

Validity, Reliability and Educational Impact of Reflective Assessment in Clinical Legal Education

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Law schools in Australia and the United Kingdom are increasingly adopting clinical legal education (CLE) as an important part of their curriculum. The purpose of this article is to evaluate reflective assessment CLE by applying the “utility model” proposed by Van der Vleuten which provides a framework for the evaluation of assessment instruments. The model is said to be useful in helping “educators make considered choices in selecting, constructing and applying an assessment instrument” (Van der Vleuten, 2005, p. 310). The utility model holds that methods of assessment of competence can be evaluated by weighing the utility of the assessment method according to certain criteria: validity, reliability and educational impact. The framework also implicitly addresses two further variables, acceptability and cost.

In particular, this paper will evaluate the assessment model adopted in a legal clinic at QUT in which students work on social justice projects in partnership with a range of community organisations. The legal clinic was qualitatively evaluated in 2013 through focus groups conducted by an independent researcher. Drawing on that evaluation, this paper argues that a case can be made that the reflective assessment is appropriate in the legal clinic context, however some issues, particularly in relation to the reliability of the assessment, need further consideration.

In 2013, the QUT law school introduced a new legal clinic subject which includes a range of clinical experiences from the live client clinic model to community projects. The range of projects undertaken by students include community based research (Backman, 2006), community empowerment activities (see Barry, Camp, Johnson & Klein, 2011-2012, p. 404), and street law projects. The legal clinic subject has been developed following principles of constructive alignment. Constructive alignment suggests that learning objectives, teaching methods and assessment should be aligned (Biggs, 2003). Constructive alignment theory is student centred, so that “the students do the real work,, the teacher simply acts as broker between the student and a learning environment that supports the appropriate learning

activities” (Biggs, 2003, p. 27). According to alignment theory the first step in designing a learning experience is to express the learning objective by using verbs that reflect the desired cognitive level, the next is to design teaching/learning activities that are likely to encourage students to achieve the objectives and the last is to select assessment tasks that will establish whether and how well each student can meet the criteria expressed in the objectives.

The first step in designing a learning experience is to develop the learning outcomes or objectives. An examination of the literature in relation to work place learning suggests that the learning outcomes should include learning theory, critical reflection, professional competence and career management. According to Brodie and Irving (2007) WIL involves three components: learning theory (understanding how to learn), critical reflection and capability. Capability involves transferrable skills and know-how, essentially, professional competence.

Analysis of the focus groups revealed several themes emerge in relation to students’ learning during the clinic. The first related to personal transformation in career management and a sense of belonging in the legal profession. The second related to legal skills and the third was transferable skills that are relevant to the practice of law.

In relation to career management, over half of the sample identified that undertaking legal clinic had resulted in a substantial ‘transformation’ for them, personally. For some students the career transformation related to individuals identifying an area of law that they felt passionate about or were unaware of previously.

‘I’m interested in a few areas like commercial law and also family. But I’m currently also volunteering at a family law firm and they’re a non-profit law firm. So that combined with doing legal clinic kind of just changed what I could do in my legal career. Like before then I just had what everybody else would be trying to do which is you know get into a big firm and get into commercial and that sort of thing. But both of them the volunteer experiences really opened up my eyes how I could really serve the community with law. Like I never knew it was possible so....’ (Female)’

In addition to helping students to identify a preferred area of law that they wish to pursue in the future, for other individuals the unit played an important role in reassuring them that they would be able to find a ‘home’ or ‘fit’ within the legal profession.

'I think until this year I was really starting to worry like approaching my last year, worry about how I would use my law degree. What I was just going to do after graduating because I felt like the culture at uni you see at law, like just going to your classes and stuff like law students in general and the legal profession you get this I don't know sort of perception that it's really aggressive. And people, a lot of the time they'll choose, they'll make choices that are more self-motivated or more just legally focussed rather than caring about people and that sort of thing. And I really struggled with that because I thought if I you know became that sort of person like I would have to force myself to be that sort of person. Like I'm naturally I'm really, I enjoy creative things a lot as well and I also enjoy just people and the people aspect really motivates me in everything I do. So I thought oh no I have to become this different person to practice as a lawyer and it was scary and depressing sort of. And yeah this unit just really changed that. I think they really give you an opportunity that you can be a real person and you can relate to people as a person. And it's not a weakness to be a person it's, I don't know an advantage because you're really connecting with someone. And you can use your legal skills and help someone holistically yeah.' (Female).

'I've learned from my placement particular things like interviewing clients, drafting letters and doing some research so it's what I liked very much about the unit.' (Male)

The particular legal skills learnt depended on the nature of the clinic undertaken. In some cases, where students are undertaking community projects, For example one student commented:

'But in terms of like career planning I learnt things that were really like quality like lots of quality in it rather than like quantity. Like a few of them for example I'm learning about communication how there's like different cultures. Everybody is like in a different culture like it's not just like ethnicity it's just where they've come from, their experiences and everything. Like learning that, I think that's so integral to just communicating with clients and becoming a better legal practitioner in the future. Like to not have those prejudices like a lot of the times I feel like if I'm practising law, like if I'm getting facts or something. Like you immediately just want to get through it, get the facts as soon as possible and don't want to really listen to the details sort of thing. But it really helped me to be like take a step back and to really be able to serve the client in a better way. Even just like listening to them and understanding where they're coming from. Like it's not just this is the law like deal with it that sort of thing. But you're like you know why is the law like this? You're thinking about the client like for real. And other than that also I think the resume workshop was pretty good. Just some tips that I never realised and it really helped (Female)

The focus group data is consistent with feedback provided by students on their clinical experiences. Students identify as key learnings from their experience: communication skills (particularly cross cultural communication and addressing social or other barriers); appreciation of the student's own privilege and greater awareness of the challenges that confront others in the community, understanding the importance of one's own values and the difficulty in maintaining a balance between empathy and professional detachment. Students also report the development of various legal knowledge and skills which vary depending on the clinical experience and the benefit of seeing the law operating in practice which results in a deeper understanding of legal principles previously only encountered in a theoretical context.

Accordingly the learning outcomes for the subject are:

1. Appraise the legal system and the role of lawyers;
2. Appraise social, professional and ethical issues, analysing the professional and ethical responsibilities of a legal practitioner in a public, private or community legal context;
3. Evaluate and reflect on your application of discipline specific and professional knowledge and skills and implement personal learning strategies;
4. Apply different kinds of legal knowledge and skills in authentic settings;
5. Practice and reflect upon cross-cultural competence using collaborative strategies to cater for racial, indigenous, cultural and socio-economic difference.

These learning outcomes cover career management (ULO 1, 2 and 3), personal learning strategies (ULO 3), application of knowledge and skills (ULO 4) and critical reflection (ULO 5).

The next step is to design learning activities that that are likely to encourage students to achieve the objectives. In addition to their clinical placement requirements, students attend workshops on campus which address issues relevant to their placement experiences and their development as future legal professionals. The workshops focus on the fostering of a sense of social responsibility and a *pro bono* ethos. Topics covered in the workshops include reflective practice, alternative dispute resolution (ADR) and wellness, cultural competency, collaborative practice and ethical and professional obligations, including *pro bono* work. Students are encouraged to engage with these concepts through listening to guest speakers

(including academic specialists and members of the legal profession), participation in workshop activities and completion of readings and reflective writing tasks.

As is apparent from the learning outcomes, reflective practice important component of the legal clinic subject. As has been reported by others (Morin and Waysdorf, 2012-2013), the authors' experience has been that students find the process of reflecting challenging, and reflective assessment is resisted by some students. Accordingly, care is taken to ensure students are taught reflective practice, receive feedback on their reflective writing, are provided with resources to guide their reflection and that reflective activities are undertaken in class to develop students' skills. Students are required to adopt the *4R's Model of Reflective Thinking* which involves four stages of reflection developed by Carrington and Selva (2010); reporting, relating, reasoning and reconstructing. The levels increase in complexity and move from description of, and personal response to, an issue or situation; to the use of theory and experience to explain, interrogate, and ultimately transform practice (Bain, Ballantyne, Mills, & Lester, 2002). Students are also assisted in workshops to consider the concept of "privilege" and challenged to "unpack their personal backpacks" which helps them to identify their own values and beliefs and how these impact on their understanding of issues raised by their respective community partners. Feminist scholar Peggy McIntosh argues that white [male] privilege is carried around with us "like an invisible weightless backpack of special provisions, maps, passports, codebooks, visas, clothes, tools and blank checks." (McIntosh, 1988)

The final stage in designing the overall learning experience is to set assessment that will establish whether and how well each student can meet the criteria expressed in the objectives. Further assessment has a key role to play in what and how students learn (Boud and Falchikov 2007, 3):

"Assessment, rather than teaching, has a major influence on students' learning. It directs attention to what is important. It acts as an incentive for study. And it has a powerful effect on what students do and how they do it. Assessment also communicates to them what they can and cannot succeed in doing."

The assessment of the QUT legal clinic comprises:

- Reflective workbook (20%)
- Group Project presentation (30%)
- Reflective journal (50%)

The reflective workbook includes a series of weekly activities and tasks that relate to both the clinical experience and the workshop activities. It includes a number of reflective writing tasks that are intended to scaffold the student's reflective practice and writing ability. In the workbook reflective tasks students are provided with relevant readings and guiding questions for each of the stages of reflection specifically relevant to the topic. A developmental approach is taken with more guidance given for the first reflection and a more open ended approach taken to the final reflection due at the end of semester. The assessment is rigorous, and is graded on the usual scale, with set criteria for marking which relate to the *4R's Model of Reflective Thinking*. An example of a guided reflective assessment task is set out in appendix 1. The assessment rubric which set out the criteria and standards for the reflective journal is attached in appendix 2.

Utility Model

The utility model proposed by Van der Vleuten (1996) holds that methods of assessment of competence can be evaluated using a framework to weigh the utility of the assessment method according to certain criteria: validity, reliability and educational impact. The framework also implicitly addresses two further variables, acceptability and cost. The model was developed in the context of assessment of clinical competence in health sciences, however it is adaptable to other educational contexts.

Validity

Put simply, validity of assessment refers to whether "the assessment measures what it purports to measure" (Hewitt, 2008, p. 145). An assessment method might be shown to be useful if results of the assessment correlate highly with subsequent student performance (Van der Vleuten, 1996, p. 51). Van der Vleuten acknowledges the deficiencies in much of the research in relation to assessment validity; however trends are emerging from the literature. Studies reveal an unexpectedly high correlation between different methods of assessment, e.g. between free response tests and multiple choice questions. It is contended

that the content of the assessment is more relevant to the validity of the assessment than the format of the assessment (p. 51). For example the validity of a multiple choice quiz is not fixed but depends on the content of the questions. Further, particular assessment types might be more valid in measuring some outcomes than others. Van der Vleuten posits that “what is being measured is not dictated by the method but rather what is put into the method” (p. 51).

The validity of the assessment used in the QUT legal clinic has not been previously evaluated and this is potentially an area for future investigation. It might be possible to do this using instrument to measure reflection such as Kember’s Reflection Questionnaire (Kember et al, 2000), or the Reflection in Learning Scale (Sobral, 2011) (see Kalk, Luik, Taimalu & That, 2014).

Reliability

Assessment can be said to be reliable if it is “objective, fairly administered, and consistently marked” (Hewitt, 2008, p.145). In the field of health sciences and many other disciplines, assessment of professional competence has been found to present reliability issues demonstrated by variable performance of candidates across tasks. The reliability of assessment is said to increase with the number of items being assessed. Assessments that contain only a “small sample of items ... produce unstable or unreliable scores.” (Van der Vleuten, 1996, p. 48) Further, the reliance on a single assessor is also said to reduce reliability; reliability is increased where various assessors are used for each item of assessment.

Van der Vleuten suggests that clinical ratings used in clerkships in medical schools are “hopelessly unreliable” (1996, p. 49) as they are based on unstandardized performance and are not on direct observation. Other issues impacting on reliability in WIL are the close relationship between the assessor and the student, and the need to assess performance over an extensive period in the past. At least in part these reasons, in the QUT legal clinic, the assessment does not include an assessment by the supervisor, but rather relies extensively on reflective assessment. However, reflective assessment itself raises concerns in relation to reliability.

In the focus groups, many students raised issues around the appropriateness of criteria marking of reflections given the subjective and personal nature of the exercise.

'As far as the reflection was concerned I found it a bit hard to (?) criteria because it's a very subjective thing. Like reflection is very personal how would you really assess someone you said it's good, it's bad. I mean you just have to really mark this type of assignment I think.'(Male)

And,

'...but if we said something in a reflection they didn't like that could, I don't think they would but anyone could leave a sour taste in your mouth. And that's the thing like I don't know how you grade assessments. I understand if you follow the steps but someone reasoning one way and someone reasoning another way and how they justify it, it's an internal process. And I struggle to see how you can put forty per cent on that and give a justifiable mark from your perspective. That's you know because if you submit the best assessment you can you think okay, I think I've done awesome with my reflections. It's a personal account, I followed the steps and yeah you come back and you've lost marks.' (Female)

The strategies that have been adopted in legal clinic to address concerns about the fairness and reliability of the reflective assessment include providing student with examples of different standards of reflective writing and discussing the examples in class. This activity is included in the workbook assessment. In addition the teaching team regularly cross mark reflective assessment to ensure they are applying the criteria consistently. The author's personal reflection is that providing a precise mark for a reflective assessment is of little value and it is preferable to provide a grade (High Distinction, Distinction, Credit, Pass).

Educational impact

The Van der Vleuten model also includes consideration of educational impact or "consequential validity" (Van der Vleuten and Schuwirth, 2005, p. 314); given that assessment drives learning, the impact of assessment on learning should be considered (Van

der Vleuten, 2005). The application of constructive alignment principles in the design of the QUT legal clinic enhances the educational impact of the assessment. Hence learning activities and assessment tasks are designed to align to the learning objectives of the subject. However given that assessment drives learning, the impact of assessment on learning should also be considered (Van der Vleuten, 2005).

In light of the impact of assessment on what students learn, it is posited that if reflection is not assessed it will be seen by students as being of less importance than other learning activities and they may not be motivated to engage with the reflective process (Ledvinka, 2006). Formally assessing reflection motivates students to engage with reflection which ultimately leads to deeper learning from the clinical experience. On the other hand others argue that assessing reflection may “stultify or even destroy ‘raw reflection’” and its highly personal nature may impact on its validity. This issue can be addressed by assessing a reflective piece that draws on the raw reflection (Ledvinka, 2006, p. 40). This also has the benefit of encouraging students to revisit their original reflections and reflect further in light of subsequent feedback, actions and by reference to relevant literature and theory. The QUT legal clinic adopts this approach, encouraging students to keep a weekly reflective diary which they refer to in compiling their final reflections. Despite this approach some students raise concerns in relation to the personal aspect of the reflection. While some individuals enjoyed the reflections, many found them challenging:

‘So while I know that they need to perhaps allocate marks to it and try to assess it on a criteria sheet I actually think that kind of component of it, if you’ve made a genuine attempt and you’ve done the readings I think perhaps that component should just be pass or fail for the unit. Because I do think it’s very personal and you know what I write you know is going to be very different to what someone else writes.’ (Female)

Another educational issue is the provision of feedback to students on their performance in the clinic. In this instance, Stuckey et al (2007) argues that recording student performance, providing prompt feedback and training students to receive feedback are key principles that should be met by experiential learning in law. While the reflective assessment provides feedback to students on the development of their reflective practice and ability to learn

from experience, it does not provide direct feedback to students in relation to their clinical performance. Such feedback is provided by supervisors during the clinic and by way of a final report however this is not formalised in the assessment regime. The project presentation provides an opportunity for students to present the outcomes of their clinical experience and feedback is provided formally by the assessor and informally by placement supervisors, However clinic supervisors are not involved in the formal assessment of the student.

The limited feedback on performance in the clinic has been identified by students as an area for concern. In the focus groups, several students commented on the lack of feedback that they received regarding their performance in their placement and the potential value of such feedback for personal learning:

And you know I didn't realise until I was actually doing it that we weren't getting any kind of grade or assessment or feedback on our placement itself that we'd get access to. So even for example the report that the supervisor wrote umm like we didn't get access to that. Which I think is something that we could use in terms of just getting something for ourselves. Rather than doing a subject, writing reflections, going to classes and then also doing a day somewhere. Just in terms of that personal learning and figuring out what you're doing right, what you're doing wrong.' (Female)

And,

'Yeah not completely I guess because like what xxx said I think that the placement is definitely the most important part of the unit but we didn't get any sort of feedback or umm yeah. Any feedback. Yeah, yeah from them.' (Male)

And,

'But for me I was submitting written work and then just kind of submitting more written stuff and I never got an opportunity to know did I do okay?' (Female)

While there was substantial discussion within the focus groups about the appropriateness of grading personal reflections (see above) and some students identified that they found the task somewhat challenging, others articulated very clearly their satisfaction with the reflections and the value of this exercise within the unit:

'..that's true I really enjoyed the reflective task actually I think it was a really good exercise. (Female).

And,

'Yeah and if it was clearly set out the ...what you had, the material you had to work with I think was set out clearly. I think you were given good guidance for the first one and then you were sort of left a bit more to your own devices.' (Female)

And,

'Yeah I think what I got from the reflective tasks was really what XXX was really enthusiastic about throughout the whole semester, that you needed to reflect to learn and to realise that you were learning. Yeah as everyone has mentioned before like you don't realise that, yeah when you reflect you realise that you're learning things that you didn't even know you were learning so yeah I really enjoyed the reflective tasks.' (Female)

Several students noted the quality and usefulness of some of the readings provided to support reflections.

Conclusion

The assessment of reflection in clinical legal education presents challenges in order to ensure the fairness, reliability and validity of the assessment and also to ensure it achieves acceptance by both the academy and students. This paper argues that these challenges can and should be overcome. Formal assessment of reflection contributes to a deeper learning

experience for students and elevates what might otherwise merely be considered to be work experience to a genuine learning experience at an academic level.

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Appendix 1: Example reflective assessment task – guiding questions

Donna Langston states:

“Class affects what we perceive - and what we have available to us as choices”.’

Similarly, Peggy McIntosh says:

“White privilege is like an invisible weightless knapsack of provisions, assurances, tools, maps, guides, codebooks, passports, visas, clothes, compass, emergency gear, and blank cheques... I have come to see white privilege as an invisible package of unearned assets which I can count on cashing in each day, but about which I was “meant” to remain oblivious.”

Reflect on how socio-economic class, race and cultural identity influences one’s values, beliefs and opportunities in society. Consider both the impact on yourself and the impact on other groups (focussing on the groups who are stakeholders in relation to your project).

(Six prescribed readings were set to inform the reflection)

Reporting

Which socio- economic class, racial and/or cultural identity do you identify with? Do you identify with any subordinate or dominate groups within your class, race or culture? How might the values, beliefs and opportunities of members of other economic, racial or cultural classes be shaped by issues of class, race or cultural identity? What is your initial reaction to the readings?

Relating

Has your own class, race and/or cultural identity impacted on your values and beliefs? What privileges might flow from this? Have you been in situations where the actions of others may have been influenced by values and beliefs that are the result of class, cultural or racial prejudices? Are you aware of conflict arising due to differences in values and beliefs resulting from class prejudices or stereotypes? At what level if at all does racial, class or cultural prejudice exist and impact upon the experiences of people from different backgrounds?

Reasoning

Highlight in detail significant factors underlying the impact of socio- economic class, race and cultural identity on values, beliefs and opportunities for yourself on the one hand and for people of different class, race or cultural identity on the other. How might this impact on you as a future legal or justice professional? What different approaches might you take, and in what respects, to the project on which you are working?

Reconstructing

Has considering how class, race and cultural identify have influenced your values and beliefs caused you to reconsider any of your values and beliefs? Has considering how class, race and cultural identity influences the values and beliefs of others caused you to reconsider how you will relate and communicate in the future with people from other groups in society? How will you change your future behaviours as a result of reflecting on the impact of class, race and cultural identity – prejudices and privileges — on your values, beliefs and opportunities?

Appendix 3: Criterion-Referenced Assessment on Reflection based on 4-Rs Model

	7 High Distinction	6 Distinction	5 Credit	4 Pass	3-1 Fail
Dept of Critical reflection					
30 marks	<p>Your reflections demonstrate an outstanding ability to critically reflect on your learning in your clinical experience by:</p> <p>Reporting: Describing highly relevant incidents and issues, with perceptive observations of the situation; explained why these were relevant, noteworthy, puzzling, or troubling.</p> <p>Relating: Making clear, insightful connections between the incidents and issues and your own personal skills, experiences, values and beliefs. Addressed questions such as: Have I seen or encountered this before? Were the circumstances the same/different? In what ways is this challenging?</p> <p>Reasoning: Insightfully considering, from different perspectives, how the incidents and issues could be explained, by referring to own knowledge and experience and relevant theory and literature.</p> <p>Reconstructing: Considering other possible responses to the incidents and issues; describing what has been learned and noting any questions that remain unanswered.</p>	<p>Your reflections demonstrate a high level of ability to critically reflect on your learning in your clinical experience by:</p> <p>Reporting: Describing relevant incidents and issues, with well-considered observations of the situation; explaining why these were relevant, noteworthy, puzzling, or troubling.</p> <p>Relating: Making clear and well-considered connections between the incidents and issues and your own personal skills, experiences, values and beliefs. Addressing questions such as: Have I seen or encountered this before? Were the circumstances the same/different?</p> <p>Reasoning: Considering, from different perspectives, how the incidents and issues could be explained, by referring to own knowledge and experience and relevant theory and literature.</p> <p>Reconstructing: Describing what has been learned and noting any questions that remain unanswered.</p>	<p>Your reflections provide evidence of your ability to critically reflect on your learning in your clinical experience by:</p> <p>Reporting: Describing relevant incidents and issues in some detail.</p> <p>Relating: Making clear connections between the incidents and issues and your own personal skills, experiences, values and beliefs. Addressing questions such as: Have I seen or encountered this before? Were the circumstances the same/different?</p> <p>Reasoning: Considering how the incidents and issues could be explained, by referring to own knowledge and experience and relevant theory and literature.</p> <p>Reconstructing: Described what has been learned.</p>	<p>Your reflections provide evidence of your ability to reflect on your learning in your clinical experience by:</p> <p>Reporting: Providing some description of relevant incidents and issues.</p> <p>Relating: Making some connections between the incidents and issues and your own personal skills and experiences.</p> <p>Reasoning: Making some attempt to consider how the incidents and issues could be explained, by referring to own knowledge and experience, and theory and literature.</p> <p>Reconstructing: Making some attempt to describe what has been learned.</p>	<p>Your reflections have:</p> <p>Reporting: Not described incidents and issues that are relevant to learning in your clinical experience.</p> <p>Relating: Made no connections between the incidents and issues and your own personal skills and experiences.</p> <p>Reasoning: Made no attempt to consider how the incidents and issues could be explained.</p> <p>Reconstructing: Made no attempt to describe what has been learned.</p>
Communication including clarity, tone and adherence to assessment requirements					
10 marks	<p>Your reflections are personal and extremely well focused; descriptions of complex situations are very clear and feelings described very well; perspectives are clearly explained and developed logically; language is</p>	<p>Your reflections are personal and well focused; complex situations and feelings described well; perspectives are clearly explained; within the word count (2000-2500 words).</p>	<p>Your reflections are personal and focused; situations and feelings described adequately; within the word count (2000-2500 words).</p>	<p>You have described situations and your reflections have some focus, but do not use the first person pronoun (I) appropriately; situations and feelings are not well-described; over or under the word limit by more than 250</p>	<p>Your reflections are unfocused and unclear.</p>

	succinct and within the word count (2000-2500 words).			words.	
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