How a Mediation Clinic Can Inform the Curriculum

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Introduction

There are many different ways and settings in which the curriculum can be developed to provide clinical legal education to students at university level within the UK. With the assistance of HEFCE³ research informed teaching funding and after nearly a year of preparatory research, two members of the Legal Studies team, in department of Crime and Policing at Canterbury Christ Church University (CCCU) in England set up a mediation clinic as a fundamental element of the development of a Qualifying Law Degree.

The clinic at Canterbury Christ Church University is unique, not least for the fact that it is the first such clinic to be based within a UK university and, one which will give students the opportunity to learn experientially in a rather innovative way.

This paper will consider four aspects of the venture. Firstly, it will focus on the benefits of research informed teaching. Secondly, it will explore the importance of providing a practical input during the academic stage of legal training in England and Wales. Thirdly, a view on how such discipline based research can help to integrate experiential learning in the core curriculum will be provided and finally, the paper will consider other opportunities which the clinic provides both for the university and the wider community.

The Benefits of Research Informed Teaching

What is Research Informed Teaching?
The relationship between student learning and staff discipline-based research in institutional policies and practices has variously been described as the ‘teaching-research nexus’, ‘research-led’, ‘research-based’, ‘inquiry-based’ or ‘research-informed’ teaching.⁴ The research informed teaching (RIT) objectives of CCCU are fourfold: firstly to ensure that all students receive a higher education that is informed by research and scholarship, secondly to enhance teaching and learning through engagement with pedagogic research in all disciplines, thirdly to enhance the employability of graduates through engagement in research-based activities and experiences and fourthly to enhance the research profile of academic departments.⁵

HEFCE has made available £25 million over three years with funding for year 1 rolled into year 2, the funding allocation being £10 million for 2006-07 and £15 million 2007-08.⁶ It was through a successful RIT funding bid that CCCU has been able to set up a mediation clinic.

Curriculum design and development

The funding has enabled research to be undertaken to reinforce the view that the worthwhile nature of encouraging students of Law and Legal Studies to understand about all kinds of dispute resolution, not just litigation, is reflective of the times we live in and has more relevance now than ever before. Since Lord Woolf produced his report on the civil justice system in 1996⁷

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⁴ Jenkins A & Healey M, (2005), Institutional Strategies to Link Teaching and Research, The Higher Education Academy
⁵ See www.canterbury.ac.uk/support/learning-teaching-enhancement-unit
⁶ Dr Liz Beaty Director of Learning and Teaching HEFCE, HEFCE annual conference 14-15 April 2005.
and the subsequent enactment of the Access to Justice Act 1999, a holistic approach to dispute resolution is arguably a fundamental part of a UK lawyer’s education. This view is supported by Carrie Menkle-Meadow who considers that teaching students about dispute resolution, which broadly includes negotiation, problem-solving, and mediation, as well as litigation serves at least four goals: firstly, a focus on the broad spectrum of actual dispute resolution devices provides a more accurate of how the legal system operates. Secondly, dispute resolution study provides a valuable way to incorporate experiential learning in legal education. Thirdly, the concrete lawyering skills that can be taught with a focus on dispute resolution are central to the performance of any lawyering work. Fourthly, using the dispute resolution framework for teaching about what lawyers do, facilitates a particular normative agenda as well

Failure to educate the next generation of lawyers about the holistic nature of dispute resolution is at best a serious omission and at worst irresponsible. Students should be aware that there is often more than one way to resolve a dispute, litigation is not always the answer or indeed should be the desired method. With the arrival of the previously mentioned legislation and the introduction of the Civil Procedure Rules, lawyers who practise in England and Wales are required to consider alternatives to litigation where they can.

Pedagogy
The move away from the purely theoretical approach to legal study is by no means new in itself, it is an approach which has been advocated for many decades in the United States for instance. The growth of experiential learning within the field of legal education prompted members of the Law and Legal Studies team at CCCU to consider the possibility of curriculum development to include experiential elements of study, and the funding grant has assisted research into the most suitable pedagogical methods.

Scholarly activity
This knowledge base has facilitated scholarly activity, including the attendance at conferences, which is not only useful for personal development, but vital for networking with like-minded delegates.

Staff development
The development of a discipline-based curriculum in conflict resolution is predicated on the fact that those teaching the modules will have had research experience of the discipline and/or through their own practical experience. Accordingly part of the grant monies have been used to enable members of the Legal Studies team to become accredited mediators and as a result of having actively led mediations through work generated by the mediation clinic and through mediations performed for other mediation providers, academic staff have themselves developed new skills.

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9 Whilst this refers to solicitors and barristers, there is also merit in educating those students in non-participatory Law/Legal Studies degree programmes as well through the availability of elective modules.
12 See Margaret Martin Barry et. al. Clinical Education for this Millenium: The Third Wave, 7 Clinical L. Rev. 1. 18-21 (2000) cited in Wizner S, The Law School Clinic: Legal Education in the Interests of Justice, 70 Fordham Law Rev. 1929 2001-2002. who state that virtually all of the more than 100 law schools in the United States have clinical programmes (as do some in Canada, Great Britain, Australia, Latin America, Europe, China, Israel, and elsewhere).
14 The director of the clinic, Mr Ben Waters and another member of the team Dr Leo Raznovich are now accredited mediators with CEDR and the ADR Group, having successfully completed training with both these leading UK mediation providers.
The establishment of a mediation clinic at CCCU will satisfy the first RIT objective of the CCCU namely ensuring that all students receive a higher education that is informed by research and scholarship, and will be met by the development of curriculum around the work of the mediation clinic. The issue that arises therefore is what the likely impact of this curriculum innovation in the learning experience of students is likely to be. This is discussed in the next section, which particularly focuses on the ways in which practical input during the academic stage of legal training improves and enhances the learning experience of students.

The importance of providing a practical input during the academic stage of legal training

Legal education has often divided upon a theoretical and a practical approach to learning. This is particularly illustrated by the Anglo-American system, which, dominated by a practical approach in its origins, based legal education around the apprenticeship system in the Inns. Eventually, legal education moved to an exclusively theoretical approach, although this occurred earlier in the USA than in the UK. There are serious deficiencies with the latter approach to teaching/learning law. These deficiencies are both curricular and methodological.

In relation to the former, it is well accepted that the inner logic of legal process methods, usually referred to as ‘thinking like a lawyer,’ is the focus of the traditional law degree. Case law, statutory provisions and doctrinal discussions are regarded as if their outcome and conclusions derive solely from a rigorous logical and analytical process labelled ‘legal reasoning.’ This often results in a mystification of law and the legal process. Further, this negative aspect of the traditional mode of teaching law is accentuated by the isolation of law from other disciplinary influences and the practice of the law itself. In relation to the methodological deficiencies, the immediate consequence of the traditional mode of teaching law for law students is that, unless students engage with a deep and diverse approach to learning, they are more likely to accept without questioning that the legal outcomes and conclusions derive solely from that rigorous logical and analytical process. This is an important caveat because if the students are not analytically prepared to broaden their minds by engaging with an active approach to reading, and most of them are not because of the deficiencies of the secondary school system, the traditional mode of teaching law will more likely sustain rather than dissipate the alienation of law from society.

Critical legal scholars have traditionally questioned both the methodology and the curriculum of traditional law degrees. They argued for the teaching of law to take a different approach. In their view, students should be equipped with the various knowledge and competences that make them suitable to appreciate not only the theory of law, but also the interactions between law and society. It will be argued that a law degree that embeds practical clinical education within theoretical approach should be the appropriate methodology because it exposes students to the influences and impacts made on legal theory by social factors as well as those made on society by law. Further, this pedagogy should also help to lay down the foundations for acquisition of the skills to substitute for the deficiencies of secondary education.

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15 This will be underpinned by the research undertaken by members of the Law/Legal Studies team within the Department of Crime & Policing Studies.
16 See Frank J supra note 11.
18 Ibid
20 It is interesting to note that this was the conclusion to which Jerome Frank arrived almost 80 years ago (see Frank J supra note 11) and, paradoxically, the conclusion to which a report commissioned by the Carnegie Foundation for the Advancement of Teaching arrived in 2007 in the USA and Canada. See Sullivan W M, et al (2007), Educating Lawyers – Preparation for the Profession of Law, Jossey Bass (San Francisco).
Legal Education for the 21st century: curriculum development

The Ormrod Report in 1971 overhauled the methods of training used until then for professional legal qualification in the UK. The report stated that legal education:

> Should not attempt to equip the lawyer at qualification with a comprehensive knowledge … [but] the objectives of the academic stage should be to provide students with (i) a basic knowledge of the law … (ii) an understanding of the relationship of law to the social and economic environment … (iii) the intellectual training necessary to enable him to handle facts and apply abstract concepts to them…

The proper accomplishment of these goals necessarily requires the study of law on three levels, which for convenience one can label the micro, the macro and the practical levels of legal process thinking. The first implies an understanding of the inner logic of the legal process method. The second implies an understanding of the relevance of the social, political and economic factors that shape societal and legal relations. The third level implies the integration of theory with practice through clinical work.

In the course of a traditional law degree, case law, statutory provisions and doctrinal discussion are studied thoroughly, but they are regarded as if their outcome and conclusions derive solely from a rigorous logical analytical process labelled ‘legal reasoning’ (ie the inner logic of the legal process method). However, law degree programmes traditionally overlook the macro and practical levels.

The negative consequence for legal education of focusing mainly on the micro level is twofold. Firstly, it often results in a mystification of law and the legal process. In fact, it arguably develops a senseless reverence for law and legal thinking overlooking the fact that legal thinking ‘can generate equally plausible rights justifications for almost any result.’

Second, this negative aspect of the traditional mode of teaching law further accentuates a methodological deficiency in relation to learning because students are forced to memorise rules and case law without paying much attention to the policy issues underlying them and the consequence (whether good or bad) for society in enforcing them. The use of provocation may serve as a good example. The defence of provocation in criminal law has traditionally required ‘sudden and temporary loss of self control.’ However, if a man were to surprise his wife having sex with his best friend in the conjugal bed, the instant killing of both of them is more likely than not, depending of course on the particular circumstances, to meet the requirement of ‘sudden and temporary loss of self control.’ However, if a long term physically and mentally abused woman one day explodes and kills her husband, she would struggle to meet the requirement of ‘sudden and temporary loss of self control.’ This is simply because the reaction is unlikely to fit the definition of ‘sudden and temporary loss of self control.’ In other words, the longstanding and repeated abuse allows a rather significant cooling off period between the innumerable abuses of the wife and of the act of killing by her, which means that in the eyes of the law there is time for ‘passion to cool and for reason to regain dominion over the mind.’ In those circumstances under current law, provocation is unlikely to be successfully invoked unless it is claimed and proved that the sudden loss of control was triggered by a last straw incident.

The study of when, if at all, provocation or immunity from prosecution is properly invoked is likely to be covered thoroughly in a criminal law course. The use of legal reasoning, the inner logic of the law, is useful to explain to the student whether and how one can apply either of

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22 See Kennedy supra (note 17) 62.
23 Ibid.
24 cf R v Duffy [1949] 1 All ER 932 and R v Ahluwala [1993] CLR 728
25 On the relevance on race, gender and sexual orientation on teaching the law see Kennedy (note 17) 56 and 69.
27 R v Duffy [1949] 1 All ER 932 (Devlin J).
them to particular facts (or in legal jargon to distinguish between cases). Legal reasoning is therefore used as an instrumentally powerful tool to justify decisions, yet it is unable to explain the underlying policy or the consequences of such decisions, let alone how those decisions are reached. In the example of provocation, for instance, one could argue that since ‘men frequently react immediately to insults and violence in a fit of anger,’ case law has arguably shaped the requirements to allow provocation merely to meet the character of a macho man even though women constitute half of the population. Of course, this does not possess any logical rationale when it is looked upon from a macro or practical perspective; hence one is unlikely to find any judgment justified on these grounds. Further, it assumes that all men are alike. In other words, the macro level of legal process thinking is either overlooked or poorly taught by conventional law degrees, which focus on the law and miss out the social, political and economic factors that shape statutory and case law. Moreover, the traditional approach to teaching often neglects to make explicit alternative mechanisms to deal with criminal offences. In fact, a defence of provocation implies that a criminal offence has already been committed and a criminal trial must follow. This neglects to consider that alternative mechanisms of solving a dispute (ie family mediation) could not only have been used to deal with the causes that led to the criminal offence in the first place but, more relevant, to be actually used to heal the wounds opened by the criminal offence more effectively than the criminal justice system can possibly do with the criminal trial.

This analysis therefore makes explicit the importance of making a law degree more leaning towards a socio-legal degree as well as opening up the degree to a more clinical approach where different techniques of dispute resolution are used to solve similar conflicts. This leads to the methodological deficiency of the traditional method of teaching law that will be assessed below.

**Where theory meets practice: Clinical Legal Education**

In the early 1980s, Ernesto Sabato, one of the most important Argentinean writers of the 20th century, wrote about curriculum development and emphasised that if one were required to choose between a curriculum designed by Plato and delivered by X and a curriculum designed by X but delivered by Plato, one should rather have the latter than the former. He explained that in his view the delivery of a curriculum designed by Plato would be reduced to the intellectual stature and experience of X, whilst a lecture by Plato ought to be great regardless of the curriculum. This assumption can be related to students’ background and learning process in higher education. This requires explanation. If Plato would have performed greatly regardless of the curriculum and X would have performed according to his/her knowledge and experience, then a student who has already acquired learning techniques will perform at least better than a student who has not. If this is not addressed, regardless of the university discipline, there is a rather large chance that critical thinking, a defining aim of the Western university, will not be achieved. But in the case of legal studies, this may potentially have an even a more serious negative consequence as explained above.

More than thirty years ago Marton and Saljo identified two types of students in relation to reading and learning: those who actively, hence deeply, read articles and those who passively, hence more superficially, do so. Not surprisingly, students with a more superficial approach tend to reproduce part of the content by accepting information passively whilst students with the former approach tend to understand their reading material better by relating ideas to previous knowledge and experience and integrating them to the new elements being placed before them by the material. If information is arguably a means, but not a goal in higher education, then one

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30 Sabato E Apologias y Rechazos (Barcelona Seix Barral 1981) 90.
could safely conclude that the mere transfer of information cannot possibly be an aim of undergraduate higher education. Further, if one were to agree with Professor Barnett that ‘critical thinking is a defining concept of the Western university’, then one could also safely conclude that it is only through a deep approach to reading and learning that a student will be able to develop such critical thinking. The underlying question therefore is how one can make sure that students’ approach to reading and learning is closer to the deep approach than to the surface approach.

It should not be surprising that those universities in the UK which attract the most able students in the country, such as those within the Russell Group, prefer not only students who have excelled in their A levels, but also students who are already likely to be equipped with an understanding of dialectics and the relativism of knowledge, and therefore conscious of the need to search fully for thesis and antithesis before reaching a conclusion. Oxford University is perhaps the best example. Predictions of best marks in A levels are only a first step towards the interview process where the real admission is decided. Tutors seek precisely students with the potential for working within a rather challenging intellectual environment. Further, the tutorial system will likely sharpen these skills and produce refined graduates. This does not mean that tutorials will necessarily lead to deep approach to learning, but they provide with the space and flexibility, in a way that other teaching practices (such as ex cathedra lectures) do not. In other words, a tutorial should allow room to challenge the work of the student and lead the student to a deep learning approach. Conversely, universities, where there is no selection process, often admit all applicants who have obtained certain grades at A levels. Further, their teaching practices because of the massification of higher education tend to be orientated towards lectures and seminars. This is a choice often dictated by necessity rather than option. If one were to agree with the work of David Kolb who emphasises that the affective side of learning is experiential because of the direct encounter with life that involves total immersion with all its attendant sensations and feelings, then one could safely conclude again that the background of the student (along with the large number of students and the use of teaching practices, such as lectures and seminars which tend to be more effective at dealing with those large numbers) is more likely to perpetuate a surface approach to learning.

Students who are not equipped with the intellectual tools of reading and learning using deep approach techniques at the beginning of their university studies do not develop these skills easily without special training (which is unlikely to be forthcoming for lack of resources). These students therefore are likely to accept the inner logic of the law and to believe that there is a single right answer. Conversely students who actively read a range of material may even hypothesise with other possible outcomes and seek for arguments to justify them; this is referred in legal jargon as a ‘dissenting position’ when done by someone with scholastic or judicial authority. It seems that in order to create a level playing field it becomes paramount to build a bridge for the former group of students to have a realistic possibility of catching up with the latter group. If one could link work experience with subject matter knowledge, as the apprenticeship system used to do, in the first instance this link should provide a place for theory to meet practice. Not only would such a bridge facilitate the transition of students towards a career in the law, but it will also equip students with the tools to develop critical approaches to legal thinking. Canterbury Christ Church University has attempted through its law programme in Legal Studies to build this bridge through clinical legal education. Through the development and delivery of modules linked to the mediation clinic at CCCU, the authors are able to illustrate how a different approach to teaching, in agreement with most literature on this topic, can make a

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33 See Barnett R op cit note 31.
34 This is a group of 20 research-intensive Universities formed in 1994. For a list of the Universities part of the Russell Group see http://www.russellgroup.ac.uk
35 A levels are the national examinations taken during the final year of compulsory education in England, Wales and Northern Ireland.
36 See Kolb, D, (1984), Experiential Learning, Prentice Hall, (New Jersey)
difference in a student’s approach to learning.\textsuperscript{38} Students who performed less well in modules with traditional teaching and learning techniques and essay/exam assessment methods, either as a result of learning disabilities or lack of commitment due to diversion by extra curricular activities, performed much better on Theory of Dispute Resolution and Law & Practice of Dispute Resolution modules. Both modules included simulation role play activities and for these modules the less able students were awarded the highest marks of their combined degree subjects.

The academic aim of these modules is to provide students with a broad understanding of the nature of conflicts and alternative dispute resolution processes. The teaching methods used in depart from traditional ones in the sense that they combine both practical and theoretical strategies. They offer a combination of teaching strategies and tools whose aim is to encourage self-reflection, teamwork, peer assessment and written assignments. Much of the practical teaching of the skills and the strategies used in conflict resolution are explored through guided role play, which include self, peer and tutor feedback as part of the assessed coursework. Successful students must show that they are able to work at the micro level of legal thinking as well as the macro level.

The authors have therefore found that the success of some less able students demonstrates how the teaching of law at a practical level should lead the student to think at both levels in a natural way: the micro and macro levels of legal process thinking; the former by understanding and applying the logic of the legal process method, the latter by understanding the relevance of the social and economic factors that shape societal legal relations.\textsuperscript{39} This is particularly illustrated where a role play mediation exercise is used as a tool for assessment, where students must show not only a sound knowledge and understanding of the mediation process, but also the ability to identify relevant ethical issues that the mediation case presents. This learning by doing approach, where practice and theory have a relevant role to play, uses law as a starting point, rather than a goal. The importance of such an experiential approach to learning has been much better expressed by a group of US scholars:

“The construction of knowledge is viewed to be the result of a learner’s attempts to use his/her existing knowledge to make sense of new experiences. This entails both the modification of concepts and the reorganization of knowledge structures. Although the construction of knowledge can be facilitated by instruction, it is not direct consequence of instruction. Since knowledge construction depends on the extant knowledge of the learner, different individuals will come away from an instructional experience of their own unique understanding, no matter how well the instruction is designed, and no matter how much effort the individuals devote to making sense of what they have seen and heard … Although learners must construct their own knowledge, a significant portion of an individual’s knowledge is constructed in response to interactions with other human beings.”\textsuperscript{40}

Whilst it may be inappropriate to draw any firm empirical conclusion from the examples mentioned above at this early stage of the clinic, it is nevertheless encouraging that the findings are in complete agreement with most literature on the topic. The authors therefore believe that one significant challenge for any law degree is to give students the confidence for working at the micro, macro/practical levels. A law degree programme should therefore attempt neither to provide a comprehensive knowledge of every subject of law nor stop the intellectual training where students are able to assimilate facts and apply abstract concepts to them. Conversely, it should be designed to use law as a starting point, rather than a goal, from which students ought to be encouraged to construct their legal knowledge through ‘interaction with other human beings’ and, as a consequence to consider other moral, ethical, economic or sociological questions that are incumbent on contemporary societies.\textsuperscript{41} This is what the Legal Studies programme at CCCU tries to achieve and is one of the aims of its new law degree. In the authors’

\textsuperscript{38} Names and irrelevant personal circumstances of the students are changed in order to protect their identity.


\textsuperscript{41} Paradoxically, this coincides with the three main goals of the Ormrod Report of 1971; see text to note 24 supra.
view this curriculum and methodology should naturally trigger a deep approach to learning because it forces a broader view. A way forward to properly achieve this goal is therefore not only to change the curriculum to a socio-legal approach, but also to change the methodology to one that includes clinical work where socio-legal theory will meet practice. Clinical work will provide students with a bridge to substitute the deficiencies of the early stages of their compulsory education. This bridge will be an opportunity for students to understand the wide range of alternative possibilities that may be available when resolving disputes much better. It will make explicit the fact that law is the basic skeletal framework from which many approaches to dispute resolution may form and evolve.

The use of clinical education will further advance the common desire to promote justice which is often inherent in almost all law students. The authors are confident that the possibility of learning by doing clinical work will enable both students and practitioners to delve deep into ethical, social and political issues and the skills needed to properly consider them by developing creative processes to complement the theory of the law in building a more egalitarian society, especially where the law does not reach or pragmatically fails to deliver.

**How such discipline based research can help to integrate experiential learning in the core curriculum**

When designing a curriculum which proposes to utilise a clinical experience as part of the macro/practical level of study, it is necessary to undertake initial research into the most suitable type of clinic given a whole range of criteria. There are varying types of clinical programmes ranging from placements, role play simulation to the ‘live’ clinical experience. As noted above the model chosen by the authors is the ‘live’ clinical experience supported by simulation.

**What is mediation?**

Informed by their teaching and practise, the authors have decided to adopt the following definition of mediation:

> “Mediation is a voluntary process conducted confidentially whereby the parties to a dispute are empowered to resolve their differences in a structured yet informal environment with the assistance of an impartial facilitator”

It is important to remember that mediation is a wholly voluntary process; there is no compulsion on the parties to submit their dispute to mediation in the UK, unlike in some jurisdictions where mediation is mandatory. The parties must want to try mediation as an appropriate means to resolving their dispute rather then commencing or continuing litigation.

The mediation process is also confidential. The parties sign an agreement at the commencement of the mediation to be bound by confidentiality. Essentially this means that the parties agree not to repeat anything raised during the course of the mediation. Similarly the process is accepted by the parties as being without prejudice, implying that if the dispute does not settle following the mediation and litigation commences or ensues, neither party can use any information disclosed during the course of the mediation in subsequent court proceedings.

The mediation process is impartially facilitated by a neutral third party mediator, which brings a completely different dynamic to the negotiations which may have been conducted hitherto and

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44 There are of course many other definitions, for instance Kimberly K. Kovach describes mediation as a process in which a third party neutral, the mediator, assists disputing parties in reaching a mutually agreeable resolution, see Moffitt M, & Bordone R, (Eds), (2005), *The Handbook of Dispute Resolution*, Jossey Bass (San Francisco)


46 See Ontario, Canada, based on the research undertaken by Dr Sue Prince of Exeter University provided in her paper entitled: *Incorporating ADR into traditional civil court processes: Should mediation be mandatory?* presented at the Second European Mediation Network Initiative's International Conference in Vienna on 28.09.07.
which are more often than not bi-lateral. The mediator's task is not to take sides or pass
judgement. The mediator assists the parties in finding a mutually acceptable solution to the
dispute which may well have reached a position of stalemate.

The parties have full control over the process, they can call the mediation to a close at any time,
and with the assistance of the mediator are able to explore a whole range of options which are
outside the scope of the civil court room. In so doing the process can be described as
empowering.

Live Clinics

According to the Higher Education UK Centre for Legal Education (UKCLE) the broad aims of
‘live’ clinics are:

- to enhance the students' learning experience and understanding of the substantive law,
  legal process, ethics and the role of law in society
- to produce students that can take the learning experience offered by live client clinics
  and reflect upon how and why cases were progressed and how this fits into the overall
  context of their legal studies
- to empower the students to become pro-active in the process of learning
- to provide formative assessment methods which are in themselves a strategic and
  integral part of the learning experience

The mediation clinic at CCCU is an example of how experiential learning can be implemented in
the undergraduate curriculum. The research undertaken by those responsible for setting up and
establishing the clinic, both with regard to the discipline itself and the possible pedagogical
opportunities available, has reinforced views about the importance of understanding conflict
resolution methods in a variety of different settings from the community forum to those conflicts
within the international arena.

The mediation clinic at CCCU therefore places an emphasis on encouraging and enabling
students of Legal Studies and Law as a core part of the practical level of their undergraduate
study, to understand how conflict can be resolved through a recognised and effective alternative
dispute resolution process. Early research into the project revealed that in other common law
jurisdictions, notably, The United States, Canada and Australia, mediation has been taught at
university level for many years and in some of the universities in those countries students are
given a clinical experience based around the study of dispute resolution and particularly
mediation.

Students will also develop an understanding of how a mediation service provider operates and
proposes to do this by involving students in the process as assistant mediators, under the
guidance and supervision of experienced members of academic staff, and by being involved in
the administration of the office. The assistant positions offered to students will be observational
in nature enabling them to learn through reflection. Part of the early discipline based research
acknowledged that reflective practice is a key component for successful experiential learning and
that mediation lends itself perfectly to the reflective practice paradigm, which is an active process
of exploration and discovery which often leads to very unexpected outcomes. Learning in this
case may therefore be defined as the process of making a new or revised interpretation of the

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47 The Higher Education Academy UKCLE at http://www.ukcle.ac.uk
48 For evidence that mediation is an established and recognised method of dispute resolution see Moore C.W, (2003), (3rd
Edition), The Mediation Process: Practical Strategies for Resolving Conflict, Jossey-Bass (San Francisco), Kovach K,
Mediation, in Moffit M, & Bordone R, op cit note 41, for an American perspective and The CEDR Mediator Handbook (4th
49 For examples of universities which have well established mediation clinical programmes see Columbia University New
York, Windsor University Ontario, Canada and The University of Queensland in Australia. Indeed in the US the ABA
requires a clinical component as part of the JD qualification requirements and as such there are many mediation clinical
programmes.
50 See Boud D, Keogh R & Walker D, op cit note 38.
meaning of an experience, which guides subsequent understanding, appreciation, and action.\textsuperscript{51} By experiencing the process of mediation at first hand, students should be able to gain a better understanding and appreciation of a different approach to conflict resolution and undertake comparative studies with other recognised methods. R.A.B. Bush outlines the following benefits that “live” observation has over simulation in the context of studying methods of alternative dispute resolution (ADR)\textsuperscript{52}

- the observations [balance] the more abstract study of classroom work and reading
- they provided a sense of immediacy and relevance that intensifies students’ interest in ADR
- the opportunity to sit back and watch critically, rather than directly involved in an exercise with classmates allows students a greater chance to be analytical and critical about the operation, and
- students [are] given direct personal contact with the ADR field, contact which helps to overcome the kinds of biases towards ADR that, it has often been noted, exists among legal professionals.

It is not only the students of course who will benefit from the experiential nature of this learning approach, the supervisory capabilities of academic staff will also be enhanced through their active involvement with the mediation clinic.

The work of David Kolb, who introduced his now well known four stage learning cycle,\textsuperscript{53} is helpful in understanding the value of experiential learning\textsuperscript{54} in the context of the study of mediation. Kolb\textsuperscript{55} emphasises the affective side of learning because in his view, which is a view shared by other educational psychologists,\textsuperscript{56} people learn from experience through a direct encounter with life that involves total immersion with all its attendant sensations and feelings. The affective dimension to learning includes emotions and also a deeper, non-rational understanding of the situation.\textsuperscript{57} This further embeds the notion that the mediation process, which often involves parties participating in a process of emotional release, fits the reflective practice model of learning quite appropriately. Ongoing research into the enhancement of teaching and learning through engagement with research into pedagogical approaches to the study of conflict or dispute resolution therefore satisfies the second objective of the CCCU RIT agenda.

Clinical legal education (CLE) in the UK is still a relatively unadvanced concept. There are notable exceptions; the clinics at Northumbria, Warwick and Kent Universities are nationally renowned.\textsuperscript{58} It has been mentioned that there are a number of different types of clinical experience. For James Stark, the emphasis on reflection and critique should be a common factor for all types of clinical experience while the teaching control and the learning environment may differ.\textsuperscript{59}\ The clinic at CCCU aims to design and develop new and innovative curricula using the work of the clinic as a focus. As already mentioned, observation experience of “live” mediations will be offered to the students. For Dewey however, observation alone is not enough, he takes the view that:

\begin{itemize}
\item Mezirow J, (1990), \textit{Fostering Critical Reflection in Adulthood, A Guide to Transformative and Emancipatory Learning}, Jossey-Bass (San Francisco)
\item See Kolb, D in Boud D, et al \textit{op cit} note 9.
\item In the 1970s Kolb introduced the idea that learning takes place as part of a four stage process: the learner has a concrete experience, secondly the learner engages in observational reflection of that experience, thirdly the learner will go through a process of forming abstract conceptions and generalisations about the experience and lastly, the learner will test the implications of the learning experience in new situations.
\item Kolb, D, (1984), \textit{Experiential Learning}, Prentice Hall, (New Jersey)
\item Kolb drew from and developed the ideas put forward by such thinkers as John Dewey, Jean Piaget and Kurt Lewin.
\item Marsick, V, Sauquet, A & Yorks, L in Deutsch, M, Coleman, P & Marcus, E, (2006), \textit{The Handbook of Conflict Resolution, Theory & Practice}, Jossey-Bass (San Francisco)
\item See Northumbria University Law School at http://northumbria.ac.uk/, Warwick University Law School at http://www2.warwick.ac.uk/fac/soc/law/ug/ and Kent University Law School at http://www.kent.ac.uk/law/clinic/
\item See Stark J, \textit{op cit} note 6.
\end{itemize}
“We must understand the significance of what we see, hear and touch. The significance consists of the consequences that will result when what is seen is acted upon.”

Through involvement with the clinic, both by observing “live” mediations and through simulated role play exercises, students should be able to improve their personal and interpersonal skills, autonomy, independence of thought and decision making skills. They will be able to do this by reflecting on their experience, something which Boud et al consider to be an important human activity in which people recapture their experience, think about it, mull it over and evaluate it and it is this working with experience which is important in learning. Indeed reflection works best with engagement and proactivity on the part of the learner, a concept which is supported by the use of the mediation process as a focus for students’ knowledge development and the development of their transferable skills. The skills which students will gain from their “live clinical” experience will provide much scope for reflection and will ultimately enhance their employability, which is a key issue for graduates from higher education in the UK. The importance of an experiential base for a degree is therefore increasingly acknowledged as important in building employment-related skills and supports the third objective of the CCCU RIT agenda that being the enhancement of the employability of graduates through engagement in research-based activities and experiences.

It is understood that many UK universities engaging in clinical legal education do not actually give students credit for their clinic experiences probably due to the perceptions about the difficulty of assessment in this context. It can be argued that there should be no reason why the experiential learning in which undergraduates will engage, should not be credit-bearing. The challenge is how to develop the curriculum to incorporate this. The mediation clinic at CCCU proposes to work towards including a credit bearing aspect for those students studying on participating modules.

CCCU has a rich tradition in providing “vocational” education, from social work and healthcare provision to policing. The work undertaken by the clinic and the exposure which students will have to it, will continue this tradition. With the development of a qualifying law degree which will be offered from September 2008, the clinic will form a cornerstone of one of the university’s driving principles, that being the concept of theory meeting practice and the reinforcement of theory through practice. Whilst the clinic is currently situated within the department for Law & Criminal Justice Studies, the nature of mediation and conflict resolution as a curriculum taught subject area, lends the clinic to cross-faculty participation; involvement with other departments should therefore be encouraged.

**Other opportunities which the clinic provides**

**The provision of mediation services to the local and wider community**

The clinic at CCCU has been set up primarily to provide a pro bono service for those who cannot afford it. The same service is also available to others on a competitive charging basis. Means testing is adopted in order to determine the eligibility for the provision of a pro bono service. There is no reason why a party already represented and in receipt of public funding, should not be able to have their certificate extended in order to cover mediation. Any income earned from the work undertaken by the clinic will either be used to pay for independent mediators to conduct mediations and perhaps more importantly for research purposes.

The mediation field is currently unregulated in the UK. The regulation of mediation providers is a topic that is currently the subject of much debate in mediation circles and with the support of the government, is being researched by the Civil Mediation Council. Accreditation is an

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64 See Civil Mediation Council at [http://www.civilmediation.org](http://www.civilmediation.org)
important step to becoming a successful and competent provider of mediation services within the UK. The public's perception of mediation is unclear, many members of the legal profession let alone lay people, have little or no understanding of the mediation process and its appreciable benefits. Trust in the process is extremely important from the parties' point of view. They may only come into contact with the process once and if they have a bad experience it is more than likely to be the last time they will attempt such a method of ADR. This is why mediator competence is important to the ongoing success of mediation. Mediators should therefore undergo training with recognised mediation training organisations. Indeed it will be one of the first tasks of the mediation clinic at CCCU to become accredited with the CMC as a recognised mediation provider and whereupon the clinic will be able to register with the National Mediation Helpline (NMH)\textsuperscript{65} the UK government linked organisation which holds a list of accredited mediation providers to be called upon when the court refers cases (with the consent of the parties) to mediation. The university’s application for membership is currently pending.

Being able to provide a range of mediators, some with particular specialisms, is a matter which the clinic intends to pursue. A panel of mediators will provide the right balance of specialism. At present the university has staff who are accredited mediators with particular interests and strengths. A number of the university's personnel department have undergone training and will be competent at providing workplace mediation and assistance with disputes which arise from within the university. It is important that the community has ready access to mediators who are local rather than having to travel, sometimes long distances for their cases to be mediated. Having conducted a very brief survey locally, it is evident that those mediators based locally do not have the opportunity to mediate enough and would welcome the opportunity of keeping their “flying hours” up.

It is proposed that the main areas of work which the mediation service will cover will include disputes arising from within the university involving those between students, and students and staff, human resources and workplace issues, we have members of the personnel department who are trained workplace mediators, who will be able to provide particular expertise in this area. Community-based disputes will be considered, although the well established community mediation service based locally who help neighbours and communities find ways of living comfortably together, by promoting restorative justice engaging in victim-offender mediation and youth offending intervention and prevention initiatives. Court-referred mediation is being targeted as a source of mediation work and to do this the clinic will need to be accepted onto the National Mediation Helpline's list of approved mediation providers. Personal injury and clinical negligence is another area where particular specialism can be provided. The clinic also intends to provide mediation for commercial and business disputes.

The encouragement and promotion of research
To enhance the research profile of academic departments, clinics are seen as increasingly important at the academic stage of legal academic study within the UK. The mediation clinic will be the first of its kind in a UK law school and the study of alternative dispute resolution will produce a research-based curriculum. It will provide academic staff with data which will form the foundation of research projects, which may be entered into in partnership with other departments within the university, or externally with private sector, public sector and voluntary sector providers\textsuperscript{66}. It is hoped also that the clinic will provide a knowledge sharing forum which amongst other thing will assist in spreading the message about the appreciable benefits of alternative dispute resolution and particularly mediation. In this way the fourth aim of the CCCU RIT agenda will be satisfied.

Conclusion
The establishment of the mediation clinic at CCCU clearly demonstrates, in the authors’ view, the benefits of research informed teaching. The initial research into the type of the model through

\textsuperscript{65} See National Mediation Helpline at http://www.nationalmediationhelpline.com/index.php

\textsuperscript{66} A small team of academic members of staff within the department of Crime and Policing at CCCU, including the authors of this paper, are currently in the process of submitting a bid for victim/offender mediation training in partnership with Kent Mediation Service at local prisons in Kent, which will provide research opportunities.
visiting other institutions and talking to experienced academics involved in clinical practice has been invaluable to the success of the initial phases of the project. The pedagogical opportunities for curriculum design and development through studying law based undergraduate subjects not only at the micro level, but also at the macro/practical level through experiential learning, helps to make an important link between theory and practice using conflict resolution and particularly mediation and the work of the clinic as the focus.


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