metaphorically dissecting them in the student's mind is dehumanising,¹²⁹ it strips the patient of their humanity and reduces them to

¹²³ *ibid.*

¹²⁴ Schön (n 9) 183.

¹²⁵ See the Kantian formula of humanity for a discussion of treating a person as an end in themselves, as opposed to a means to an end: Kant above 19, chapter 4.

¹²⁶ Schön (n 9) 186.

¹²⁷ Giovanni Vallebona and Bernadette Weber, 'Knowledge, Power and System in Hegel and Foucault: The Hegelian Impact on Foucault's Theories of Power' (2018) 39 (Special Issue 2) *Hegel Bulletin* 260.

¹²⁸ Michel Foucault, *The Birth of the Clinic: An Archaeology of Medical Perception* (A. M. Sheridan tr, 3rd edn, Routledge Classics 2003).

¹²⁹ Black Hawk Hancock, 'Michel Foucault and the Problematics of Power: Theorizing DTCAs and Medicalized Subjectivity' (2018) 43(4) *The Journal of Medicine and Philosophy* 439.

nothing more than, for example, a sore throat, a sprain, or gout.¹³⁰ Hegel may suggest that the knowledge of a problem that a person is suffering is insufficient without knowledge of the person and the problem as a whole. Notwithstanding the above, the process is paternalistic in nature as the student is deciding what information to give weight to, based on their interpretation of the client or the facts of the case. It is acknowledged here that the student possesses knowledge of the law and what the law (as an inanimate body of rules which evolves from external influence) considers to be material. However, the client may place emphasis on facts that are material to them and, dismissing these, engenders paternalism and the idea that the 'lawyer knows better'. The difficulty that arises here is that paternalism may run the risk of treating the client as a means to an end and not as an end in themselves.

One may argue that there is an intrinsic difference between the role of a medical practitioner and that of a lawyer. However, a client may approach a lawyer asking for advice on, neighbour nuisance, for example, and the lawyer may discover through effective client interviewing that the client's issue is not solely neighbour nuisance or that there is a root cause beyond neighbour nuisance. Likewise, the adviser may also discover that the type of nuisance that is complained about is not recognised by the law or is beyond the scope of the current rules of nuisance. It is inevitable that not every client will present with a claim which is actionable or has a reasonable chance of success. Dismissing that client is also paternalistic in nature as it devalues the issues that the client holds in high value as they do not meet the required standards for litigation. If a student were to recognise the value of these elements with which the client presents, there may be alternative means to resolving the dispute beyond legal proceedings which may both recognise the value of elements the client places weight on, and seeks to resolve the dispute which is, inevitably, why the client has approached the adviser in the first place. 'Seeing' the client as more than an isolated legal problem is, essentially, the same as treating the client as an end in themselves and, to that effect, recognising the client, their appreciation of their situation, and the transfer and assimilation of knowledge as part of a wider zone of practice. This draws us to the third stage in the cycle – working in solidarity with the client by seeking to establish the client's priorities, values, and aims.

¹³⁰ *ibid.*

Stage 3 – Working in unison

The starting point for developing this stage of the cycle is Derrida's deconstruction.¹³¹ Deconstruction has had reincarnations throughout its history; formerly in the Cartesian work on the discovery of a 'firm and permanent foundation',¹³² and latterly with Heidegger.¹³³ Derrida's work on deconstruction spans many texts and has itself suffered a form of reincarnation. The aspect which this article would draw out of Derrida's work is the concept of privilege in dialectics. Derrida's work, through his deconstruction, can be used to identify a flaw in this dialectical process; that flaw is an inherent privileging of one side over another.¹³⁴ One of the elements which deconstruction appears to present is the idea of privileging. There are two types of privileging: privileging in literature and privileging in philosophy.¹³⁵ For the purposes of this stage in our reflective cycle, we are applying the latter type to the dialectical mode in the previous stage.

The combatants that were identified earlier often consist of one privileged side over another. That privileged side could be the constituent part of a cognitive bias. It is the thinker's predisposition to one form of knowledge, or one value, or to one outcome that results in a privileging of one sensation over another. This could also be a preference for maintaining harmony in the face of new knowledge which would create disorder (or a state of *aporia*)¹³⁶ in a student's mind, or there could be other bases for the bias emanating from the thinker's

¹³¹ Jacques Derrida, *Positions* (A Bass tr, University of Chicago Press 1981); Jacques Derrida, *Dissemination* (B Johnson tr, The Athlon Press 1972); Jacques Derrida, 'Force of Law' (M Quaintance tr) in Drucilla Cornell, Michel Rosenfeld and David Gray Carlson (eds), *Deconstruction and the Possibility of Justice* (Routledge 1992).

¹³² John Cottingham, Robert Stoothoff and Dugald Murdoch, *The Philosophical Writings of Descartes* (Vol 3, Cambridge University Press 1988).

¹³³ Herman Rapaport, Heidegger and Derrida: Reflections on Time and Language: Reflections on Time and Language (University of Nebraska Press 1991).

¹³⁴ Thomas Habinek, *Ancient Rhetoric and Oratory* (Blackwell Publishing 2005) chapter 5.

¹³⁵ JM Balkin, 'Deconstructive Practice and Legal Theory' (1987) 96 *Yale Law Journal* 743; for more general but complete analyses of deconstruction in the field of legal theory, see Pierre Legrand, *Derrida and Law* (Routledge 2009).

¹³⁶ *Aporia* is a state of confusion or uncertainty which is often said to denote the adulthood of the mind. See Aristotle, *Metaphysics* (Penguin Classics 1998) Book Beta; Friedemann Buddensiek, 'Aporia in Aristotle's *Metaphysics* Beta' in George Karamanolis and Vasilis Politis, *The Aporetic Tradition in Ancient Philosophy* (Cambridge University Press 2017); Jacques Derrida, *Aporias* (T Dutoit tr, Stanford University Press 1993); Jacques Derrida, 'Force of Law' (M Quaintance tr) in D Cornell, M Rosenfeld, and DG Carlson (eds) *Deconstruction and the Possibility of Justice* (Routledge 1992).

ethical views, their beliefs, or opinions. Persons are often inclined to rationalise their thought patterns to avoid a state of aporia. Deconstruction for present purposes is not synonymous with ‘destruction’. It is in fact much closer to the original meaning of the word ‘analysis’ itself, which etymologically means ‘to undo’.¹³⁷ Deconstruction encourages the thinker to identify the inherent binary, dichotomy, or hierarchical structures within accepted knowledge and to challenge their inherency. Why should one mode of conveying knowledge be preferred over another? What is the outcome when that preference is reversed, how does it affect one’s knowledge and understanding, or a student’s appreciation of a client’s version of events?¹³⁸ In its most extreme sense, the adviser runs the risk of coercing the client into an action plan which the client does not now or had not previously envisaged. There is a fine line between the recommendations of a person in a position of power and trust and the implicit coercion of the client to pursue that specific recommendation. The client, who may not be legally trained, though they may be legally astute, places trust in their adviser and in return the adviser should adequately have regard for the client’s needs and desires, and take account of those matters which the client perceives as important. This stage of reflection offers space to the student to take account of the wishes and priorities of the client before recommending a course of action which can skew the client’s predispositions.

In extrapolating this form of deconstruction and applying it to reflection, the result is that the student ought to question the privileging of one form of acquiring knowledge, over the other. This also fits well with the process of thinking reflectively on the phenomenal knowledge one possesses or acquires and the means by which one adopts inherent preferences. However, the process itself is still strewn with privileging of many kinds. The concept of deconstruction encourages students to identify those forms of privilege and explore how they affect the acquisition of knowledge. In deconstructing one’s weddedness to a particular concept or form of knowledge, students may be presented with a cognitive bias, which brings us to the fourth stage of the reflective cycle.

¹³⁷ Barbara Johnson, *The Critical Difference: Essays in the Contemporary Rhetoric of Reading* (John Hopkins University Press 1980) 5.

¹³⁸ Per Linell, *The Written Language Bias in Linguistics* (University of Linköping 1982) iii.

Stage 4 – Thinking it through: addressing cognitive biases

University law clinics provide pro bono advice in several areas of law such as employment, family, housing, and immigration. Consequently, students act for clients from different cultural backgrounds, lived experience,¹³⁹ and nationalities. To ensure effective communication between students and their clients, it is necessary that students have the knowledge to recognise bias. Bias, in and of itself, does not necessarily mean that a student is failing to act in their client's best interest.¹⁴⁰ It is not being cognizant of, and addressing, one's bias that may lead to a failure to act in the client's best interest.

Literature on bias in the legal profession distinguishes between three types: explicit, implicit, and structural.¹⁴¹ Structural biases, also known as 'institutional' or 'societal', are processes that 'can lock in past inequalities, reproduce them, and indeed exacerbate them even without formally treating persons worse simply because of attitudes and stereotypes about the groups to which they belong'.¹⁴² Explicit bias refers to attitudes and stereotypes that are 'consciously accessible through introspection and endorsed as appropriate'.¹⁴³ Conversely, implicit biases are not consciously accessible through reflection.¹⁴⁴ These attitudes or stereotypes can affect the student's understanding, decision-making, and behaviour.

Chopp argues that 'a person's multiple identities give rise to cultural affiliations, and cultural affiliations are often at the root of implicit bias'.¹⁴⁵ Implicit biases are 'the most concerning' because students fail to recognise they

¹³⁹ Sarah Buhler and Rachel Stalker, 'Place-based education: Clinical Legal Education and ethics' in Madhloom and Hugh McFaul (eds) (n 15) 7–28.

¹⁴⁰ Karen Steinhauser, 'Everyone Is a Little Bit Biased' (2020) 16 March *American Bar Association* <

https://www.americanbar.org/groups/business_law/publications/blt/2020/04/everyone-is-biased/> accessed 20 April 2024.

¹⁴¹ Stacy L Burstin and Carmia N Caeser, 'Bias in the Legal Profession' in Leah Wortham et al (eds), *Learning from Practice: A Textbook for Experiential Legal Education* (3rd edn, West Academic Publishing 2016) 168.

¹⁴² Jerry Kang, Judge Mark Bennett, Devon Carbado, Pam Casey, Nilanjana Dasgupta, David Faigman, Rachel Godsil, Anthony G Greenwald, Justin Levinson and Jennifer Mnookin, 'Implicit Bias in the Courtroom' (2012) 59 *UCLA Law Review* 1124, 1133.

¹⁴³ *ibid*, 1132.

¹⁴⁴ *ibid*.

¹⁴⁵ Karen Steinhauser, 'Everyone Is a Little Bit Biased' (2020) 16 March *American Bar Association* <

https://www.americanbar.org/groups/business_law/publications/blt/2020/04/everyone-is-biased/> accessed 20 April 2024.

possess them.¹⁴⁶ Furthermore, individuals are likely to reject implicit biases upon discovering they possess such attitudes.¹⁴⁷ It is, therefore, essential that students are provided with a theoretical framework that allows them to reflect and address the values and attitudes they possess, especially those which are not aligned or conflict with the client's values or cultural background. A student drafting a client statement, or notes of their client meeting, may trigger memories from their meeting and provide more data for evaluation and interpretation.¹⁴⁸ Interpretation of data, however, is not a value neutral undertaking.¹⁴⁹ Interpretation is a creative process and, given that knowledge is the rationalised sensation, will invariably leave part of the student's experience, understanding, and reasoning within the interpreted material itself. It is, therefore, necessary that students are trained to avoid misrepresenting their client's information. This can be achieved by educating students to separate their own perceptions from their interpretation of acquired information or knowledge.¹⁵⁰

At this point, it is pertinent to note that there is no universally accepted definition of what amounts to a cognitive bias.¹⁵¹ Here, we rely on Haselton et al's definition of cognitive bias as 'cases in which human cognition reliably produces representations that are systematically distorted compared to some aspect of objective reality.'¹⁵² If a student has a particular preference for a particular theory of justice, they may feel disinclined to accept a course of action which purports to offer a different form of justice or equitable remedy. Likewise, in interviewing a client and later preparing their written advice, the student's understanding of a just outcome in reference to their legal studies may influence their advice to their client. However, there is no single concept of justice. Justice is a term which is examined by a set of theories, none of which are universally accepted as absolute. This bias in favour of antecedent

¹⁴⁶ *ibid.*

¹⁴⁷ Kang et al (n 142) 1132.

¹⁴⁸ J P "Sandy" Ogilvy, 'Observation' in Leah Wortham et al (eds), *Learning from Practice: A Textbook for Experiential Legal Education* (3rd edn, West Academic Publishing 2016) 75.

¹⁴⁹ *ibid.*

¹⁵⁰ Susan L Brooks and Inga N Laurent, 'Effective Communication and Professional Relationships' in Leah Wortham et al (eds), *Learning from Practice: A Textbook for Experiential Legal Education* (3rd edn, West Academic Publishing 2016) 83-109.

¹⁵¹ Sophie Stammers, 'Improving Knowledge Acquisition and Dissemination through Technological Interventions on Cognitive Biases' (2018) 68(6) *Educational Theory* 675.

¹⁵² Martie G Haselton, Daniel Nettle, and Paul W Andrews, 'The Evolution of Cognitive Bias' in David M Buss(ed), *The Handbook for Evolutionary Psychology* (Wiley 2005).

knowledge – that is, the knowledge of a particular theory of justice – may jeopardise the successful synthesis of knowledge from a client. If a student is a proponent of, let us say, retributive justice theory, that same student may find outcomes which effect distributive justice theories incompatible, and may interpret the law in a different manner. This could cause both a problem in terms of transfer of knowledge, but also in terms of legal practice. If a student, who believes that everyone who breaks the law should be punished, is dealing with a matter in vicarious liability, they must reflect in a meaningful way to identify the bias and ensure that it does not skew their perception and advice, since the tortfeasor is not the defendant where vicarious liability applies.

Possessing a cognitive bias may impact a student's approach to a client, and this should not go unchallenged, even by themselves. Earlier in this article, metacognition was described as thinking about thinking, or as the awareness of oneself as a thinking entity. Rollwage et al have recently demonstrated that those who hold radical beliefs suffer from a lack of metacognitive ability. Rollwage et al state that:

Within two independent general population samples [...] we show that individuals holding radical beliefs (as measured by questionnaires about political attitudes) display a specific impairment in metacognitive sensitivity about low-level perceptual discrimination judgments. Specifically, more radical participants displayed less insight into the correctness of their choices and reduced updating of their confidence when presented with post-decision evidence.¹⁵³

This demonstrates that there is a link between more radical or extreme views and the lack of metacognitive abilities. Therefore, holding views which are radical, using Rollwage et al's framework for gauging radical views, would likely be an insurmountable obstacle in reflective practice in law or legal education, which requires that students undertake critical reflection to progress their learning and development. To a lesser degree, a student or practitioner who possesses, for example, a confirmational bias, may find their metacognitive abilities impaired or skewed due to that bias.¹⁵⁴ If we possess

¹⁵³ Max Rollwage, Raymond J Dolan, and Stephen M Fleming, 'Metacognitive Failure as a Feature of Those Holding Radical Beliefs' (2018) 28 *Current Biology* 4014.

¹⁵⁴ Raymond S Nickerson, 'Confirmation Bias: A Ubiquitous Phenomenon in Many Guises' (1998) 2(2) *Review of General Psychology* 175.

confirmation bias, we are more likely to seek out or interpret knowledge which confirms a predisposition that we possess.¹⁵⁵

The position which clinic students ought to avoid, is blindness towards one's own privileging of knowledge, one's own biases, and one's own process of TI, which all can skew, manipulate, or distort the knowledge that one is attempting to reconcile or comprehend. These mechanisms encourage students to engage critically with the work and this, in turn, incites an active engagement in the learning process which is often linked to increased retention of knowledge.¹⁵⁶ Identifying these forms of bias or privileging is an important step in identifying the impact of these biases and privileges on the acquisition and interpretation of new knowledge. However, the process of conveying knowledge carries with it a potential epistemological hazard, language. The fifth stage of the proposed cycle requires that students reflect on the impact that communication, namely language, can have on their acquisition of new knowledge.

Stage 5 – Effective communication – the role of language

Lawyers and clients who do not share the same cultural background face the challenge of establishing a trusting relationship where effective communication can take place.¹⁵⁷ The issue of trust concerns both students and their clients. Fiske and Dupree report that, '[p]eople decide quickly another's apparent intent: Who is friend or foe, on their side or not, or a co-operator or competitor'.¹⁵⁸ The authors' study reveals that lawyers, while respected, were not trusted. The study highlights the importance of students establishing a rapport with their clients during the initial client meeting, as this can impact on the level of trust and the overall conduct of the case. Mistrust on the part of the client could result in the student's advice being ignored, to the client's detriment. Thus, trust may impact on the student's ability to effectively

¹⁵⁵ Margit E Oswald and Stefan Grosjean, 'confirmation bias' in Rüdiger F Pohl (ed), *Cognitive Illusions: A Handbook on Fallacies and Biases in Thinking Judgement and Memory* (Psychology Press 2004).

¹⁵⁶ Pina Tarricone, *The Taxonomy of Metacognition* (Psychology Press 2011); Josiane Parrouty, *Philosophy of Education and Critical Thinking* (Lulu Publishing 2019).

¹⁵⁷ Susan Bryan, 'The Five Habits: Building Cross-Cultural Competence in Lawyers' (2001) *Clinical Law Review* 33, 42.

¹⁵⁸ Susan T. Fiske and Cydney Dupree, 'Gaining trust as well as respect in communicating to motivated audiences about science topics' (2014) 111(4) *Proceedings of the National Academy of Sciences of the United States of America* 13593, 13594.

communicate with their client. Communication is defined as any process by which individuals generate information, ideas, feeling, and perceptions.¹⁵⁹

A student's failure to properly communicate with their client, can have negative consequences in terms of understanding their client's values and objectives. By becoming more cognizant of the elements of communication, such as language, students can 'slow' down the process of interaction¹⁶⁰ and make conscious choices during critical moments.¹⁶¹ Language, as a social tool, enhances the benefits of cooperation, facilitates agreements, and coordinates actions.¹⁶² However, language barriers can impact on the quality of legal advice.¹⁶³ There is one form of bias that students ought to acknowledge and consider the impact of – that is the inherent deficiency of language and its ubiquity. Persons can only convey their arguments and descriptions to their target audience through the use of language.

Wittgenstein argued that the language that we employ, and that which the reader employs, are not always synchronised and that dislocation between the usages of language can lead to the corruption of knowledge.¹⁶⁴ Wittgenstein refers to the state in which language is used as a game;¹⁶⁵ that is not some narcissistic or Svengali form of game, but rather a situational influence on the form and meaning of language which can be internal or externally relevant. Wittgenstein's games concern the nature of information conveyed from one person to the next. An element of that nature is the context within which the information is contained. Unfortunately, context is not readily conveyed with the information and, as a result of this, the meanings associated with language are precariously balanced. Language has the meaning that is generally ascribed

¹⁵⁹ Sandra Hybels and Richard L Weaver II, *Communicating Effectively* (9th edn, McGraw-Hill 2008) 6.

¹⁶⁰ *ibid*, chapter 4.

¹⁶¹ Susan L Brooks and Inga N Laurent, 'Effective Communication and Professional Relationships' in Leah Wortham et al (eds), *Learning from Practice: A Textbook for Experiential Legal Education* (3rd edn, West Academic Publishing 2016) 87.

¹⁶² Mark Pagel, *Wired for Culture: The Natural History of Human Cooperation* (Penguin Books Limited 2012).

¹⁶³ Cordia Chu, 'Cross-cultural health issues in contemporary Australia' (1998) 3(1-2) *Ethnicity & Health* 125; Christoph A. Hafner, 'Professional communication in the legal domain' in Vijay Bhatia and Stephen Bremner, *The Routledge Handbook of Language and Professional Communication* (Routledge 2014) 349-362.

¹⁶⁴ Ludwig Wittgenstein, *Philosophical Investigations* (GEM Anscombe, PMS Hacker and J Schulte tr, 4th edn, Wiley-Blackwell 2010).

¹⁶⁵ William H Brenner, *Wittgenstein's Philosophical Investigations* (State University of New York Press 1999) 12-31.

to it and recognised by society. This explains how the meaning of words develops as societies use of such words changes. When we fail to convey context and intended meaning along with words, we raise the risk that those words will be misinterpreted and, therefore, misunderstood. It is, therefore, an imperative that students in preparation for a live client interview consider the words that the clients use and seek to foster candour. For example, multiple questions on the same point or issue may be used to seek to ascribe context to the words conveyed by the client to more accurately understand the meaning that the client has in mind.

To remedy this disconnect and the associated corruption of knowledge, students ought to be taught that language, and the game in which it is situated, is a form of bias,¹⁶⁶ albeit a bias that one cannot simply eradicate. Students possess a preference for their contextual and definitional understanding of the words that are used to communicate with one another. Without adequate space to reflect on these inherent contexts and ascribed meanings, there is a very real possibility that the words received by the student will paint a picture not intended by the client. Language bias is one to be accounted for and the impact of which is assessed on the learning process and the integrity of knowledge. Words such as ‘gay’, ‘fathom’, ‘wench’ and ‘catfish’ – to name a few, are words with such variations in usages that the subject matter can drastically be changed beyond recognition. In this respect, and for the purposes of the reflective cycle developed in this paper, it is not possible to completely mitigate the effect of language bias on the learning process and the acquisition of new knowledge. It is a form of bias that must be accommodated and that will cause students to raise a caveat as to the certainty of the context and meaning of words used and the very human trait of fallibility.

¹⁶⁶ Emilio Ribes-Iñesta, ‘Human Behavior as Language: Some Thoughts on Wittgenstein’ (2006) 34 *Behavior and Philosophy* 109.

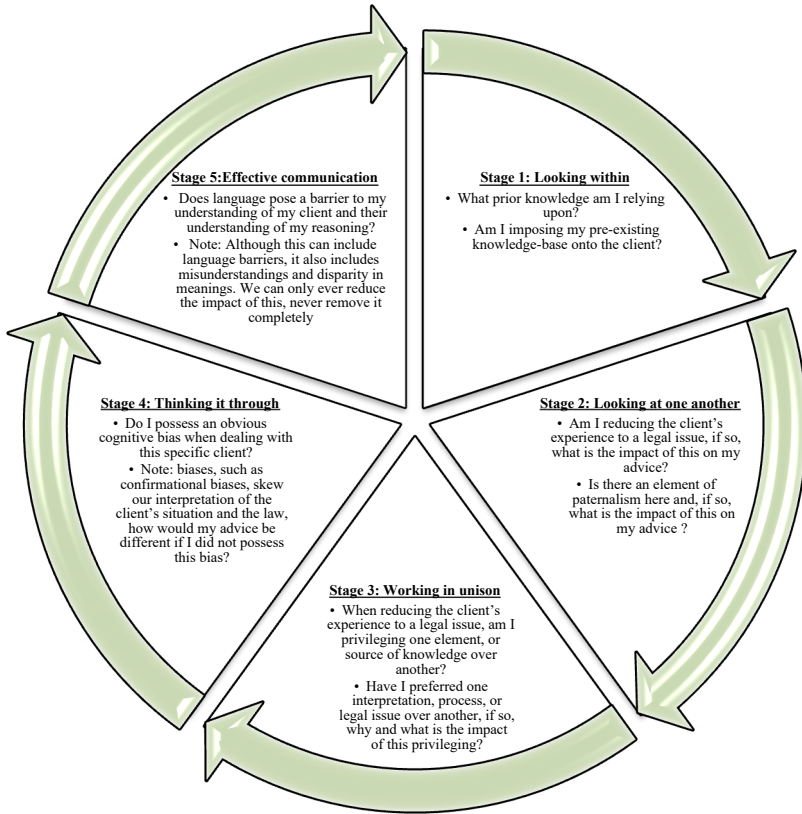


Figure 1: Diagrammatic model for integrative reflection

Conclusion

The term 'reflective practice', which was coined by Schön,¹⁶⁷ is now considered one of the most popular theories of professional education, such as

¹⁶⁷ Donald Schön, *Educating the Reflective Practitioner: Towards a New Design for Teaching and Learning in the professions* (Jossey-Bass 1987); Donald Schön, *The Reflective Practitioner: How Professionals Think in Action* (Routledge 1992).

that of nursing¹⁶⁸, medicine,¹⁶⁹ social work,¹⁷⁰ and law.¹⁷¹ With regard to the legal profession, in England and Wales, reflection is endorsed by the two main branches of the legal profession, the Bar Standards Board¹⁷² and the Solicitors Regulation Authority.¹⁷³ However, despite its popularity and its proliferation into various disciplines, there is a lack of conceptual clarity regarding the meaning of reflective practice and how one should reflect.¹⁷⁴ In relation to legal education, the dominant forms of assessment, namely essay questions and problem questions, omit or minimise the role of the client. This can lead to students and future legal practitioners omitting the knowledge supplied by the client from their reflection. The established pedagogic approaches also ignore or minimise the impact of bias in relation to the acquisition of new knowledge. The proposed reflective cycle seeks to achieve two broad aims. First, to identify an epistemology of reflective practice, which is underpinned by Kant's TI. Second, to address students' implicit bias in relation to knowledge acquired from the client. The proposed cycle of reflection, in addition to encouraging reflection-in-action and reflection-on-action, is prospective in nature as it occurs prior to the client interview, meaning that the student is reflecting on the impact that they themselves can have on the interviewing process. This prospectivity can help to reduce unintended influence before that influence arises, rather than current models of reflection which are, generally, *ex post facto*. An optimal methodology for teaching students how to address their implicit bias using the proposed reflective cycle is CLE, namely live-client clinics. Generally, students in clinics are engaged in community lawyering, which is concerned with disrupting the status quo and promoting social

¹⁶⁸ Liv Karin Bjerkvik and Yvonne Hilli, 'Reflective writing in undergraduate clinical nursing education: A literature review' (2019) 35 *Nurse Education in Practice* 32.

¹⁶⁹ Silvia Mamede and Schmidt G. Henk, 'The structure of reflective practice in medicine' (2004) 38(12) *Medical Education* 1302.

¹⁷⁰ Andy Mantell and Terry Scragg (eds), *Reflective Practice in Social Work* (Sage 2023).

¹⁷¹ Michele M Leering, 'Enhancing the Legal Profession's Capacity for Innovation: The Promise of Reflective Practice and Action Research for Increasing Access to Justice' (2017) 34(1) *Windsor Yearbook of Access to Justice* 189.

¹⁷² Bar Standards Board, 'CPD for those on the Established Practitioner Programme' (Last updated 01 Jun 2020) available at; Nick Hilborne, 'Barristers still struggling with concept of CPD "reflection"' *Legal Futures* (4 December 2019) available at < <https://www.legalfutures.co.uk/latest-news/barristers-still-struggling-with-concept-of-cpd-reflection> > accessed 20 April 2024.

¹⁷³ Solicitors Regulation Authority, 'Reflect and identify' (Solicitors Regulation Authority 2022) available at < <https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/continuing-competence/reflect-identify/> > accessed 20 April 2024.

¹⁷⁴ Elizabeth Anne Kinsella, 'Professional knowledge and the epistemology of reflective practice' (2009) 11(1) *Nursing Philosophy* 3, 4.

change.¹⁷⁵ Central to this theory is the lawyer-client relationship, which our model seeks to enhance by providing lawyers with a reflective cycle that promotes the lawyer-client relationship by minimising the lawyer's bias.

Given the emphasis on reflective practice in various disciplines and professions, our reflective cycle can be applied to any form of experiential education where the client is a source of knowledge acquisition. However, empirical research is required to test the effectiveness of this theoretical model in relation to addressing implicit bias.

¹⁷⁵ Monika Batra Kashyap, 'Rebellious Reflection: Supporting Community Lawyering Practice' (2019) 43 *NYU Rev L & Soc Change* 403, 404. See also Gerald P Lopez, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice* (Routledge 1992); Austin Sarat and Stuart Scheingold, 'Cause Lawyering and the Reproduction of Professional Authority: An Introduction' in Austin Sarat and Stuart Scheingold (eds), *Cause Lawyering: Political Commitments and Professional Responsibility* (Oxford University Press 1998); Richard Owen, 'Rebellious lawyering theory, sustainability and Clinical Legal Education' in Madhloom and McFaul (eds) (n 15).