



# A tribute and a legacy: Clinical legal education and the bountiful harvest

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## Abstract

The pioneering work of Madhava Menon is well known to many. This article pays tribute to his memory and briefly examines what he has left behind in terms of changes to the way we think of, design, and deliver legal education across the world. The concepts that Dr Menon and others helped to sow and propagate are now blooming across the world. Before his untimely passing, he would have seen some of the fruits of such labour in his own country and beyond, but the legacy is much more than this. There is now a global movement of clinical legal education practitioners who are sustaining and developing the ideas and models that this legacy bequeathed. Using a mix of personal anecdotes and reference to relevant published works, this article explores the relevant detail and concludes that clinical legal education is in safe, competent, and creative hands.

**Keywords** Clinical legal education · Knowledge · Pro bono clinics · Experiential learning · Law school curriculum design

## 1 Background

I recently received an email out of the blue. It was from a woman I had met at the inaugural conference of the Global Alliance for Justice Education (GAJE) in Thiruvananthapuram in December 1999.<sup>1</sup> I recall the occasion well, although I had not thought about it for a long time. I was giving a presentation on interactive teaching and learning and needed a volunteer. I asked this person for help. She was sitting in the front row and looked interested. In one of those almost painful situations where

<sup>1</sup> For a report of the conference, see <https://resources.gaje.org/wp-content/uploads/2011/01/1999-GAJE-Conference-Report-Thiruvananthapuram.pdf>. Accessed 2 October 2020.

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cultures sit uneasily alongside each other, she lowered her eyes and appeared very reluctant to engage. I tried to defuse the situation by just saying unless I had some help what I was trying to demonstrate would not work. She very kindly stood and joined me on stage. Exactly what we were doing has long become a distant memory but needless to say, she played her part well, and the session was duly completed.

The email was to tell me that my helper on that day had secured a permanent, senior position in a well-respected law faculty. She had been using experiential methods in all of her classes, and she had never looked back since taking part in our joint presentation. She thanked me for influencing her so profoundly. I, of course, responded saying how pleased I was to hear from her and congratulating her on progress and promotion. Deep down, I was thrilled, not just for her but the fact that one's work can sometimes make a real difference.

I do not mention this to claim any personal credit (although I was and am delighted to help). I use this instance more to show that those of us who have been promoting, designing, and delivering hands-on, or clinical, education for some time can, without any undue complacency, begin to rest a little easier. The importance of an integrated and interactive yet robust form of study has been well documented elsewhere.<sup>2</sup> What should now be acknowledged is that there is a very bright future ahead in terms of ensuring that legal education is fit for the modern world in all its guises, jurisdictions, and jurisprudential forms. I suggest that the legacy of the past 40 years or more of those pushing the legal pedagogic boundaries is bearing fruit productively and sustainably.

This brief article looks at that legacy and the harvest we are now reaping.

## 2 The past

I don't intend to dwell on who has done what or when, save that I do want to acknowledge, in line with the overall theme of this journal's present issue, that we have much to thank Dr Madhava Menon for with regard to his pioneering work. His death in May 2019 marked the end of a truly remarkable career. There have been many heart-warming tributes to his work.<sup>3</sup> Not only were many of his ideas highly innovative and socially progressive but they were brought to fruition with an impressive degree of personal commitment, acute political acumen, and a realistic appraisal of what was possible and when. The fact that the concepts and institutions he developed and created have turned out to have had a lasting impact is a legacy that leaves many of us smiling in appreciation. Implementing change in some

<sup>2</sup> For example, see Graham Gibbs, *Learning by Doing: A Guide to Teaching and Learning Methods* (Oxford Centre for Staff and Learning Development, Oxford Brookes University 1988); John B Biggs and Catherine So-kum Tang, *Teaching for Quality Learning at University* (Open University Press–McGraw-Hill 2011).

<sup>3</sup> A very personal but moving account of his work can be found in the tribute paid by Saumya Saxena, 'A Tribute to NR Madhava Menon—Father of Modern Legal Education in India' (2019). <https://blog.ipleaders.in/nr-madhava-menon-legal-education/>. Accessed 20 April 2020.

spheres is more complicated than others, and the legal world, in my experience at least, certainly falls into the more challenging category!

Although I was fortunate to meet Dr Menon on many occasions, perhaps the most impressive one was the GAJE conference in 2011. Again I was given a slot to present ideas and, having then recently been appointed to the York Law School, where the entire degree is delivered in an experiential way, I was keen to talk about the vehicle used extensively there—problem-based learning (PBL).<sup>4</sup> The session took the form of a simulated PBL class. It was well attended, and the audience duly became the students and were guided through what PBL means in practice and some of the theory underpinning it. Dr Menon joined in with the same degree of interest and enthusiasm as everyone else. In the end, he came up to my co-presenter and me and thanked us for the session saying it was not an approach to study he was familiar with, but he would certainly be considering introducing this at his law school and recommending it to others to try. It was very satisfying to hear such an endorsement, but for me it spoke volumes about the kind of person Dr Menon was—genuinely interested in the subject matter, still receptive to new ideas, and modest in his approach. I got the distinct impression that he was pleased, as I would later be when I received the email from the person who had been my helper at the first GAJE conference, that as part of the generation succeeding him, we too were developing and implementing ideas to improve legal education in general and to advance social justice in particular.

Much has happened in the legal education and access to justice worlds, certainly since I was in law school. Again, I do not wish to spend time tracking these changes. Suffice it to say for present purposes that perhaps the turning point was in 1992, with the publication of the MacCrate Report in the United States.<sup>5</sup> Although there had been many commentaries and reviews in the years leading up to this, the MacCrate Report for me galvanises thinking on what we want from our law school and why. Although legal education in the United States differs from many parts of the rest of the world, given it is primarily a graduate programme of study, the need for an integrated approach to legal education—one that involves not just doctrinal knowledge but an appreciation of the skills and values relevant to legal and related practice, and an understanding of the ethical context in which law and lawyers operate—is seen by the report as being of critical importance. The means of studying in this holistic way necessarily calls for some brush with reality—be that through actual legal work or a simulation of such reality. This pedagogic and conceptual foundation stone now

<sup>4</sup> An account of how PBL operates at the York Law School and the theory it is based on can be found in Richard Grimes, 'Delivering Legal Education through an Integrated Problem-Based Learning Model: The Nuts and Bolts' (2014) 21(2) *International Journal of Clinical Legal Education* 228.

<sup>5</sup> American Bar Association (ABA), Section of Legal Education and Admissions to the Bar, *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (ABA 1992).

underpins so much of what we have seen since<sup>6</sup> and has given us the basis for building a clinical movement, so well described and analysed elsewhere.<sup>7</sup>

Whilst there is abundant evidence of a clinical legal education movement dating back much further than the 1990s,<sup>8</sup> it was, in my view, the MacCrate recommendations that paved the way for major structural change.

If MacCrate gave us the content of what should be studied and hinted at how that might be done, the social justice component, even though it was practised at that time by many existing clinics, primarily in the United States, was not as evident until more recently.

There were several meetings of like-minded educationalists, practising lawyers, and activists that were to prove highly influential in shaping clinical legal education development. Never more so than when a small group of 20 or so people met in Sydney, Australia, in September 1996—where we discussed the formation of a network that would focus on more effective and socially relevant ways of educating future lawyers. There had been some discussion prior to this (and who takes the credit for all of this is not important), but out of the Sydney meeting came specific proposals for establishing such a body. Indeed, the name Global Alliance for Justice Education was agreed on shortly afterwards, and a steering committee was set up to bring the idea into existence. Within three years, the inaugural conference had taken place. As I recall, our mission was not simply to promote and support justice education but to enable as many of those who might not otherwise get the chance to attend and participate in such events to do so. The history of GAJE, therefore, has seen conferences being set up roughly every two years and being hosted by institutions in those parts of the world where perhaps locally based delegates could more easily attend, thereby making important networking links.<sup>9</sup>

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<sup>6</sup> See Roy Stuckey et al., *Best Practices for Legal Education: A Vision and a Road Map* (CLEA 2007). [https://www.cleaweb.org/Resources/Documents/best\\_practices-cover.pdf](https://www.cleaweb.org/Resources/Documents/best_practices-cover.pdf). Accessed 2 October 2020. In my own jurisdiction, see Legal Education and Training Review (LETR), *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales* (LETR 2013). [http://irep.ntu.ac.uk/id/eprint/26418/1/PubSub3106\\_Maharg.pdf](http://irep.ntu.ac.uk/id/eprint/26418/1/PubSub3106_Maharg.pdf). Accessed 2 October 2020.

<sup>7</sup> Frank S Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford University Press 2011).

<sup>8</sup> In particular, see Jerome Frank, 'Why Not a Clinical Lawyer-School?' (1933) 81(8) *University of Pennsylvania Law Review* 907. The history of clinic is well documented by Jeff Giddings, Roger Burridge, Shelley A Gavigan and Catherine F Klein, 'The First Wave of Modern Clinical Legal Education' in Bloch, *The Global Clinical Movement* (n 8) 3. Interestingly, Chile claims to match or even have predated the presence of clinics during the civil rights movement in the United States; see J Beca, 'The Civil Law Tradition ... but with Clinics—A Case Study from Chile', in R Grimes (ed), *Re-thinking Legal Education under the Civil and Common Law* (Routledge 2018) 181.

<sup>9</sup> To date the conferences have been held in India (twice), South Africa, Poland, Argentina, the Philippines, Spain, Turkey, Mexico, Indonesia. Conference reports are available at <https://gaje.org/conferences>. Accessed 15 March 2020.

### 3 The present

In 2006, having been inspired by the GAJE-related activity, being heavily involved in clinical work in England, and knowing that colleagues in other universities were doing similar work, I surveyed law schools to find out what was being done and where. I have been involved in similar surveys in my jurisdiction and covering Scotland and Northern Ireland regularly ever since.<sup>10</sup> The most recent survey is currently under way as I write. The results are very interesting and are, I suggest, in line with what is happening globally, albeit perhaps not as intensely in all parts of the world. The outcome is this: a marked increase in clinical legal education in the common and civil law worlds and in those countries where Sharia law dominates. When one drills down into the reasoning behind this, one finds that there is a remarkably similar rationale given—a mix of improving knowledge, developing skills, fostering a sense of professional responsibility, equipping students in terms of future employability, and contributing to legal service provision, particularly for those who might otherwise struggle to get access to a lawyer.<sup>11</sup> Nowhere is this more evident than in parts of the world where there is limited or no legal aid provision and where practising lawyers have perhaps no tradition of doing pro bono work.<sup>12</sup>

Although now necessarily a little dated, Frank S Bloch's excellent edited volume on the global clinical movement provides ample evidence of both the extent and health of experiential learning in law schools across the world.<sup>13</sup> There is every reason to believe that the picture in Bloch's book, based on data and accounts from no later than 2010, has, if anything, expanded in terms of the reach of social justice-oriented legal education.

It is probably not exaggerating to say that legal clinics and other forms of hands-on, reflective learning are now to be found in virtually every country of the world. Some jurisdictions have been admittedly relatively slow to embrace this form of study.<sup>14</sup> Many institutions, whilst still relying on more traditional forms of delivery, have expanded their portfolios to incorporate clinical legal education—with one I know well personally that runs a master's programme devoted to experiential

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<sup>10</sup> For a discussion of the survey reports and for full references to the survey results themselves, see James Sandbach and Clare Johnson, 'Impacting Justice: The Contribution of Clinical Legal Education and Law School Clinics to Pro Bono and Access to Justice in England and Wales' (European Network for Clinical Legal Education [ENCLE] and International Journal of Clinical Legal Education Conference, Comenius University, Bratislava, July 2019). <https://www.lawworks.org.uk/sites/default/files/Impacting-Justice-Paper-INJCLE-ENfCLEpdf.pdf>. Accessed 2 October 2020.

<sup>11</sup> As well as the explanations given in Bloch, *The Global Clinical Movement* (n 8), personal experience suggests that all of these reasons can be found in varying degrees. Whenever I have conducted work internationally, I inevitably ask staff and students at some point why they are doing clinic, and from Afghanistan to Zimbabwe the answers are much the same.

<sup>12</sup> My recent work in the Republics of Georgia and Turkey has underlined the importance of legal clinics in countries where either pro bono work is not the norm or indeed prohibited (save for certain situations) and where legal aid either does not exist or is severely limited and often just to criminal cases.

<sup>13</sup> Bloch, *The Global Clinical Movement* (n 8).

<sup>14</sup> For example in France and Germany, where there are now well-established clinics and national clinical networks.

learning and teaching in a legal context.<sup>15</sup> A number of major foundations and international agencies now directly support the development of interactive learning in general and legal clinics in particular.<sup>16</sup>

The development of experiential learning in law has also not escaped the attention of the regulators, government, and wider society. In my own country, major changes are being made to the routes for professional legal qualification.<sup>17</sup> Indeed the most recent proposal in this context contains the specific endorsement of clinics (for better or worse, but that is another story) as a possible vehicle for accredited work-based experience and learning. It is as if what has been commonplace in many other vocationally oriented areas of study, such as medicine and applied sciences, has suddenly been recognised as relevant to legal education. Progress indeed!

Before turning to the future, there is another factor that should be mentioned. Not only has the number, extent, and scope of clinics and related clinical activity in law schools dramatically increased, year on year, but the scholarship associated with this, in terms of theory and practice, has made its presence felt in monographs, peer-reviewed journals, and funded research.<sup>18</sup>

As things currently stand, there are a host of academics, practitioners, students, and others who are committed to a clinic and who, almost without exception, are willing to share and offer support to those less experienced in the game. Again, in my view, this is somewhat different in certain other aspects of academia and life more generally!

We now have, in addition to GAJE, highly active networks of clinicians in different parts of the world, including the European Network of Clinical Legal Education (ENCLE).<sup>19</sup> This all stands in stark contrast to the position back when I started clinical work in 1990 (although I didn't know it was called that then!) when just a handful of United Kingdom-based universities did such work.<sup>20</sup>

#### 4 And, the future?

I am quietly optimistic—at least in so far as clinical legal education is concerned.

Throughout this short piece, I have deliberately avoided mentioning names, except for that of Dr Madhava Menon for the reason given above, and those included in the references given in the footnotes. That is not to say that a whole host of colleagues and friends do not deserve mention.

<sup>15</sup> See Faculty of Law, Charles University, Prague, Masters' programmes. <https://www.prf.cuni.cz/en/llm-and-certificate-in-experiential-learning-and-teaching-1404058406.html>. Accessed 20 April 2020.

<sup>16</sup> Notably the Open Society Foundation, the Raoul Wallenberg Institute, and the United Nations Development Programme.

<sup>17</sup> See, for example, in England and Wales, Solicitors' Regulation Authority. <https://www.sra.org.uk/sra/policy/sqe/>. Accessed 17 April 2020.

<sup>18</sup> For example, *International Journal of Clinical Legal Education*. <https://northumbriajournals.co.uk/index.php/ijcle>. Accessed 20 April 2020.

<sup>19</sup> <http://www.encle.org>. Accessed 20 April 2020.

<sup>20</sup> At the time I began this work, two universities in the United Kingdom had live-client clinics (Northumbria and Sheffield Hallam) although several others had had clinics prior to this (Kent, London South Bank, and Warwick).

For personal reasons I have been unable to attend the last three GAJE conferences, but know from the reports I have received that they were all very well attended and received. The last ‘clinic’ conference I did get to was in Bratislava in 2019—the International Journal of Clinical Legal Education and ENCLE annual event. Whilst there were the (relatively) old, familiar, and welcome faces present, there was also a mass of younger colleagues many of whom are doing pioneering work in places where we have not seen or heard of clinics before.<sup>21</sup>

Their work encompasses not just the live-client advice and representation that has featured so strongly in clinics over the years, but many now run highly sophisticated simulation programmes exposing students to the realities of the law and preparing some to go on to do legal work on actual cases. Others have immersed themselves in public legal education projects such as *Street Law*.<sup>22</sup> The variety of clinical work so far done ranges from individual clients’ cases to high-profile miscarriage of justice issues and research projects that look at changes to the law and possible reforms that may be needed. The growth of clinical legal education has been just extraordinary.

I attribute this development to three things.

First, and this is really an indictment of society, past and present, we still have unmet legal need on a massive and global scale. The inequalities found in the world, whatever one’s political perspective, are reflected in the difficulties many have accessing lawyers and justice. Whilst ever there is such need, there will be lawyers and others attempting to address it. It is our collective responsibility to do so. Clinics are one way of doing this.

Secondly, and more positively, as teachers, I think many of us have slowly taken cognisance of contemporary educational theory and the importance of structured reflective learning. It is, if properly designed, integrated, delivered, monitored, and supervised, simply a win-win situation for all—students, teachers, universities, clients, the legal profession, other employers, and the wider society.

Finally, we now have many, and an increasing number of, places where cohorts of students and alumni have been exposed to a clinic and where educational institutions have taken up the mantle of this approach to study. In addition we have a growing body of participants who have become increasingly aware of the importance of social justice. It is no coincidence that those who are acquainted with and understand clinical methods are now practising them. Some of us who have helped in producing this generation (or should it now be generations for some of us?) can at least look back with a degree of satisfaction that there has been such a lasting legacy.

I have no doubt that there is still much to be done, but at least we have the seemingly very safe hands of current clinicians and others to rely on. Thanks must go to Dr Madhava Menon for helping us along this path.

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<sup>21</sup> For a report on proceedings and to download the papers presented, see <https://www.northumbria.ac.uk/about-us/news-events/events/2019/07/ijcle-2019>. Accessed 20 April 2020.

<sup>22</sup> <https://www.streetlaw.org/>. Accessed 2 October 2020.