Clients, clinics and social justice

Reducing inequality (and embedding legal ethics) via an LLB portfolio pathway

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Abstract

Purpose – The purpose of this paper is to present a case study of an innovative, three-module pathway designed by the Department of Law and Criminology at Edge Hill University (England) in 2014. In addition to supporting the work of its campus pro-bono law clinic, the first-two modules aim to enhance and evidence the legal skills of EHU's undergraduate LLB students, to embed a deeper awareness of the (legal) ethics needed for sustainable legal practice (within PRME), and to highlight the increasing need for socially responsible advocates, able to defend the rights of marginalised, vulnerable clients.
Design/methodology/approach – The critical analysis of the content and scope of an innovative, work-based learning LLB module pathway, which furthers the aim of the UN Global Compact and the PRME, and ties them firmly to socio-legal issues and advocacy involving recent jurisprudence.
Findings – The case law used within the modules, and the practical work of the students in the campus law clinic, are relevant to social justice issues and to the promotion of PRME values—they promote awareness of human rights principles, highlight the importance of access to legal services and provide students with knowledge of legal ethics. Enhanced employability skills flow from this.
Research limitations/implications – This is a narrow case study but still provides a useful analysis of an innovative, PRME relevant module pathway. The model mirrors international trends in clinical legal education and also offers a template for other law schools keen to promote the concept of ethical, just legal practice.
Practical implications – The paper posits that enhanced employability can flow from real world tasks such as advocacy for marginalised or disadvantaged groups and presents an exemplar for other law schools wishing to embed ethics/clinical law practice into their curriculum.
Social implications – The paper highlights how the campus law clinic serves the public in a deprived region—it raises awareness of human rights and of social justice issues. It has the potential to feed into litigation on social welfare issues (housing, social security, child welfare, etc.).
Originality/value – The discussion of the human rights case law that is used in the Year 2 "bridging module" (which prepares students for working in the law clinic in their final year) is particularly relevant and is analysed in detail, highlighting how this module pathway is aimed at promoting PRME and UN Global Compact principles.

Keywords Work-based learning, Human rights, Employability, Social justice, PRME, Law clinic
Paper type Research paper

1. Introduction

> Businesses can be involved in human rights violations either as primary perpetrators or as accomplices, aiding and abetting to human rights abuses. (Cirlig, 2016, p. 229)

This paper discusses the potential, societal impacts of an innovative, tri-modular, work-based learning pathway to legal practice, arguing that its high-level problem-solving tasks (and its emphasis upon ethical dilemmas) are aimed at fulfilling several of six Principles for Responsible Management Education (PRME). The PRME are a United Nations led initiative generated from the United Nations Global Compact: PRME participants agree to abide by its six principles: "to share and learn from each other, and to continuously move toward fulfilment of its purpose" (Waddock *et al.*, 2010, p. 1). The pedagogy described seeks to honour the spirit of the UN's Global Compact whose principles are clearly "drawn from existing UN documents and agencies such as the International Labor Organization ('ILO') and the Commission on Human Rights" (King, 2001, p. 485). The focus of the paper is primarily upon

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the jurisprudential content of the Year 2 (Level 5) module advanced lawyers' skills, which serves as a sort of "bridge" between the more generalised, basic year one legal skills module and the challenging final year, practice-mirroring clinical law module. Students who have maintained an overall average of 60 per cent or higher are eligible to apply for a place on the clinical law module. At the EHU law clinic, the initial client interview is a fact-finding exercise, after which student advisors research the relevant law and deploy practical problem-solving skills to identify options for clients. This leads to the drafting of an advice letter which is approved by the supervising solicitor or barrister before being sent out to the client. Considerable emphasis is placed upon team working as an essential skill for legal practice. This latter module (with the law clinic itself directed by a practising solicitor) requires students to accurately advise members of the public on complex legal issues involving difficult matters of social justice (such as, for example, housing, property, commercial and family law cases, debt work and appeals against criminal convictions).

By the pathway's end "learning gains" are evidenced via three substantial portfolios of practical, work-based learning tasks (i.e. legal research presentations, skeleton arguments, moots, legal opinion, legal advice) which have at their core a need to reinforce the importance of adhering to professional, ethical principles and codes of behaviour. In terms of evidencing enhanced employability skills, EHU's HESA and TEF figures indicate that employment rates for law graduates have improved significantly, rising from around 55 per cent of graduates taking up graduate level employment four years ago, to a record high of around 75 per cent in the figures for 2017 graduates. Numbers taking the law clinic module over the first-four years have also risen from 10 students in the initial cohort to 43 applications to enrol for the next law clinic module in 19/2018. The pathway's ethos also reflects also the wider global trends within legal education which highlight an urgent need to embrace "justice education", against a backdrop of emergent democracies, globalisation, increasing awareness of the need to respect cultural heritage and inclusivity and to address issues of community need (Gurpur and Rautdesai, 2014). As Cai (2011, p. 159) has argued, law clinics which focus on international human rights law principles and provisions evidence clearly a "deepening convergence of international law, domestic law, human rights law, and clinical legal education". Further, as practitioners (both former and current), the pathway's tutors help build (in accordance with the first principle of the PRME):

> […] the capabilities of students to be future generators of sustainable value for business and society at large and to work for an inclusive and sustainable global economy[1].

The assessment methodologies (portfolio, clinical law practice) are clearly grounded in a need to incorporate (rather than simply mirror) "real work" activities, beyond those of many traditional work-based learning simulations (Hertel and Millis, 2002) The pathway was designed and developed in response to practical suggestions gleaned from a number of focus groups involving key stakeholders (e.g. local employers, charities, alumni and NGOs). Employers were especially keen to see the often-elusive concept of "graduateness" (Glover *et al.*, 2002) being framed as encompassing clearly demonstrable signs of legal professionalism, and underpinned by ethical approaches to the realities of modern practice and office management. In terms of embedding law-relevant employability skills, undergraduate LLB students are prepared from induction to regard themselves as capable of becoming compassionate, articulate legal advisors to members of the public.

The law clinic opened in September 2014, and has been operating successfully for nearly four academic years. Initially the client base was limited to students and staff at the university. The remit of the law clinic was extended however to include members of the public in 2016, with the agreement of the university's insurers. They had initially been reluctant to permit such a potentially broad client base, but were persuaded in light of the

successful first-two years of its operation. The work of the law clinic involves initial written legal advices, following an interview by two student advisors in the presence of a qualified, experienced solicitor or barrister holding a current practising certificate. By final year, the highest-achieving LLB students are offered the chance to actively "intern" as legal advisors offering pro bono legal advice to clients. In doing so, they are actively addressing issues of social inequality: the north west of England has long been recognised as a region facing profound challenges in terms of unemployment levels and low wages[2]. Austerity measures have added further to its various socio-economic and cultural problems[3]. This is a useful example of "the local" mirroring "the global"; however, it can be argued that human rights law has become ever more significant, both here and beyond the jurisdiction, influencing social welfare litigation in both private and public law spheres. The presence of "ethical aimlessness" in judicial proceedings has the potential however to sideline the substantive legal importance of human dignity, and make lawyers focus instead upon matters of procedural regulation and policy (O'Cinneide, 2013, p. 43). As Cirlig (2016, p. 229) has also recently noted:

> Traditionally there was a clear divide between human rights law, with a focus on the states' obligations, and business law, with a focus on economic aspects. Nowadays the borders between the two main areas are increasingly blurred, impacting tort law, criminal law, contract law, as well as investment and commercial arbitration.

Often litigation involves claims of corporate complicity, thus "new actors" have become more prominent (e.g. NGOs, financial institutions […] stock markets) and these can alter a company's reputation, and its ability to access funding. Significantly, there is now a more obvious:

> […] tendency towards creating or strengthening the mechanisms available at national and international level regarding corporate accountability for human rights violations. (Cirlig, 2016, p. 229)

Verbos and Humphries (2015) have similarly argued (albeit in respect of the need to include indigenous groups' unique vulnerabilities within such academic analyses and learning innovations) that making changes to the "critical pedagogy (process) as well as content" is often key to challenging and transforming those "seemingly intractable issues of maldistribution of wealth (and) unequal influence" within society which clearly demand changes in terms of content, curriculum, and pedagogy, with a sharper focus upon "the common good". (Muff *et al.*, 2013). Section 2 of this paper therefore discusses how the module pathway ties to both the Global Compact and the PRME. It argues that the basic legal skills (researching, presenting, and advocacy—as taught in the introductory, Year 1, Level 4 legal skills module, the first step on this portfolio pathway) are essential for building student confidence, not least by enabling further study and setting them up for sustainable careers in law.

Section 3 examines in some detail the Year 2, Level 5 module advanced lawyers' skills, explaining how its four overlapping portfolio tasks combine to highlight how legal ethics, advocate empathy and human rights law are all significant in relation to the promotion of social justice and ethical norms. The case law analysed (and mooted) in this, second, "bridging" module is particularly relevant given its focus upon welfare, deprivation, socio-economic rights, injustice, and the underpinning need for human dignity. It is critically discussed, therefore, in Section 4, while the work, remit and impact of the law clinic is presented for analysis in the article's concluding section.

2. Embedding ethics: induction and transition via the legal skills module

> Sustainability is not only a legal or moral issue […] it is also a business issue. (Berger-Walliser and Shrivastava, 2015)

As Meyer and Stefanova (2001, p. 501) have observed, the UN Global Compact has increasingly come to define and represent how:

> […] a new effort […] has been added to a long list of activities at the local, national and international levels to make transnational corporations ('TNCs') better corporate citizens.

The three-module legal skills and practice-led portfolio pathway developed at Edge Hill University was designed to challenge existing student perceptions on social justice, to broaden their understanding of human rights law and principles and to sharpen their ability to both accurately interpret and apply its provisions to difficult scenarios grounded in harsh economic realities. Inequalities highlighted throughout the three-module pathway include systemic gender biases[4], the lack of equitable access to justice (Stutt, 2015), institutionalised examples of discrimination (particularly, for example, against elderly or disabled persons[5]) and the presence of adult-centric norms in child protection and family law cases[6]. Access to justice is key; however, as The Legal Services Board's (2012) stresses:

> Access to justice is the acting out of the rule of law in particular or individual circumstances. The tools to achieve that outcome range from informing the public about their rights, through routine transactional legal services and personalized advice, through to action before tribunals and courts. The agents of delivery are wide and, of course, legal professionals are at the heart of this"[7].

The ability to offer accurate legal advice to vulnerable members of the local population by the end of this pathway rests upon the students' capacity to actively engage in independent academic legal research; however, a key challenge for staff, therefore, is to move students away from a general tendency to quickly "google" brief (often incorrect, inadequately glib) answers to complex questions of law. Academic legal databases demand skills grounded in a useful degree of intellectual ability, resilience and diligence to be navigated correctly and efficiently. Thus, the compulsory, basic (yet comprehensive) 24-week legal skills module in the first year (Level 4) is designed to generally prepare nervous freshers to read for an LLB, and more specifically to undertake the optional Year 2 (Level 5) advanced lawyers' skills module. (This module in turn then enables students to apply for a competitive place on the (Level 6) law clinic module, which will see them work directly with the public in their final year, as out-reaching legal advisors in the campus-based law clinic).

The pathway's key purpose is, therefore, clearly grounded in a need to raise students' awareness of key social justice issues and ethical legal practices: it is designed to support and offer profession led "appropriate challenges" (Eraut, 2007) from the point of pre-induction through to graduation. A pre-arrival, induction activity encourages a sense of profession relevant "belongingness" (Yorke, 2016) but also serves to clearly underscore the fact that students are embarking upon a difficult, "boot-camp" phase on their journey towards professional legal qualification. The message is that from the outset, active learning will be required from them. In other words, they are expected to read diligently, follow instructions, work independently when necessary, embrace collegiate teamwork and engage in reflective peer review, post-process. In Year 1, a diagnostic activity occurs two weeks after induction week: students must write a short discursive piece, properly researched (i.e. non-googled, avoiding polemic), fully and correctly referenced and footnoted, so that they will be able to provide valid authorities and sources for the advice/answers that they will later be giving in moots and indeed throughout their legal career. This diagnostic activity also enables personal tutors to gauge whether students are in need of extra forms of support, e.g. in terms of language skills training or essay-writing workshops. By its end, the year-long legal skills module will have provided a solid grounding in basic, academic legal research skills, requiring students to engage with practical, client care role-play scenarios, which are aimed at honing their communication skills and sense of professionalism.

Professional codes of conduct from the Solicitors Regulatory Authority[8] and Bar Standards Board[9] are studied in detail and referred to throughout, to promote a greater awareness of the need for consistently professional, ethical behaviours. A "mini-moot" activity at the end of the year focusses upon one of the core ("Foundations of Legal Practice") modules being studied, such as tort or contract law, and again requires students to engage in scholarly legal research via appropriate legal databases (e.g. Lexis-Nexis, Heinonline, Westlaw, Bailii) to both find their "voice", grow in confidence, and work to strict deadlines, constructively, in teams or pairs to problem-solve logically. They must produce professional, shortened versions of formal trial bundles and focussed skeleton arguments and learn to distinguish between matters of fact and points of law capable of forming the subject of legal appeals. Persuasive authorities are permitted within their arguments as they are encouraged to look beyond the jurisdiction of the UK to find alternative approaches to legal (and indeed moral) dilemmas or hard cases, where necessary or appropriate.

For some students the key challenge within this activity is to both verbalise and transcribe articulate arguments coherently and clearly, and to respond quickly to challenging questions from the guest judges and rebuttals from the other side. They must be very familiar with their chosen authorities, able to rapidly think "on their feet", and knowledgeable enough to ground answers to complex legal questions within accurate legal analyses. By the end of this module, they should have compiled a professional, polished portfolio which offers tangible evidence (to potential employers) of their fledgling ability to engage in meaningful, detailed deconstructions of thorny legal issues. Panopto-captured sessions offer the added advantage of allowing students to critically review and reflect upon their performances after the assessment, to see themselves in action as advocates and to thus gauge whether they have fully mastered the art of respectful court etiquette (eye contact, demeanour, courtesy, pronunciation, etc). In sum, this basic but challenging introductory module serves to prepare them for the rigours of their second year, not least for the intermediary case law-rich module on the pathway to professionalism, advanced lawyers' skills.

3. Ethics, advocacy, and (legal) opinions

> The challenge for scholarship is to build the bridges that can make the reality of home's meanings count where it matters most: in the governance of the real issues and challenges. (Fox-O'Mahony, 2013, p. 158)

The second year, 12-week module (advanced lawyers' skills) opens with a conceptual study of legal ethics: students have just over two weeks to produce a 1,500-word analytical essay on the topic, both in terms of classical and modern theories and applied examples drawn for example from the files of the Solicitors' Disciplinary Tribunal database[10]. They are required to look beyond the basic text books and to refer instead to critical works on the subject, as contained in the more challenging academic law journals (e.g. *The Modern Law Review, Law Quarterly Review).* Case law involving unethical behaviours (e.g. breaches of confidence, conflicts of interest, data-handling) is discussed in some detail, so that students are able to tie the various theories of ethical behaviour to the serious, far-reaching consequences of breaching prescribed ethical codes of conduct. The legal ethics essay serves, therefore, not just as an introduction to the notion of legal professionalism but also as a sort of warning: advocates must be mindful of how unethical policies and practices can ruin careers, and easily damage the reputation of the profession which they have chosen to join. As Herring (2014, p. 106) notes, however, the teaching of legal ethics is often far from straightforward:

> The issue here is to ensure that students realise that the rules on lawyers' ethics are not meant to supplant the basic principles of behaving properly. A study of ethics should not rob someone of ethical common sense.

By requiring students to look in detail at academic authority beyond that of the basic, introductory texts of Year 1, they are being challenged to think about the conceptually discrete natures of law, morality and justice, particularly in terms of often ambiguous or conflicting legal and socio-cultural norms. They are given little time to "recover" from the first portfolio task (the essay is due in the third week of the semester) as they must attempt to display practical lawyering skills in week 4, when they must roleplay as clients and legal advisors. By taking clear, coherent attendance notes and instructions from "challenging" clients (who present at a "mock interview" to seek legal advice on difficult social issues) students must quickly gain and demonstrate the skills needed to show compassion for troubled, perhaps very vulnerable people. Examples of "clients" have included elderly, anxious, hearing impaired, learning disabled, illiterate, confused or non-English speaking persons (generally "played" with varying degrees of enthusiasm by law or drama students).

Their roles and queries (allocated and provided by the tutor, respectively) are based on recent cases involving challenging human rights issues for example on health and social care, housing, contested adoption or social welfare. The key themes are vulnerability, non-discrimination, human dignity and the overarching need for ethical conduct on the part of advocates, who must behave in a highly professional manner in the face of problematic client behaviours (i.e. tearfulness, silence, anger, anxiety, confusion or a downright refusal to accept legal advice). This workplace-simulating activity is grounded in the acknowledgement that practising lawyers must cultivate and display such key skills as empathy, compassion, patience and a measure of open-mindedness. Often, the students tasked with taking attendance notes are surprised that they are likely to encounter such "difficult" clients, with potentially non-justiciable socio-legal issues, in "real life".

Although these sessions tend to be lively, engaging and eye-opening, they do also throw into sharp relief the changing nature of modern legal practice, where factors such as austerity measures, finite resources and an ever-shrinking legal aid budget have added to the pressures on young advocates. Having adequate access to justice (via advice or representation) is no longer, it seems an automatic feature of modern legal systems, especially in times of economic recession or political upheavals (such as that of the UK in the wake of the "Brexit" referendum). And yet, some students who might have previously expressed a firm desire to only work within lucrative corporate or commercial fields will display curiosity over the role and work of NGOs, Citizens' Advice Bureaux or welfare rights centres. They are able at least to appreciate that the notions of ethical behaviours, fairness, good governance and social justice must be fully explored and understood by those seeking to make a career in the business or financial sectors.

The second portfolio task, therefore, ties directly to this role-play session: students must carry out fairly advanced legal research into (and present their findings upon) the legal problems that they their "clients" have presented with. These problem scenarios are based upon cases that have recently been heard before the domestic courts. They are examined more fully in the following section, but all involve complex elements of human rights law, domestic and international. Again, some students are often quite shocked at the levels of hardship facing vulnerable clients within this jurisdiction. Their oral presentations (group work-based, with group work itself often becoming a fairly challenging task in terms of having students teamwork together successfully, professionally and equitably, to strict deadlines) must be logical, clear and sufficiently detailed, and also avoid the pitfalls of simply reading out printed material from a prepared script or power point slide. A peer-led question and answer session follows, so that presenters must be fully cognisant of their arguments and able to back these up by citing properly referenced, valid legal authorities in a formal bibliography (i.e. case law, statute, academic opinion as contained in relevant, recent journal articles and seminal texts). A concise letter of advice for the client must also be produced, in clear but authoritative terms, again citing relevant legal principles.

The third (and, arguably, the most challenging) portfolio task is the moot. As Hill (2009, p. 3) explains, a moot is "a simulation or mock version of a hypothetical case in one of the appellate courts". Students are required to produce a strictly deadlined, formal skeleton argument and fully annotated trial bundle of legal authorities, to support their oral legal submissions. Guest judges provide detailed feedback, and final year LLB students (with experience of having competed in national competitions) attend to offer full and frank peer review. Moot problems are based upon the client care scenarios which were seen in task 2: now, however, the cases have moved on either to the Court of Appeal or Supreme Court stage, to focus upon narrow areas of law and judicial interpretations of them (rather than the facts, or the procedural aspects of High Court Judicial Review). Formalities (e.g. court etiquette) are strictly observed to mirror the realities and rigours of practice: students must also furnish the other side with their skeleton arguments and authorities 48 h before the moot, which often means emailing the tutor and the opposing team and submitting work online over the weekend.

A week later, students must submit a 1,500-word legal opinion on the case that they have mooted on, not as appellants or respondents but as neutral jurists, deciding whether or not to uphold or dismiss the appeal on the basis of all of the research done. This fourth and final portfolio task requires them to view the problem once again, both as judges and through the eyes of their opponents, and to weigh up and apply the relevant law which was analysed during the moot. They should, ideally, conduct further research to find useful authorities beyond those which were included within their trial bundles, and indeed within those submitted by their opponents, pre-trial. Persuasive authorities from other jurisdictions, and dissenting and obiter judgments are particularly welcome, especially given that the moot problems are chosen to represent difficult "grey" areas of law and hard cases involving thorny socio-legal rights issues. Questions of non-justiciability often arise, given the nature of the appeals. Finite or scarce state resources tend to further hinder the meaningful realisation of already highly qualified socio-economic "rights" within the fields of social care, welfare, health or housing law. Decisions grounded in principles of social justice, equality and human dignity may seem beyond the reach of many litigants seeking a meaningful juridical solution or practical legal remedy within these areas.

As Chenwi (2008, p. 137) has argued (in respect of the "right" to access adequate housing), often "enforcement is the most vital facet" of the process. Where clients are denied access to legal aid, or to free (or indeed reasonably priced) legal advice or representation, it may be argued that the very notion of accessing justice itself becomes an entirely moot point.

4. The case law used in advanced lawyers' skills: advising, researching and mooting issues of social justice

> […] the development of the Global Compact […] in its simplest form is the dissemination of and adherence to good business practices, which encompass principles of human rights, principles of the environment and development, and fundamental principles of rights at work. (King, 2001, p. 482)

As the previous section has outlined, the human rights issues with which students must grapple on this intermediary module are not for the faint-hearted: poverty, homelessness, child abuse, gender discrimination and unmet need (within the areas of social and health care law) are but some examples of the topics they are expected to very quickly become familiar with. In doing so, students are engaging directly with goals 1, 5 and 16 of The UN's Sustainable Development Goals, which seek respectively to eradicate poverty (1), achieve gender equality (5) and "promote peaceful, inclusive societies and accountable institutions" (16)[11].

As King (2001, p. 482) has noted, the principles seek to underpin "the protection of human rights […] [and] elimination of discrimination". That many of the rights issues within the module's reading list and case law seem to be often almost entirely non-justiciable is, unfortunately, perhaps the most significant lesson to be learnt from this exercise[12].

Access to health and social care services is a particularly relevant example. As Miller (2015) has argued, the very notion of a right to human dignity is perhaps essentially now being "rationed" within the UK, due to the ongoing austerity measures affecting the NHS (and indeed access to legal aid and legal advice). As Callahan (2012, p. 12) has further observed, previously covert policies of austere regulation have now become blatantly overt with the rights and needs of elderly persons often overlooked (Newdick, 2004; Clough and Brazier, 2014). Case law arising out of austerity measures (e.g. on health, social care and housing issues) does however offer useful, if harsh, guidance that is in turn very open to juridical analysis. As Fordham (2013, p. 386) has observed in respect of issues of social justice generally:

> Inhuman and degrading treatment is an important baseline. But it is an "on/off switch" focusing on extreme misery, where policy and resources lose any relevance. Social rights have a different virtue.

The jurisprudence is still very well suited to the aims of the advanced lawyers' skills module (and indeed of the module pathway) in terms of highlighting the need for practitioners to have and display high levels of empathy, compassion and awareness of basic human rights principles when handling their case load. The difficult case of Mc Donald v UK (2014)[13] for example touches upon issues of inhuman and degrading treatment, and the concept of human dignity against a backdrop of scarce and dwindling resources. It has recently been used as the basis for three of the portfolio assessments: a client care role-play scenario, follow-up legal research and the moot[14]. The focus of much of the litigation as it made its way through the courts was on procedural rather than substantive rights and there was only limited judicial discussion of the notion of human dignity. As Miller (2015, p. 52) observes, "in spite of the relationship between health and dignity being clearly acknowledged within the international law on a right to health, there is limited guidance on what dignity means within the jurisprudence on [the right to health as outlined in] Article 12 ICESCR".

The case still merits close study given that it challenges the statutory decisions of a local authority, on questions of need and health rights[15]. The local council had a duty here to both assess need and then provide for it adequately, subject to resources. (After a stroke, the claimant had only limited mobility and required help with toileting, which placed her at a heightened risk of falling. Her local authority refused to provide night-time help, providing her instead with incontinence pads.) At the Supreme Court stage, the court confirmed the Court of Appeal's earlier decision that there had been no interference with the plaintiff's Article 8 ECHR rights (i.e. the right to be afforded respect for one's home, family, private life and correspondence) but concluded that even if this had have been the case here, such an interference was entirely capable of being justified in law on the basis of the finite, scarce nature of state resources[16].

The European Court of Human Rights found subsequently that her Article 8 rights had to a limited extent been interfered with, but again this was not unlawful, nor was it disproportionate given the economic context[17]. What was especially significant for the students on this module was the finding that Article 8 ECHR rights were confirmed as capable of giving rise to positive obligations, on the part of signatory states, even though they had not actually done so in the instant case. This was because the local authority's decision had been deemed to have been underpinned by a legitimate aim, namely to promote the economic well-being of the state, and the interests of other care-users. As Miller (2015) observed, "the state's decision. Involved issues of general policy which in turn rested upon assessment of priorities 'in the context of the allocation of limited State resources' ".

A similar approach was adopted by the courts in relation to a recent, high-profile case involving "bedroom tax", which was also recently explored in this module. In *R (Rutherford) v SSWP8* (2014)[18] the High Court (for England and Wales) highlighted how ongoing conditions of "extreme national financial austerity"[19] required political decision makers to embrace a culture of "acute financial stringency"[20]. In this case, a disabled child was in need of round the clock care by his two carers (his grandparents, who were also themselves disabled). Overnight carers also provided respite, without which it was likely that the child would be placed into residential care. Under the new "bedroom tax" regulations, however, there was a shortfall in the amount of their housing benefit: disabled children were unable to automatically claim a payment for the "spare" bedroom needed for an overnight carer. The issue of reasonably "justified" discrimination was examined in detail (disabled adults' social welfare claims were dealt with under a different scheme) as was the question of the lawfulness or otherwise of the scheme[21]. It was found that any flaws in the social welfare scheme needed to be regarded as "serious flaws" before the discrimination (between adults and children) would be found to be unreasonable[22].

Other factors that have been taken into account by the courts in cases such as this have included the numbers of persons who could potentially be affected, and the apparent likelihood of some claimants seeking to abuse the social welfare system. Ultimately it was held that no substantial detriment had been suffered by the claimants here, although it was noted that the Human Rights Act 1998 does require domestic jurists to look beyond basic interpretations, and take the policy aims of legislators into account. As Nield and Hopkins (2013, p. 431) have argued, however, there is often a harshly "stark logic" to property law: where claimants lack truly justiciable property rights they become more vulnerable, and perhaps even more "invisible" to the rest of society. Analysing such difficult issues allows students to seek out and interpret key provisions of human rights law, refer to them in their research presentations, and then rely upon them as valid authorities during moots. Key examples include Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights which highlights the need for signatory states to aim to provide "adequate food, clothing and housing and […] the continuous improvement of living conditions"; Article 2 (1) is often argued in response however, given its qualifying clause on "maximum available resources" (which ties in well with calls for discretionary, economy-dependent decision-making). ICESCR General Comment 3 (on The Nature of State Parties' Obligations) is also relevant given that students must argue here on the complex issue of adequate housing, via "a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights" contained therein[23]. As Fordham (2013, p. 381) has observed too, that the EU Charter of Fundamental Rights ("CFREU") may yet prove to be highly significant, given its focus upon the growing importance of socio-economic rights: "[…] access to such basic resources as 'food, shelter and healthcare' [are] paradigm examples of social rights. They are not new"[24]. And yet, as Hoffman LJ stressed in 2003, in Matthews v Ministry of Defence:

> Human rights include the right to a minimum standard of living, without which many of the other rights would be a mockery […] they certainly do not include the right to a fair distribution of resources or fair treatment in economic terms – in other words, distributive justice. Of course distributive justice is a good thing but it is not a fundamental right[25].

5. Conclusion: accessing social justice via the pro bono law clinic

> […] an unfair and unkind universe […] divergent responses epitomize the North/South divide on development, income disparities, technology transfer, health, the environment, and related problems. (King, 2001, p. 485)

It is often the case that "cycles of poverty […] can only be broken through structural reforms"(Muvingi, 2009, p. 163). Within academia generally, there remains an acute need for

a much "sharper focus upon the notion of the greater, common good" to engender a socially conscious, "new breed of faculty" (Muff *et al.*, 2013)[26]. For lawyers, watching the non-enforcement of human rights law in domestic courts can be particularly "frustrating", especially where minimum standards and clear rights-thresholds appear absent or ignored (Collingsworth, 2005, p. 185). Social security issues (health care, welfare benefits, housing) should be seen as having very clear ties to juridical rights: domestic court rooms must be regarded as the protectors of those most at risk of suffering harm. Given also how types of societal injustice and other "inequalities combine, interact, and are reproduced through interlinked economic, political, and socio-cultural processes" World Bank (2006), the importance of accessing justice at an early stage (not least via pro bono legal advice and assistance) is increasingly key. Lawyers (who often occupy positions of privilege) should aim, therefore, to be "not merely visitors, but fully responsible citizens of the communities in which they operate" (King, 2001, p. 2)[27]. In terms of challenging socially unjust norms and policies, however, there still also exists a clear, geographically grounded, cultural:

> […] divide in solutions to [such] problems: the North advocates human rights, democracy, transparency, responsibilities; the South counters with more aid, trade, and debt forgiveness[28].

This pathway's focus upon deprivation and inequality may be framed as striving particularly for the creation of a meaningful "public space for dialogue among various participants […] show[ing] norms creating processes which generate and develop norms continually" (Shoji, 2015, p. 30). Having students argue intricately constructed points of human rights law on thorny issues of social justice essentially brings them full circle back to the linked notions of ethical behaviours and justice promotion which they encountered at the start of this module pathway. Their practical assessments are designed to reinforce the contention that "social justice or fairness […] is an ethical concept, grounded in principles of distributive justice" (Braveman and Gruskin, 2003, p. 254). This ties in well with the argument that:

> Policies and programs which rest primarily on a perception of need and powerlessness subtly reinforce the powerlessness of the recipients who are seen as being given justice rather than as receiving their rights. The recognition of entitlement is in itself an act of empowerment. (Frankovits, 1996, p. 123)

Significantly, the areas of law which have experienced a substantial reduction in public funding in recent years tend to form the bulk of the cases dealt with here: property and family law issues, child law, contact arrangements and financial support following family breakdown. Additionally, the majority of clients who have attended for advice at the clinic to date have tended to be female, indicating how the work has the potential to directly address gender inequalities. In sum, by providing pro bono legal advice to members of the public, LLB students are contributing to the alleviation of poverty and discrimination and raising local awareness of human rights principles. The work of the clinic has the potential also to feed directly into social justice litigation both nationally and locally, and indeed to encourage political lobbying for legislative and policy change. As Luban (2014, p. 373) has further argued, such a:

> […] three-cornered conception of rights implicitly brings in law, politics and economics. It envisages institutions to guarantee rights, and to which rights-bearers may tender their demands. It also raises questions of what a "social guarantee" is, and who should bear the costs of socially guaranteeing rights.

This pathway raises awareness of the difficulties surrounding ethical business management and client-focussed lawyering, and identifies the barriers that exist in terms of navigating the minefields of social justice (Cirlig, 2016, p. 229)[29]. In doing so, it prepares and equips LLB students for a career in law that is both mindful and respectful of the principles upon which the PRME and the Global Compact were originally founded.

They learn that active lawyering has the capacity to influence legislative reform and policy change, and to interpret legal provisions in a manner which achieves meaningful levels of justice for vulnerable, disenfranchised members of society. Whether through advocacy, political lobbying or by advising their corporate clients of their moral obligations, ethical lawyers will be very well placed to help achieve the:

> […] ultimate goal of the social compact […] to enlist multinational corporations in the efforts of governments, multilateral institutions and nongovernmental organizations to advance goals of social and economic development, such as reduction in poverty, enhancements in education, improvements in and access to healthcare, equal access to justice, and the universal engagement of human rights. (King, 2001, p. 404)

Notes

1. See principle 1, http://unprme.org/the-6-principles/index.php (accessed 12 March 2018). See further www.unprme.org/about-prme/the-six-principles.php; www.unglobalcompact.org/library/319 (accessed 1 March 2018).
2. www.gov.uk/government/statistics/english-indices-of-deprivation-2015 (accessed 17 March 2018).
3. www.tuc.org.uk/sites/default/files/North%20West%20Final%20Report_2.pdf; www.theguardian.com/society/2015/jan/01/austerity-cuts-2015-12-billion-britain-protest; www.independent.co.uk/news/uk/home-news/north-of-england-northern-powerhouse-george-osborne-cultural-wasteland-museums-are-hit-by-austerity-a6926321.html (accessed 18 March 2018).
4. See for example *Re M (Children)* (2017) EWCA Civ 2164, where a transgender (male to female) father appealed the High Court's decision to prevent her having contact with her children.
5. See for example *The Secretary of State for Work And Pensions* v. *Carmichael & Anor (2018)* EWCA Civ 548 (20 March 2018) on "bedroom tax".
6. See for example *M (A Child)* (2018) EWCA Civ 240 (20 February 2018) on significant harm.
7. https://research.legalservicesboard.org.uk/wp-content/media/access_to_justice_measurement_lsrc_conference_sept_2012.pdf (accessed 19 March 2018).
8. See further www.sra.org.uk/solicitors/handbook/code/content.page (accessed 20 March18). See also the Law Society (England and Wales) on how ethics clearly also "involves making a commitment to acting with integrity and honesty in accordance with widely recognised moral principles". www.lawsociety.org.uk/support-services/ethics/ (accessed 25 March 2018).
9. See further www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/ (accessed 20 March 2018).
10. www.solicitorstribunal.org.uk/ (accessed 22 March 2018).
11. See further www.un.org/sustainabledevelopment/sustainable-development-goals/ (accessed 1 February 2018).
12. See further Singh (2014), Agenda item 3: promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development (www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.35_en.pdf accessed 16 March 2018) on the various challenges facing justiciability of such rights and on how these are particularly problematic for many disadvantaged groups, not least in relation to the inability to initiate legal proceedings. (para 74)
13. *Mc Donald* v. *UK 4241/12* (2014) 60 E.H.R.R. 1.
14. R (On the Application of McDonald) v Royal Borough of Chelsea and Kensington (2011) UKSC 33; R (On the Application of McDonald) v Royal Borough of Chelsea and Kensington (2010) EWCA 1109; R (On the Application of McDonald) v Royal Borough of Chelsea and Kensington (2009) EWHC 1582 (Admin).

15. The National Health Service and Community Care Act (2009): The National Assistance Act (1948); The Chronically Sick and Disabled Persons Act (1947) and The Local Authority Social Services Act (1970). At the Supreme Court stage, there were four issues raised: whether care plan reviews were a reassessment of needs, whether due regard had been afforded to the nature of disabled persons' needs (under statute) and whether any rights arising under Article 8 of the European Convention on Human Rights (ECHR) had been unlawfully interfered with.
16. Under Article 8 (2) ECHR. See however Lady Hale's sole Dissenting Opinion.
17. McDonald V UK (2014) at para 59. A violation was found to have occurred from 21 November 2008 to November 2009: within that time period, care was not provided in accordance with the social care needs assessment that had been made.
18. *R (Rutherford)* v. *SSWP* (2014) EWHC 1631 (Admin).
19. Supra at para 61.
20. Supra at para 4. The term "bedroom tax" was described here as "a colloquialism" and the MA case was praised for its careful detailing of the "political and legislative background" which had led to the need for welfare reform.
21. Supra at para 35. Dyson MR had stressed that "the effect of the 2012 Regulations (as amended) in conjunction with the DHP scheme on the position of disabled persons was well understood by Parliament".
22. See however the subsequent appeals: *Rutherford and others* –v.- *Secretary of State for Work & Pensions and A* –v.- *Secretary of State for Work & Pensions* (2016) EWCA CIV 29; *Daly & Ors, R* v. *Secretary of State for Work and Pensions* (2016) UKSC 58 (9).
23. (5th session, 1990) "any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing […] [the state] is, prima facie, failing to discharge its obligations under the Covenant". Available www.bayefsky.com/themes/adequate_general_general-comments.pdf (accessed 21 March 2015). See also General Comment 4: The Right to Adequate Housing (1991).
24. As Article 34(3) CFREU states; "In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices".
25. Matthews v Ministry of Defence [2003] UKHL 4 per Hoffman LJ at para 26.
26. Muff *et al.* (supra) argue also that the mere acknowledgement of key stakeholders is insufficient; issues such as "ethical orientation" are often key, in a bid to challenge the predominant models of "western capitalist thinking" that might be encountered in higher education.
27. King (supra) note that "even where constitutions or bills of social rights have been draughted to protect specific socio-economic rights, there may be little obvious reduction in inequality". (p. 2)
28. Supra (albeit in relation to the role of human rights law in a global context). Arguably, a not entirely dissimilar approach to global North–South divides might be said to exist in respect of divisive social inequality issues within England and Wales.
29. Cirlig (supra) adding that "primarily it is the states obligation to put in place proper legislation and to allow access to proper mechanisms to remedy human rights violations". (p. 229)

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