

# The role of clinical legal education in developing ethical legal professionals

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## SUMMARY

Training in legal professionalism and ethics is a vital part of any legal education. Teaching these aspects according to the Socratic method generally proves to be ineffective in producing the desired result. A lawyer's actual life experience, which include happiness and career satisfaction, is rarely included. This article will explore on what it means to be an ethical human being and consider the teaching of professionalism and ethics by way of the clinical legal education methodology. Clinics have particular riches to offer and discussing professionalism, values and ethics in a clinical setting can assist students to begin to identify their own professional sense. University law clinics serve as a role model in legal practice about how a legal practitioner should behave and what ethical decision-making means. The link between culture and ethics, which informs a person's sense of morality and ethics, is explored, with application to diversity and multiculturalism. In clinical context, students assume a high degree of responsibility by taking instructions from clients and they will benefit from cooperative learning where they will begin to develop a deep understanding of professionalism and ethical practice. Through tutorials and debriefing sessions and later in their reflection assignments, students discuss and reflect on aspects of the law, the legal system, their own interviewing skills and the experience of the client. In their reflection assignments, students readily identify areas for improvement but also refer to what they are able to achieve in their interview, building their motivation and sense of autonomy. Ongoing reflection and constructive feedback thereon will support a commitment to ethical and professionally competent, self-directed and autonomous lawyering. Clinical training affords students the opportunity to explore their legal professional and ethical behaviours and values, allowing them to develop in capable, self-directed and independent practitioners who will not only assume responsibility for their individual clients, but also contribute to their communities.

## 1 Introduction

Teaching legal professionalism, values and ethics according to the Socratic method generally proves to be ineffective in producing the desired result.<sup>1</sup> Universities globally, since the second half of the 19<sup>th</sup>

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1 Krieger "The inseparability of professionalism and personal satisfaction: perspectives on values, integrity and happiness" 2005 *Clinical Law Review* 425. See discussion in paragraph 3.

century,<sup>2</sup> apply the Socratic method as an inexpensive form of professional education,<sup>3</sup> focusing on classroom lectures, which involves little or no practical training. Lecturers refer students to textbooks as a guide towards solutions to legal questions posed,<sup>4</sup> viewed as a process by which students arrive at the answer to the questions themselves,<sup>5</sup> as guided by lecturers' responses. Although proponents of a purely theoretical and traditional Socratic pedagogy may view this methodology as participatory,<sup>6</sup> this method deprives students of valuable practical training. The Socratic teaching method was furthermore criticised as having a destructive psychological effect on students, enforcing a sense of inferiority to lecturers regarding their skills and abilities.<sup>7</sup>

Lawyers are human beings with human identities and actual life experiences informing their actions.<sup>8</sup> Therefore, the interplay between being professional as a lawyer, and one's values and sense of ethics in private life is important.

This article will explore what it means to be an ethical human being and consider the teaching of professionalism and ethics by way of the clinical legal education methodology. University law clinics have particular riches to offer and discussing professionalism, values and ethics in a clinical setting can assist students to begin to identify their own professional sense.

In clinical context, students assume a high degree of responsibility by taking instructions from clients. Therefore, it is necessary to explore the link between culture and ethics, which informs a person's sense of morality and ethics and how to apply these to diversity and multiculturalism.

Therefore, practical clinical experiences will serve as an important role model for legal practice where students will have the opportunity to learn how a legal practitioner should behave and what ethical decision-making means.

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2 Regassa "Legal Education in the New Ethiopian Millennium: towards a law teacher's wish list" 2009 2(2) *Ethiopian Journal of Legal Education* 53-56.

3 Regassa 2009 *Ethiopian Journal of Legal Education* 56.

4 Dickinson "Understanding the Socratic teaching method in law school after the Carnegie Foundation's Education Lawyers" 2009 31(1) *Western New England Law Review* 97-98.

5 McQuoid-Mason "Methods of teaching Civil Procedure" 1982 *Journal for Juridical Science* 162.

6 McQuoid-Mason 1982 *Journal for Juridical Science* 162.

7 McQuoid-Mason 1982 *Journal for Juridical Science* 164, who indicates that this may result in students having doubt about their own intelligence and personal worth.

8 Webb 2007 *International Journal of Clinical Legal Education* 136; Mnyongani "Whose morality? Towards a legal profession with an ethical content that is African" 2009 *SA Public Law* 131, indicates "the code of professional ethics regulates the life of a lawyer only in his or her professional life," but does not equate to cultural norms, turning lawyers into moral schizophrenics attempting to integrate the ethics in their professional and private lives.

This article will furthermore consider the teaching of professionalism and legal ethics by way of student collaboration, classroom instruction, clinic duties, tutorial discussions, which include debriefing sessions and reflection assignments, where students learn and reflect on aspects of the law, the legal system, their own interviewing skills and their experiences with fostering professionalism and legal ethics.

## 2 Legal professionalism,<sup>9</sup> values and ethics

Clearly defined goals on teaching ethics are often lacking, as “written ethics are found in what are essentially disciplinary, as opposed to aspirational codes”.<sup>10</sup> Therefore, the teaching of legal professionalism and ethics tends to focus on rules set by professional bodies. Lawyers may, in seeing themselves as accountable to the Legal Practice Council and the courts, lose sight of the community they represent and therefore, also the reason why their profession exists.<sup>11</sup> When teaching ethics, there should instead be a discussion on the sort of lawyers law schools want to produce. An ethical framework should be used in decision-making.<sup>12</sup> There is an interplay between being professional as a lawyer, and your values and sense of ethics in your private life. Personal tension can come into play when you argue the law on behalf of a client where your personal values clash with the position you are arguing.<sup>13</sup>

Webb,<sup>14</sup> in discussing the importance of measuring who you are, as well as what you do, as a lawyer, notes that we are faced with a theoretical debate that demands that you must choose “whether the best question to ask is ‘what, as lawyers, are we morally required to do’, or ‘what kind of lawyer should we be?’”<sup>15</sup> Webb states that, because we see ourselves as human beings, not human doings, the question of being is

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9 Legal professionalism was defined as ‘appropriate behaviors and integrity in a range of situations; the capacity to deal sensitively and effectively with clients, colleagues, and others from a range of social, economic, and ethnic backgrounds, identifying and responding positively and appropriately to issues of culture and disability that might affect communication techniques and influence a client’s objectives’. Stuckey et al *Best practices for legal education* (2007) 79.

10 Webb “Conduct, ethics and experience in vocational legal education” in *Ethical Challenges to Legal Education and Conduct* (1990) quoted in Kerrigan “‘How do you feel about this client?’ A commentary on the clinical model as a vehicle for teaching ethics to law students” 2007 *International Journal of Clinical Legal Education* 11.

11 Mnyongani 2009 *SA Public Law* 132.

12 Cody “What does legal ethics teaching gain, if anything, from including a clinical component?” 2015 *International Journal of Clinical Legal Education* 3. She indicates that students who often say that they want to be ‘professional’ are unable to describe what they mean when probed.

13 For a full discussion, see Parker and Evans *Inside Lawyers Ethics* (2014).

14 Webb 2007 *International Journal of Clinical Legal Education* 130–151 for an in-depth discussion on the concepts of ‘ethics’ and ‘being’, who you are as a lawyer and what you do.

15 Webb 2007 *International Journal of Clinical Legal Education* 130.

fundamental to your human identity and your actions,<sup>16</sup> even though through history, Western philosophy's of self and of identity are alienated therefrom.<sup>17</sup> Menkel-Meadow holds that the Western philosophy compartmentalises knowledge,<sup>18</sup> distinguishing between a lawyer's professional and private life. However, the public does not draw this distinction and assess lawyers' morality according to ordinary standards. In practice, they are guided by professional codes, whilst they are guided by their cultural ethos in their private lives.<sup>19</sup> On what it means to be an ethical human being, Webb suggests three connected commitments. First, to authenticity, which means, to accept who you are with your limitations before you can choose who you want to be (or not) in life.<sup>20</sup> Secondly, responsibility, where authenticity demands that we take responsibility for our moral decisions and ourselves.<sup>21</sup> The third commitment is choice, which is fundamental to responsibility as it does not determine who we are, but rather who we are being shaped by what we do.<sup>22</sup> He indicates that an authentic ethic of responsibility requires us to be fully responsible for the entirety of our representation, not just to our clients, but also others who may be affected by the representation.<sup>23</sup> Salinas further emphasises the effect of the impact that our legal work may have on other people, organisations and companies.<sup>24</sup>

Researchers identified a link between culture and ethics, acknowledging the role of culture in informing someone's sense of morality and ethics.<sup>25</sup> In understanding professional ethics, Mnyongani suggests that the profession "embark on a journey of 'decolonising' their minds," by debating what it means to be African in a profession with a Western approach, ethos and orientation.<sup>26</sup> To treat all others as universally the same is a travesty of responsibility.<sup>27</sup> An authentic ethic

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- 16 Webb 2007 *International Journal of Clinical Legal Education* 136; Mnyongani 2009 *SA Public Law* 131 indicates, "the code of professional ethics regulates the life of a lawyer only in his or her professional life," but does not equate to cultural norms, turning lawyers into moral schizophrenics attempting to integrate the ethics in their professional and private lives.
- 17 Webb 2007 *International Journal of Clinical Legal Education* 136.
- 18 Menkel-Meadow "Excluded voices: New voices in the legal profession making new voices in the law" 1987 *University of Miami Law Review* 31.
- 19 Menkel-Meadow 1987 *University of Miami Law Review* 31.
- 20 Webb 2007 *International Journal of Clinical Legal Education* 141-142.
- 21 Authenticity demands that we take responsibility for our moral decisions and ourselves. Webb 2007 *International Journal of Clinical Legal Education* 142.
- 22 Webb 2007 *International Journal of Clinical Legal Education* 142.
- 23 Webb 2007 *International Journal of Clinical Legal Education* 148.
- 24 Salinas *Effective client interviewing and counselling* (2016) 21, 175.
- 25 Fataar "Decolonising Education in South Africa: Perspectives and Debates" 2018 *Educational Research for Social Change* vii.
- 26 Mnyongani 2009 *SA Public Law* 133-134. Indigenous law was relegated to a subordinate role with the imposition of Roman Law, Roman-Dutch Law and English Law into South African Law. See Van Niekerk "The status of indigenous law in the South African legal order: A new paradigm for the common law?" 2002 *Codicillus* 5-6.
- 27 Webb 2007 *International Journal of Clinical Legal Education* 148.

of responsibility is that it is primarily sensitive to the needs and situation of a specific person.<sup>28</sup>

The nature of being, as suggested in Webb's three connected commitments, must be more prevalent when teaching ethics within an authentic legal education programme. Students must understand the constructed nature of their ethics before they can authentically act on them.<sup>29</sup> Therefore, "in order to ensure a happy, well-functioning legal professional, the person you are as a lawyer is also important, in line with what you do."<sup>30</sup>

Looking at ourselves as not only lawyers, but also law teachers, Macdonald describes our careers as a calling.<sup>31</sup> He believes that true teaching involves qualities, skills and actions that are the opposite of the notion equating teaching with authority in a one-way projection of expert knowledge from instructor to student.<sup>32</sup> We should direct our attention to who we are as teachers, not what teachers do - the human dimension.<sup>33</sup> Our actions as human beings arise from our experiences and our reflections thereon. He reflects on how he has learned through the words and deeds of a number of his inspiring law teachers in the past,<sup>34</sup> concluding that we ought to live our lives as both students and teachers of the law.<sup>35</sup>

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28 Webb 2007 *International Journal of Clinical Legal Education* 148.

29 Webb 2007 *International Journal of Clinical Legal Education* 150.

30 Cody 2015 *International Journal of Clinical Legal Education* 3.

31 Macdonald "Everyday lessons of law teaching" 2012 *Canadian Legal Education Annual Review* 1.

32 Macdonald 2012 *Canadian Legal Education Annual Review* 3. This serves as an indication of the inappropriateness of the Socratic method in skills training.

33 Macdonald 2012 *Canadian Legal Education Annual Review* 3.

34 Macdonald 2012 *Canadian Legal Education Annual Review* 3. Macdonald, in discussing what it means to teach and learn law, as he was inspired by his own teachers in the past, he came to the following conclusions: 1) to see living law in action, understanding that education is not inculcation; 2) liberating one's self-learning, learning how to learn law; 3) that legal education is a vocation with many dimensions; 4) that there are no hard boundaries to a discipline; 5) 'that you can *book-learn* what something means, but you can only *experience* what something has meant'; 6) that you are never off-the-job; 7) that without vulnerability there is no learning; 8) that an assignment is an occasion for learning and the assessment thereof is a further occasion for learning; 9) that we should learn as much from being wrong as we learned from being right; 10) that teaching is a shared activity between teachers and students; 11) that scholarship is teaching, learning is research; 12) that we need to weave epistemology and ethics into the design of classroom problems, that students realise that their answers are the result of their moral choices (in specifically referring to students looking on the internet for quick answers; and 13) there is always more to learn.

35 Macdonald 2012 *Canadian Legal Education Annual Review* 11-15. He holds that if one is not learning, one is not teaching. "Teaching and learning are *not* about mastering the known. They are about confronting the unknown".

Hyams echoes that law teachers should have an ongoing commitment to lifelong education, over and above that which is necessary.<sup>36</sup> This would require two things, first, an understanding that good lawyering and professionalism require an ongoing process of understanding personal limitations and a commitment to remain fresh, innovative and knowledgeable in professional work; and secondly, it requires the tools to put this understanding and commitment into action.<sup>37</sup>

Professional identity includes creating competent legal professionals who are not only responsible to individual clients, but to also contribute services to the community.<sup>38</sup> The Carnegie Report discusses “professional formation toward a moral core of service to and responsibility for others”.<sup>39</sup> The MacCrate Report identified key values that are essential to lawyers,<sup>40</sup> including the provision of competent representation, striving to promote justice, fairness and morality, striving to improve the profession and professional self-development.

Requirements for a professionally responsible lawyer were indicated as someone who:<sup>41</sup> fulfils the duties attached to a fiduciary relationship; is competent in the work they perform; communicates often, openly and clearly with their client; does not encourage the use of law to bring about injustice, oppression or discrimination; identifies, raises and discusses ethical issues with current and potential clients; seeks to enhance the administration of justice and actively engages in serving the community;<sup>42</sup> is able to work in an autonomous way in an independent, self-sufficient and self-directed fashion; is able to exercise judgment, not only relating to how to resolve a client’s problems, but reflective judgement of their own behaviours and actions; and should have an ongoing commitment to lifelong education – over and above that which

36 He concludes “the greatest celebration one can feel as a teacher ... lies in the celebration of one’s students and the projects they have made of their lives”.

37 Hyams “On teaching students to ‘act like a lawyer’: What sort of lawyer?” 2008 *International Journal of Clinical Legal Education* 23.

38 Cody 2015 *International Journal of Clinical Legal Education* 4; Hyams 2008 *International Journal of Clinical Legal Education* 21 confirms this understanding that all professionals have an obligation to contribute to the community in some form. In South Africa duties towards the poor in the form of access to justice, forms part of the requirements of professional and ethical conduct. See De Klerk et al *Clinical law in SA* (2006) 50–52.

39 The Carnegie Foundation for the Advancement of Teaching. See Hamilton and Monson “Legal Education’s Ethical challenge: Empirical research on how most effectively to foster each student’s professional formation (professionalism)” 2012 *University of St Thomas Law Journal* 332.

40 Report of the Task Force on law Schools and the Profession, Narrowing the Gap: Legal Education and Professional Development-An Educational Continuum (American Bar Association July 1992).

41 Noone & Dickson “Teaching towards a new professionalism: Challenging law students to become ethical lawyers” 2001 *Legal Ethics* 144.

42 Noone & Dickson 2001 *Legal Ethics* 144.

is required by continuing professional development points.<sup>43</sup> Cody,<sup>44</sup> in discussing the above requirements, concludes that the key aspect is “working towards or contributing to justice, fairness and the improvement of the legal system and serving the community, as part of the role of a lawyer.”<sup>45</sup> She continues with two further aspects, namely gaining a sense of autonomy and self-direction;<sup>46</sup> and ongoing reflection and continual improvement,<sup>47</sup> as fundamental to an ethically responsible lawyer.<sup>48</sup>

### 3 Negotiating the connection between individual values and professionalism

Despite much talk about professionalism in law schools and the legal profession, students tend to turn away from public service careers,<sup>49</sup> a crucial reason being the highly visible and commercialised segments of the profession. Law students tend to disregard the often-noble messages about professionalism, resulting in many of them failing to comprehend the foundations of their future working life.

Professionalism and ethics training is typically presented by way of the Socratic method,<sup>50</sup> which proved to be ineffective in producing the desired result. A lawyer’s actual life experience, which include happiness and career satisfaction, is rarely included.<sup>51</sup> Students may then distance themselves from a discussion they perceive as theoretical rather than personal, alienating them from legal education and legal practice.<sup>52</sup> It was argued that “legal education and early lawyering experiences can tend to erode integrity by separating people from their personal values and beliefs, conscience, truthfulness, and intrinsic needs for caring and co-operation.”<sup>53</sup> Therefore, it is important to find a “value-match” between a lawyer’s own values and the values of their firm, or even

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43 Hyams 2008 *International Journal of Clinical Legal Education* 23.

44 Cody 2015 *International Journal of Clinical Legal Education* 6.

45 Cody 2015 *International Journal of Clinical Legal Education* 6.

46 Cody 2015 *International Journal of Clinical Legal Education* 6. “[T]he ability to reflect on oneself, how you are and what you do as a lawyer, is vital to being able to improve and be a competent lawyer”.

47 Cody 2015 *International Journal of Clinical Legal Education* 6. “Ongoing reflection on how a lawyer contributes to the legal system and its ability to deliver justice is also necessary for any lawyer to be able to contribute to the justice system and serve the community”.

48 Cody 2015 *International Journal of Clinical Legal Education* 6.

49 Krieger 2005 *Clinical Law Review* 425.

50 Krieger 2005 *Clinical Law Review* 425. Applied, this basically amounts to telling law students that they should act in certain ways, for generally noble reasons including the high calling of the profession; “and that they’d better do so, for more coercive reasons including the potential for bar discipline”.

51 For a full discussion, see Krieger 2005 *Clinical Law Review*.

52 Cody 2015 *International Journal of Clinical Legal Education* 7.

53 Krieger 2005 *Clinical Law Review* 432.

earlier, such as a match within the law school experience before entering practice.<sup>54</sup>

Clinics have particular riches to offer in the teaching of professionalism and ethics. Discussing professional values in a clinical setting can assist students to begin to identify their own professional sense. The clinical office will serve as an important role model in legal practice about how a legal practitioner should behave and what ethical decision-making means. Students will be able to, through their clinical experiences, assess in the future, whether a particular practice will suit their professional identity.<sup>55</sup>

When professionalism includes a responsibility to the community, it means that lawyers' sense of who they are, and what it means to them to be a lawyer, will be part of their professional values.<sup>56</sup> It has been stated in paragraph two above that professional identity also includes the understanding that all professionals have an obligation to contribute to the community in some form,<sup>57</sup> supported by the Carnegie Foundation's views on service to and responsibility for others,<sup>58</sup> echoed as a requirement of professional and ethical conduct in South Africa.<sup>59</sup> University law clinics, through their clinical courses, provide legal services to the indigent in their communities.

In clinical context, students are given a high degree of responsibility by actually taking instructions from clients, briefing their clinicians, researching the law, advise and proceed with drafting legal process. Through tutorial discussions, collaboration and reflection assignments students learn and reflect on aspects of the law, the legal system, their own interviewing skills and the experience of the client, building student autonomy. These are explored further below.

## 4 Embedding professional ethics through Clinical Legal Education

The clinical legal education (CLE) methodology promotes an understanding of ethics on a deeper level where a student is not limited

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54 Cody 2015 *International Journal of Clinical Legal Education* 8.

55 Foley, Rowe, Holmes and Tang "Teaching professionalism in legal clinic - what new practitioners say is important" 2012 *International Journal of Clinical Legal Education* 17-19.

56 Cody 2015 *International Journal of Clinical Legal Education* 9. For a full discussion see Webb 2007 *International Journal of Clinical Legal Education*; also see Klein, Wortham and Blaustone "Autonomy-Mastery-Purpose: structuring clinical courses to enhance these critical educational goals" 2012 *International Journal of Clinical Legal Education* 105-147.

57 Hyams 2008 *International Journal of Clinical Legal Education* 21.

58 The Carnegie Foundation for the Advancement of Teaching; Hamilton and Monson 2012 *University of St Thomas Law Journal* 332.

59 De Klerk et al *Clinical law in SA* 50-52.



to understanding a theoretical ideal.<sup>60</sup> Therefore, the teaching of legal professionalism, values and ethics is particularly relevant in clinical courses where students are consulting with live clients. Law students will now have the opportunity, within the sheltered clinical environment, to interrogate the impact of their decisions specifically in relation to their clients, encompassing diversity on multiple levels, and the legal profession. Therefore, law students have the opportunity to develop their professional identities and to consider their roles within the legal profession.<sup>61</sup>

Clinical courses (referred to as CLE) are generally on offer during students' final year of LLB studies. As such, students will have a foundation in a number of substantive law courses. CLE can be offered as a capstone course or a capstone experience in which an environment is created where law students will gain new insight from their prior knowledge of the law and how that relates to society and other relevant disciplines.<sup>62</sup> Kift describes capstone experiences as referring "to the overall student experience of both looking back over their academic learning, in an effort to make sense of what they have accomplished, and looking forward to their professional and personal futures that build on that foundational learning."<sup>63</sup> Clinicians should weave key aspects of ethics into all the different components of students' clinical experiences.<sup>64</sup> Students can gain insight into the law's impact on the disadvantaged members of their community and they will gain a sense of autonomy when they understand how they can use their law degree to improve justice and the legal system. Students will be able to see how the law can sometimes impact harshly on the lives of specifically disadvantaged clients. This will create a framework for them to think about ethical decision-making, as well as their roles as future lawyers.<sup>65</sup>

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60 On the development of the clinical teaching methodology, see Barry and Joy "Clinical education for this millennium: the third wave" 2000-2001 *Clinical Law Review* 16-18. For a detailed discussion of CLE used as a teaching methodology see Vawda "Learning from experience: the art and science of clinical law" 2004 *Journal for Juridical Science* 116-134.

61 Giddings *Promoting justice through clinical legal education* (2013) 14, 59-61.

62 Quinot and Van Tonder "The potential of capstone learning experiences in addressing perceived shortcomings in LLB training in South Africa" 2014 *Potchefstroom Electronic Law Journal* 1350-1390.

63 Kift et al *Curriculum renewal in legal education. Final Report: 1-143* (2013) 18. Available at [https://eprints.qut.edu.au/64249/1/Final\\_Report%5B1%5D.pdf](https://eprints.qut.edu.au/64249/1/Final_Report%5B1%5D.pdf) (accessed 18 August 2020).

64 Cody 2015 *International Journal of Clinical Legal Education* 12-13. The key aspects were identified by Cody as working towards or contributing to justice, fairness and the improvement of the legal system and serving the community, as part of the role of a lawyer; gaining a sense of autonomy and self-direction; and ongoing reflection and continual improvement, as fundamental to an ethically responsible lawyer.

65 Cody 2015 *International Journal of Clinical Legal Education* 12-13.

## 4 1 Cultural diversity and professional ethics

It was indicated that culture “is not something static and immutable, but is rather moving, dynamic, flexible”.<sup>66</sup> Mnyongani holds that language and culture play a large role in preparing students to enter the profession,<sup>67</sup> suggesting that Western philosophy embraces individual autonomy, whereas African philosophy focuses its reality overall.<sup>68</sup> These two different views have an effect on students entering the profession, as all may not easily embrace Western norms.<sup>69</sup>

Cultural diversity in CLE extends across clinicians, students and clients frequenting the clinic.<sup>70</sup> This diversity provide rich learning for students around cross-cultural communication and professional ethics.<sup>71</sup> By observing the individual behaviours of their clinicians, students will witness a range of views on appropriate lawyering styles and approaches to legal practice.<sup>72</sup> This will provide students with ample material to critique, analyse and reflect on how to be an ethical legal professional.

The diversity in the South African multicultural society has an impact on students’ receptivity to particular forms of CLE. Students encounter diversity and differences attributed to a “myriad of factors of race, gender, class, culture, religion and language [which] all impact on the

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66 Smith and Tvaringe “From Afro-centrism to decolonial humanism and Afro-plurality. A response to Simphiwe Sesanti” 2018 *New Agenda* 42.

67 Mnyongani 2009 *SA Public Law* 125.

68 Mnyongani 2009 *SA Public Law* 125.

69 Mnyongani 2009 *SA Public Law* 125.

70 Du Plessis *Clinical legal education: Law Clinic Curriculum design and assessment tools* (2016) 146. Racial, cultural and religious differences may be challenging when clients are unable to distinguish between cultural or indigenous customs, religious practices and the law regulating the society during consultations with students. Students who do not know these customs and practices often have difficulty in advising clients, as some may withhold certain information from the students because of their cultural differences, such as issues relating to money or family. Sometimes confusion may be caused merely by the different use of language in different cultures.

71 For discussion see Lopez “Teaching a professional responsibility course: lessons learned from the clinic” 2002 *Journal of the Legal Profession* 149-158.

72 Cody 2015 *International Journal of Clinical Legal Education* 16. Parker and Evans *Inside Lawyers Ethics* 7-32 suggested four key frameworks within which lawyers make ethical decisions. They are 1) the ‘adversarial advocate’ in which a lawyer’s role is to advocate zealously for the client’s interests within the bounds of the law; 2) the ‘responsible lawyer’ who is seen predominantly as an officer of the court, responsible for making the law and the legal system work as fairly as possible; 3) the ‘moral activist’ of ethics who emphasises the importance of lawyers’ position within society, their role in engaging in law reform and to also advise clients about a moral course of action; and 4) the ‘ethics of care’ lawyer, where it is his/her responsibility to others, to maintain relationships, and to avoid harm.

way students experience their world, and hence on the context in which their learning takes place.”<sup>73</sup>

Studies on legal education identify cultural literacy as a core skill and student education in this regard is essential.<sup>74</sup> Learning theory shows that students learn well by viewing a problem through multiple perspectives and experience shows that cross-cultural examples can serve as particularly fascinating, revealing comparative models for learning core material.<sup>75</sup> Different perspectives can also reduce feelings of marginalisation among students with diverse backgrounds.<sup>76</sup>

Polistina identifies four key cultural literacy skills namely: 1) cross-cultural awareness which includes the ability to examine other cultures critically;<sup>77</sup> 2) local cultural awareness, the ability to accept and respect knowledge within local cultures and communities; 3) critical reflective thinking, a dialogue between students and clinicians on aspects of cultural or social discourse, where the experiences of the group as a whole is considered.<sup>78</sup> This includes students’ accountability with reference to multiple perspectives as influenced by their diverse historical and socio-political contexts; and 4) developing personal skills in coping with cultural shifts and to be empowered to cope with unreceptive behaviours of people seeking to sustain the status quo.<sup>79</sup> Significant teaching tools, such as “the five habits of cross-culture lawyering” were developed by Bryant.<sup>80</sup> A multicultural environment provides students

73 Vawda “Lost in translation: Language and diversity issues in clinical law teaching” 2006 *De Jure* 296.

74 Polistina “Cultural literacy. Understanding and respect for the cultural aspects of sustainability” 1-6. Available at [http://arts.brighton.ac.uk/\\_\\_data/assets/pdf\\_file/0006/5982/Cultural-Literacy.pdf](http://arts.brighton.ac.uk/__data/assets/pdf_file/0006/5982/Cultural-Literacy.pdf). (accessed 29 October 2020). For a discussion on cultural literacy in view of globalisation see Shliakhovchuk (2019) ‘After cultural literacy: new models of intercultural competency for life and work in a VUCA world’. Available at [https://www.researchgate.net/publication/331453186\\_After\\_cultural\\_literacy\\_newmodels\\_of\\_intercultural\\_competency\\_for\\_life\\_and\\_work\\_in\\_a\\_VUCA\\_world](https://www.researchgate.net/publication/331453186_After_cultural_literacy_newmodels_of_intercultural_competency_for_life_and_work_in_a_VUCA_world) (accessed 17 August 2020).

75 Du Plessis 2016 *Clinical legal education: Law Clinic Curriculum design and assessment tools* 126.

76 Du Plessis 2016 *Clinical legal education: Law Clinic Curriculum design and assessment tools* 126. Many clinical teachers have recognised the importance of teaching diversity issues in the clinic.

77 Polistina [http://arts.brighton.ac.uk/\\_\\_data/assets/pdf\\_file/0006/5982/Cultural-Literacy.pdf](http://arts.brighton.ac.uk/__data/assets/pdf_file/0006/5982/Cultural-Literacy.pdf). 1-6.

78 See discussion on cooperative learning and reflection in paras 4 2 and 6 below.

79 Polistina [http://arts.brighton.ac.uk/\\_\\_data/assets/pdf\\_file/0006/5982/Cultural-Literacy.pdf](http://arts.brighton.ac.uk/__data/assets/pdf_file/0006/5982/Cultural-Literacy.pdf). 1-6.

80 Bryant “The five habits: building cross-cultural competence in lawyers” 2001 *Clinical Law Review* 12–19. In brief, habit one gives students a framework within which to analyse how similarities and differences between the lawyer and client may influence lawyer-client interactions. In habit two students are asked to identify and analyse the possible effects of similarities and differences on the interaction between the client, the legal decision-maker and the lawyer – the three rings. This analysis is linked to the habit one analysis to explore all the ways in which culture may

with the diversity beneficial to both them and their clinicians,<sup>81</sup> a valuable learning experience for students as law clinics create safe environments for multicultural interaction.

## 4 2 Cooperative learning

Professional ethics, including challenges of diversity within law clinics,<sup>82</sup> can be addressed through cooperative learning, such as in small heterogeneous groups where students ideally work with partners or in “student law firms”.<sup>83</sup> Respectful relationships and clear communication can be fostered in student law firms where professional values and ethics can be discussed, allowing students to identify their own professional sense and identity.<sup>84</sup> In forming the student law firms, students are likely to partner up with friends or at least with others with whom they are acquainted. Chavkin is of the opinion that “[t]he appropriate balance is probably best struck by clinician pairing of students.”<sup>85</sup> He cautions that although race, gender, sexual orientation, ethnicity, extreme diverse backgrounds and socio-economic status are some of the factors that may impede meaningful interaction between students,<sup>86</sup> clinicians can use this diversity to create certain pairings in student law firms, to encourage effective collaborative learning and to better facilitate interaction with

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influence a case. Habit three is that of “parallel universes” thinking which invites students to look for multiple interpretations, especially at times when the student is judging the client negatively. Habit Four focuses on cross-cultural communication, identifying some tasks in normal attorney-client interaction that may be particularly problematic in cross-cultural encounters as well as alerting students to signs of communication problems. Habit five encourages the student to create settings in which bias and stereotype are less likely to govern. The Habit promotes reflection and change of perspectives with a goal of eliminating bias. It recognises innumerable factors that interact with bias and stereotype to negatively influence an attorney-client interaction.

- 81 The multiracial component also affects clinicians. Some progress was made in the USA since 1995 when issues of race in clinical context was lamented as a critical concern, specifically relating to certain unique issues clinicians of colour confront when applying generally accepted modes of clinical supervision and instruction. It was later stated that the fact that the CLE community at last became a racially diverse community was welcomed in assuring that the validity of clinical theories and practices from truly multicultural and multiracial perspectives can be re-examined. See Ellmann, Gunning and Hertz “Why not a clinical lawyer-journal?” 1994-1995 *Clinical Law Review* 6. For a full discussion on this topic, see Jacobs “Legitimacy and the Power Game” 1994 *Clinical Law Review* 187-198.
- 82 Randall “Increasing retention and improving performance: Practical advice on using cooperative learning in Law Schools” 2000 *Thomas. M. Cooley Law Review* 201-273.
- 83 See Du Plessis 2016 *Clinical legal education: Law Clinic Curriculum design and assessment tools* 110-116 for a discussion on student law firms.
- 84 Foley, Rowe, Holmes and Tang 2012 *International Journal of Clinical Legal Education* 17-19.
- 85 Chavkin “Matchmaker, matchmaker: Student collaboration in clinical programs” 1994-1995 *Clinical Law Review* 199-244.
- 86 Chavkin 1994-1995 *Clinical Law Review* 211-212.

clients.<sup>87</sup> Advantages will include some students having a better understanding of clients' circumstances and positioning their problems within a specific cultural context,<sup>88</sup> the opportunity to converse in a language that clients feel comfortable with,<sup>89</sup> and to share with their student partners. Randall suggests that cooperative learning increases "critical thinking, better attitudes toward subject matters, increases social support, improves social adjustment and increases appreciation for diversity."<sup>90</sup> Cooperative learning offers students the benefit of observing first-hand the different lawyering styles adopted by their peers and the supervising clinicians. They will then begin to develop a deep understanding of ethical practice.<sup>91</sup>

## 5 Application of CLE towards cultivating professional ethics

CLE uses three basic pedagogical components consisting of clinic duty, classroom teaching and student tutorial sessions with their clinicians.<sup>92</sup> Evans and Hyams refer to some intrinsic belief that students will learn certain skills simply by seeing a real client with a legal problem, assuming that they may find a solution to a problem "on the run". They argue that, although there is evidence that many things are learned in this manner, this "osmotic" exposure model may not be the best way in which to learn lawyering skills, advising clinics to run a seminar and tutorial programme alongside the live-client work.<sup>93</sup>

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87 Chavkin 1994-1995 *Clinical Law Review* 211-212.

88 Du Plessis 2016 *Clinical legal education: Law Clinic Curriculum design and assessment tools* 144-145. Some students are unable to position the problem within the social and/or business environment within which the client's legal problem manifests. Some students will therefore have the advantage of being better equipped to understand the circumstances surrounding clients' problems than others.

89 Du Plessis 2016 *Clinical legal education: Law Clinic Curriculum design and assessment tools* 132-135 for a discussion on the challenge of language barriers.

90 Randall 2000 *Thomas. M. Cooley Law Review* 226-227. Randall uses the Academic Excellence Programmes (AEP) as foundation for cooperative learning which specifically focus on students in need. The AEP was designed to assist minority students or other students that were considered to be at risk. The AEP has 6 major themes: it is based on psychological and cultural adaptations NOT compensatory education; it emphasises encouragement and empowerment, never sending a message of incompetence; it is highly structured; promotes confidence; encourages risk-taking in the classroom or clinic; and encourages students to articulate their analysis in writing."

91 Noone, Dickson and Curran "Pushing the Boundaries or Preserving the Status Quo? Designing Clinical Programs to Teach Law Students a Deep Understanding of Ethical Practice" 2005 *International Journal of Clinical Legal Education* 111.

92 Du Plessis 2016 *Clinical legal education: Law Clinic Curriculum design and assessment tools* 26.

93 Evans & Hyams 2008 *Griffith Law Review* 63.

CLE is relevant as to its content, as students, diversely grouped, are required to apply prior knowledge of substantive and procedural laws in a practical context in solving problems of a collection of culturally diverse clients, whilst maintaining professional ethics. The application of the clinical legal education methodology is indicated below.

## 5 1 Classroom teaching

Classroom instruction runs in tandem with students' clinic duties to support and expand the legal skills learnt in the clinical environment. The classroom component is essential, because the clinician often has to "teach things students should have learned before enrolling in client representation courses, such as the rules of evidence and professional conduct and basic lessons about lawyering skills".<sup>94</sup> Classroom content must support a focus on legal professionalism and ethics, which can include ethical skills exercises.<sup>95</sup> In teaching on legal professionalism and ethics, clinicians must also address diversity issues and multiculturalism, including the respect for diverse customs, traditional education values, the diversity in religions and observing relevant protocols.<sup>96</sup> The role of the clinician is critical in raising diversity issues in the classroom through the experiences of students,<sup>97</sup> allowing for interactive teaching.<sup>98</sup> More focused teaching opportunities will present during clinic duties where students interact with live clients. These interactions will in turn form the basis for in-depth discussions during student tutorials.

## 5 2 Clinic duty

A live-client clinic enables students to scratch beneath the surface of the legal system and explore the hinterland of expectations, promises and goals engendered by the legal process.<sup>99</sup> In the clinic, students may be presented with, described by De Klerk as, what often amounts to an incoherent "mish-mash" of problems and they are required to distinguish between what would be relevant in law and what could be referred for

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94 Stuckey 2007 *Best practices for legal education* 189.

95 For example: <https://www.unodc.org/e4j/en/tertiary/integrity-ethics.html> (accessed 28 October 2020). Vawda 2004 *Journal for Juridical Science* 119 suggests a classroom component of two hours per week where clinicians meet with all the students and offer instruction in the theory of clinical law, skills, ethics and values.

96 Du Plessis 2016 *Clinical legal education: Law Clinic Curriculum design and assessment tools* 125. One should bear in mind that, although the clinic may be situated in an urban area, some clients travel from rural areas where certain customs are strictly adhered to. Students must also be instructed on how to explain to clients why the consultation may be different to what they are used to or expect.

97 Vawda 2006 *De Jure* 303.

98 What was taught in the plenary sessions should be constantly re-enforced during student tutorials.

99 Hall & Kerrigan "Clinic and the wider law curriculum" 2011 *International Journal of Clinical Legal Education* 34.

some other form of intervention.<sup>100</sup> The typical profile of a client was aptly described as:

“(W)hen consulting, clinic clients ‘tend to present to the clinic lawyer a rather large package of problems, half of which have nothing to do with the law and the other half so intertwined with poverty that their actual legal problems are often very hard to extract’ and ‘(f)ormulating the mandate is only half the battle won’ ...”<sup>101</sup>

Aitken suggests, “[c]lients’ cases rarely present simple facts that lend themselves to right and wrong answers. It is the complexity and unpredictability of working with real people that makes clinical legal education so rich.”<sup>102</sup> This complexity provides fertile ground for learning about ethical decision-making.<sup>103</sup> Clinicians should not assume that the clinical experience alone would teach that to students. The teaching of professionalism, ethics and ethical decision-making has to be well planned and incorporated in the entire CLE pedagogy.<sup>104</sup>

Cultural diversity will be most apparent during clinic duties, specifically where students work in pairs or in student law firms. This diversity extends to the clients frequenting the clinic. Significant losses in meaning can occur when communicating across diversity lines, highlighting cultural and linguistic inequivalences.<sup>105</sup> This diversity provide fertile ground for teaching professionalism and professional ethics.<sup>106</sup>

### ***5 2 1 Clinic interviews and student autonomy***

As it is impossible for clinicians to attend all client interviews, students are mostly left to their own devices.<sup>107</sup> Therefore, students’ understanding of professionalism and ethics are tested during client interviews, as they do not observe client interviews, they actually

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100 Du Plessis 2016 *Clinical legal education: Law Clinic Curriculum design and assessment tools* 136.

101 De Klerk “Unity in Adversity: Reflections on the Clinical Movement in South Africa” 2007 *International Journal of Clinical Legal Education* 97.

102 Aitken “Provocateurs for Justice” 2001 *Clinical Law Review* 292.

103 Cody 2015 *International Journal of Clinical Legal Education* 15.

104 Barry and Joy 2000-2001 *Clinical Law Review* 57-65.

105 Vawda 2006 *De Jure* 302. Nuances of “different cultural groups can result in misunderstanding or ... a serious breakdown in communication”. Apart from language barriers, students may be required to identify problems not solely based in law, but often of a social nature, rooted in poverty, which in turn may have strong customary and/or cultural elements. Students with different cultural backgrounds may not understand these. See Du Plessis 2016 *Clinical legal education: Law Clinic Curriculum design and assessment tools* 146. Also see Du Plessis *Effective legal interviewing and counselling* (2019) on how to conduct effective legal interviewing and counselling.

106 Further teaching will follow during tutorial sessions. See discussion below in 5 3.

107 Du Plessis 2016 *Clinical legal education: Law Clinic Curriculum design and assessment tools* 122.

interview real clients.<sup>108</sup> This experience supports a sense of purpose in their lives. Students experience autonomy when interviewing clients in a supportive environment,<sup>109</sup> leading to positive motivation and helping them to thrive. Cody indicates that for many students these interviews are their “first experience of seeing how law can help people and how impenetrable the legal system can be for disadvantaged people.”<sup>110</sup> She notes that most students indicated that they feel a sense of accomplishment after the interviews.<sup>111</sup> Such unsupervised client interviews, the details of which can be elaborated on in a supportive environment during tutorials and debriefing sessions, discussed below, strengthen students’ sense of professionalism.

### 5.3 Student tutorials

Weekly tutorial sessions are geared towards guiding students through the stages of learning.<sup>112</sup> Students must be democratically engaged when legal professionalism and ethics are applied during tutorials.<sup>113</sup> This must include discussions relating to language barriers, diversity and multiculturalism.<sup>114</sup> It was argued that discussion builds positive social attitudes and a sense of belonging where students are taught that different views should not only be respected, but also indeed welcomed.<sup>115</sup> This is in harmony with the discussion in paragraph two above on Webb’s views on the importance of measuring who you are, as well as what you do, as a lawyer.<sup>116</sup> The tutorials are also well suited for re-enforcing plenary instructions on diversity issues and incorporating other students’ experiences during clinic duties.

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108 Students generally consult without a clinician in attendance during the actual interview. The interviews and statements taken are usually discussed during their tutorial sessions. See Du Plessis 2016 *Clinical legal education: Law Clinic Curriculum design and assessment tools* 122-128. For a full discussion on legal interviewing and counselling, see Du Plessis 2019 *Effective legal interviewing and counselling* and Du Plessis “Clinical legal education: Interviewing skills” 2018 *De Jure*.

109 Klein, Wortham and Blaustone 2012 *International Journal of Clinical Legal Education* 113.

110 Cody 2015 *International Journal of Clinical Legal Education* 24.

111 Cody 2015 *International Journal of Clinical Legal Education* 24.

112 This “is an active pedagogy in which students are required to perform certain tasks and draw lessons from those experiences.” Vawda 2004 *Journal for Juridical Science* 120.

113 Harriger “Deliberative dialogue and the development of democratic dispositions” 2014 *New Direction for Higher Education* 55.

114 This may include the training of students according to Bryant in the five habits of cross-culture lawyering See Bryant 2001 *Clinical Law Review* 1–62.

115 Clark and Starr *Secondary and Middle School Teaching Methods* (1991) 239.

116 See para 2 above. Webb 2007 *International Journal of Clinical Legal Education* 130–151 for an in-depth discussion on the concepts of ‘ethics’ and ‘being’, who you are as a lawyer and what you do.



### 5 3 1 *Debriefing sessions*

Debriefing is a key element of students' learning processes.<sup>117</sup> Debriefing sessions normally occur during tutorials. As clinicians are not present during client interviews, many issues may arise during the post client interview debrief which include: racial, cultural, language and religious differences encountered and whether students captured the instructions correctly. When communicating with clients with disabilities certain questions arise, such as:<sup>118</sup> What constitutes a disability? How are disabled clients impacted within the legal system?<sup>119</sup> Cody provides a range of possible issues that may arise during debriefing sessions, such as:

“Who are the legal profession? Who are clients? Does the limited diversity of the legal profession impact on the experience of disadvantaged clients seeking legal help? What are conflicts of interest? How should a legal practice manage conflicts of interest within families? What does acting on instructions mean? What is a lawyer's responsibility when asked for advice about doing something, which is illegal? What is the role of a lawyer and the limit on students who cannot give legal advice? How much information should lawyers give clients about why they do not have a good case, taking into account issues of client autonomy issues versus complexity/paternalism/disadvantage?”<sup>120</sup>

These issues, all having an impact on professional ethics, should be discussed during the tutorial debriefing sessions.<sup>121</sup>

#### 5 3 1 1 Strengths and weaknesses of debriefing

Clinicians' backgrounds in legal practice and their types of practices may vary and each one may have a unique approach.<sup>122</sup> Therefore, students will experience debriefing sessions differently. Furthermore, students will add views that are characteristic to their own backgrounds, as well as what they may have learnt during the preceding years of study. Students may observe disagreement and robust discussion amongst clinicians as to how to deal with an issue.

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117 Cody 2015 *International Journal of Clinical Legal Education* 12, 15.

118 Cody 2015 *International Journal of Clinical Legal Education* 19 indicates that clients' ability to give instructions may be challenged in some way. Guidance to students are therefore imperative.

119 Cody 2015 *International Journal of Clinical Legal Education* 18. She poses the question whether a psychiatric disability has an impact on a client's ability to give instructions and how students perceive the disability.

120 Cody 2015 *International Journal of Clinical Legal Education* 18-19.

121 For further discussion, see Webb 2007 *International Journal of Clinical Legal Education* 7-26.

122 Cody 2015 *International Journal of Clinical Legal Education* 19-20.

Although some may perceive this as a weakness, the strength lies in the fact that it allows students to see that lawyers have to grapple with issues individually and that there is not always a readily right answer to ethical issues.<sup>123</sup> Students are able to discover that there are a range of ways to deal with ethical issues when they are not clear-cut.<sup>124</sup> A weakness is that the issues are often not made available to all the students in the clinical course. It is suggested that individual issues be shared within the student law firms during their combined tutorials. Ethical issues must be shared with all students during debriefing conferences, discussed below.

### 5.3.1.2 Debriefing conferences

Clinicians should ideally also consider debriefing conferences with the full cohort of students in the clinical course to discuss issues that became apparent during individual tutorials as indicated above.<sup>125</sup> Students can share their experiences during interviews by way of oral presentations. This may lead to the discussion of broader ethical issues such as, the duty of confidentiality or fiduciary relationships, allowing for deepened individual experiences and peer learning.

## 6 Reflection

Reflection, a key element of the learning process,<sup>126</sup> is the intentional consideration of an experience in light of particular learning objectives.<sup>127</sup> Reflection will allow students to discover methods for merging their personal and professional identities without the need to compartmentalise views and perspectives.<sup>128</sup> For a student to learn what makes an ethical legal professional, reflection is as essential as debriefing to the learning process. After debriefing sessions, or even after discussing their interviewing experiences with one another informally, students should reflect on their experiences in their reflective journals.<sup>129</sup> Reflection on their interviews should ideally take the form of self-

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123 Cody 2015 *International Journal of Clinical Legal Education* 20. Students may observe disagreement and robust discussion amongst clinicians as to how to deal with an issue. Students are able to discover that there are a range of ways to deal with ethical issues when they are not clear-cut.

124 Cody 2015 *International Journal of Clinical Legal Education* 20.

125 Du Plessis 2016 *Clinical legal education: Law Clinic Curriculum design and assessment tools* 131. The diversity in the student populations furthermore serve as authentic cross-cultural exchanges between students and clinicians. See Vawda 2004 *Journal for Juridical Science* 127–129.

126 Cody 2015 *International Journal of Clinical Legal Education* 15.

127 Du Plessis 2016 *Clinical legal education: Law Clinic Curriculum design and assessment tools* 74. See Moon *Reflection in Learning and Professional Development, Theory and Practice* (1999) for a full discussion.

128 Levy-Pounds and Tyner “The principles of Ubuntu: using the legal clinical model to train agents of social change” 2008 *International Journal of Clinical Legal Education* 18.

129 For a discussion on reflection and reflective journals, see Du Plessis 2016 *Clinical legal education: Law Clinic Curriculum design and assessment tools* 74-77.

reflection, where students discuss issues that arose and how he or she addressed them. This part should also address identified areas for improvement. A further part of the reflection should address ethical issues that were encountered or broader issues around the law, the legal system, and the client's participation within it.

South Africa comprises a diverse and multicultural society, reflected in the composition of the students, clients and clinicians. Issues relating thereto are not unique. Lopez,<sup>130</sup> in referring to her clinical practice in New Mexico, where she observes students struggling to represent clients who are members of minority groups,<sup>131</sup> she has come to see the need for diversity and cross-cultural competence among members of the profession.<sup>132</sup> Lopez uses reflection, where students are required to pen their thoughts and views on issues encountered, as a valuable tool in achieving cross-cultural competence.<sup>133</sup> A further strength of reflection lies in students' adaptation to the globalisation of the profession, where the need for diversity in the profession is also a professional issue, in terms of diversifying society to open the doors of opportunity to all ethnic and racial groups.<sup>134</sup>

Written reflection provides evidence of a student's learning journey. Assessing reflective work provides a structure for feedback.<sup>135</sup> It is important to assess reflection using clearly defined criteria that focuses on both the reflective process, the content of the reflection, and the linkage to learning outcomes.<sup>136</sup> It is essential to provide students with feedback on the assessment of their reflective journals, whether such assessment is formative or summative, as it will increase their understanding of professionalism and ethical conduct, which in itself is a valuable pedagogical tool. Timely and effective feedback will increase students' skills as insightful learners, developing autonomy.<sup>137</sup> Clinicians in turn, should focus on gaining much from their individual experiences and from the reflections of students across the student cohort to strengthen effective feedback and the CLE programme in general.

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130 Lopez 2002 *Journal of the Legal Profession* 155-158.

131 Lopez 2002 *Journal of the Legal Profession* 156. She states that the client cohort presents "with its mix of Latino cultures, Native American cultures, Anglo cultures, African-American cultures and Asian cultures", and that "cross-cultural competence is very important to a successful practitioner."

132 Lopez 2002 *Journal of the Legal Profession* 156.

133 Lopez 2002 *Journal of the Legal Profession* 156.

134 Lopez 2002 *Journal of the Legal Profession* 157.

135 Hyams 2008 *International Journal of Clinical Legal Education* 30.

136 Cody 2015 *International Journal of Clinical Legal Education* 28. See Du Plessis 2016 *Clinical legal education: Law Clinic Curriculum design and assessment tools* 181-186 for assessment rubrics to use for reflection assignments.

137 Hyams 2008 *International Journal of Clinical Legal Education* 30.

## 7 Conclusion

Clinics have particular riches to offer in the teaching of legal professionalism, values and ethics. One cannot overrate the role of a university law clinic being a role model in legal practice about how a legal practitioner should behave and what ethical decision-making means.

From the discussion above, it is apparent that training in legal professionalism and ethics is a vital part of any legal education curriculum. Students can come to realise the importance of who they are as lawyers, in line with what they do, to be well-functioning legal professionals and that having a professional identity will include creating competent legal professionals. Rather than focus on disciplinary consequences of malpractice, it is key to recognise that an ethical lawyer will identify their responsibility to contribute to the community, to the legal system and to improving justice for the community.

CLE provides students with the opportunity to explore and cultivate their professionalism, values and ethics as they interact in the cultural diversity that extends across clinicians, students and clients frequenting the clinic. Students benefit from cooperative learning where they will begin to develop a deep understanding of professionalism and ethical practice. They assume a high degree of responsibility by actually interviewing and taking instructions from clients in the clinic, briefing their clinicians, researching the law and writing up the advice given. Through tutorials and debriefing sessions and later in their reflection assignments, students discuss and reflect on aspects of the law, the legal system, their own interviewing skills and the experience of the client. In their reflection assignments, students readily identify areas for improvement but also refer to what they are able to achieve in their interview, building their motivation and sense of autonomy. Ongoing reflection will support a commitment to competent, self-directed and autonomous lawyering. An important advantage of CLE that students can explore professionalism and ethical issues in a context where they can reflect and consult with clinicians. Hopefully, this will affect their future behaviour as lawyers.<sup>138</sup>

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138 Lopez 2002 *Journal of the Legal Profession* 156.