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## Reflective practice: The essence of clinical legal education

### Introduction

It is a longstanding assertion of clinical legal educators the world over that one of the most important elements of a good clinical program is reflection. Roy Stuckey, in his highly regarded and often-referred-to book, *Best Practices for Legal Education*,<sup>1</sup> articulates it as ‘helping students learn how to learn from experience’, while Milstein puts it more formally with his suggestion that the ultimate aim of clinical teaching is to develop reflective practitioners and lifelong learners.<sup>2</sup>

Our recent research on clinical legal education in Australia has confirmed the importance of reflection. Australian clinical legal educators from a broad range of programs consistently identified reflection as central to the clinical legal education process, many calling it a ‘minimum standard’ for clinical legal education programs.<sup>3</sup> This observation should hardly be a surprise, as clinical legal education is experiential learning and, as Stuckey has argued, optimal experiential learning involves a circular

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1 Roy Stuckey and others, *Best Practices for Legal Education: A Vision and A Road Map* (2007) Clinical Legal Education Association.

2 Elliot Milstein, ‘Clinical Legal Education in the United States: In-House Clinics, Externships, and Simulations’ (2001) 51 *Journal of Legal Education* 375.

3 See *Identifying Current Practices in Clinical Legal Education*, Regional Reports, cited in Chapter 1 at footnote 6, particularly the ‘Key Elements of a Good Clinical Program’ section and the report responses attached as annexures.

sequence of experience, reflection, theory and practice.<sup>4</sup> This universal recognition within Australian clinics of the role of reflection led us to consider in more depth exactly what is meant by reflection and why it is so important to clinics.

Our research shows that reflection and reflective practice are often used to assess students in clinical programs; this is evident from the repeated reference to reflection by those we surveyed when asked about how they assess students. Our research shows that reflective workshops, debriefs, blogs and journals are all used to assess such diverse aspects of the clinical process as client sensitivity and empathy, sociolegal awareness, and even intellectual grasp of substantive law.<sup>5</sup> While the scope of our research was not designed to tease out the distinction between assessing reflective thought and using reflection to assess more substantive legal skills, this crossover raised some very interesting questions for us, such as what exactly is reflection within a clinical legal context? Should it be assessed and, if so, how? And finally, if reflection is relied on to measure the success of our students against a range of other criteria, is enough emphasis being placed on the process of reflection itself?

These questions could not be answered without a clear understanding of what reflective practice is and why it is considered so crucial to clinical legal education. Once we delved into these questions it became clear that while almost all clinicians see reflection as vital, there are very different views on what it is, and many clinicians were in the dark as to how to most effectively foster reflective practice in our students.

In this chapter, we will explore reflection in the clinical legal setting, drawing on the literature on reflection and our own research. We will ‘think through’ what reflective practice actually means and why it should be part of clinical legal programs. We then turn our attention to how it might be taught and assessed. There has been much discussion, both within clinical legal programs and beyond, as to how we assess reflection (or even if we should) and we will explore this discussion in the Australian context.

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4 Rachel Spencer, ‘Holding up the Mirror: A theoretical and practical analysis of the role of reflection in Clinical Legal Education’ (2012) 17–18 *International Journal of Clinical Legal Education* 181, 186, citing R Stuckey, ‘Teaching with a purpose; defining and achieving desired outcomes in clinical law courses’ (2007–08) 13 *Clinical Law Review* 807, 813.

5 This is evident from a close reading of the Regional Reports, cited in Chapter 1 at footnote 6.

## What our research discovered about reflection

Before we begin, a few words should be said about our research and what its findings suggest about reflection in clinical legal teaching. As canvassed in Chapter 1, the first stage of our research surveyed all the clinical legal education programs offered across the country. We did not ask direct questions about reflection and, in fact, reflection was not mentioned in our survey document. This was an unfortunate oversight, although it is of interest that reflection appeared repeatedly in the responses to our questions. For example, the first part of the survey asked for details of the program being surveyed, while the second part asked about what might make a ‘good’ clinical program. In that second section, our open-ended question about whether there are any minimum standards that should be achieved in clinical programs elicited responses that almost always mentioned reflection.<sup>6</sup>

The next section of the survey was aimed at supervision and supervision standards, and again reflection and reflective practice featured large. For example, when asked about the appropriate length of a clinical program, a typical response was that it needed to be long enough to allow reflection and the development of reflective skills.<sup>7</sup> However, the section in which the most references to reflection appeared dealt with questions about assessment. It is clear that almost all clinics use reflection, whether through discussions, presentations, journals or blogs, to help them assess their students.

The section of the survey headed ‘Clinical Supervision Standards’ again showed us how important reflection is. Respondents were asked to comment on if and how they assess a variety of capacities, understandings and skills. These ranged from client sensitivity and ethical and sociolegal awareness to intellectual grasp of substantive law, drafting, negotiating and advocacy skills, self-organisation, and comprehension of the law reform process. Reflection and reflective practices, including reflective discussions, workshops, blogs or journals, were repeatedly cited as ways in which students were assessed against all these varied competencies.

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6 See Regional Reports, particularly the ‘Key Elements of a Good Clinical Program’ section, question 1, cited in Chapter 1 at footnote 6.

7 Again, see Regional Reports, cited in Chapter 1 at footnote 6, e.g. *Identifying Current Practices in Clinical Legal Education, Regional Report: Queensland and Northern New South Wales*, 14, at [perma.cc/257Z-6EMR](https://perma.cc/257Z-6EMR).

There is perhaps a lack of clarity in the way that clinicians communicate to their students the aim or role of the reflective exercises they ask of them. Because reflective exercises are often used to assess more than simply the students' ability to reflect, we may be diluting the message that reflection in itself is important. It is possible that the readiness to use reflection as a form of assessment means that we are giving our students some mixed messages about what it means to reflect, and weakening understanding of the inherent value of reflection itself. Mary Ryan has commented:

Despite the common (and often undefined) use of the terms reflection or reflective in assessment tasks ... learners are not often taught how to reflect, which different types of reflection are possible, or how best to communicate their disciplinary knowledge through reflection.<sup>8</sup>

It is clear across the responses to our survey that reflection is core to clinical legal education. But is this because clinicians rely on reflection to assess other capacities, or is it because reflection is valued as a fundamental skill and an inherent part of a good clinical legal program? There is no doubt that reflective exercises, whether oral or written, are a rare opportunity to understand better the thought processes, assumptions, values and beliefs held by our students. It can also be hard to resist opportunities to test how well we have taught other aspects of our courses. However, is this really the role of reflection? To answer this question we need to be clear on what reflection is.

## What is reflection?

'[Reflection] is the magic ingredient which converts legal experience into education.'<sup>9</sup>

There has been a great deal of writing on reflection and the role it should play in the education or development of professionals. Teaching reflective practice has long been the norm in education, nursing and social work as well as in many other disciplines, and the literature from this wealth of experience has a lot to offer the discipline of law. Law, on the other hand,

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8 Mary Ryan, 'The pedagogical balancing act: teaching reflection in higher education' (2013) 18(2) *Teaching in Higher Education* 144.

9 Georgina Ledvinka, 'Reflection and assessment in clinical legal education: Do you see what I see?' (2006) 9 *International Journal of Clinical Legal Education* 29, 29–30.

has barely begun to explore reflection and the idea of teaching reflective practice. So what does reflection mean and what does it look like in the context of legal education?

Discussion of reflection, what it is and why it might be important to professional practice goes back many decades. In the early 1900s, Dewey looked closely at how we think and, in a book of that name, he analysed the different ways in which we think about a given issue or situation.<sup>10</sup> He identified several different ways of thinking, including stream of consciousness, belief, imagination or invention and, of course, reflection.

Although Dewey did not necessarily articulate it in this way, clinical students often find it helpful to think about these different ways of thinking in a progressive way. That is, when faced with an issue or, for example, a client's problem, the most immediate response of the student/practitioner<sup>11</sup> is a continuous stream of consciousness in their mind. This is a natural, common and, it could be argued, unavoidable response to a new experience. Dewey describes it as everything that 'goes through our minds'.<sup>12</sup> This stream of consciousness perhaps tries to capture as much of the information the student/practitioner is presented with as possible—but it is not yet ordered or structured.

From this stream of consciousness, the student/practitioner often then moves into another of Dewey's types of thinking: belief. Almost immediately, a student/practitioner will start to rely on belief—they may not even be able to articulate how, but the information from their stream of consciousness is triggering in them 'understandings' or beliefs they already hold. So, for example, the student/practitioner may assume that a client who presents with a legal issue about divorce is in conflict with the other party, even if that has not been said. Belief is not based on evidence, it is not proven and it is not necessarily true (although it may be), yet it is held by the student/practitioner to be true.

Almost simultaneously, the student/practitioner will also start to engage in invention or imagination. This form of thinking involves starting to extrapolate solutions or possible options out of the information they

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10 John Dewey, *How We Think* (1910) DC Heath.

11 We use this term in this chapter to highlight that it is the student acting as practitioner whom we are describing: not yet practitioner and still subject to supervision, but trying to put themselves in the position of practitioner.

12 John Dewey, cited at footnote 10, 2.

already have. In our example, the student/practitioner may start to think 'perhaps if this client tells their spouse that they don't want child support, then they will be able to negotiate arrangements for the children'.

Reflection draws on all of these types of thinking but goes further: 'it is the ... active, persistent, and careful consideration of any belief or supposed form of knowledge in the light of the grounds that support it and the further conclusion to which it leads'.<sup>13</sup>

Reflection is grounded in experience, as it is experience that allows the testing of the other types of knowledge. In our example, the student/practitioner can reflect and draw together the other ways of thinking, but can also test them. They might hypothesise that the client may have some residue ill feeling towards their spouse, and then they might inquire further about the client's feelings and how they influence what the client wants. For Dewey, reflection was not possible without experience, but experience was meaningless without reflection.

Similarly, Schön, writing in the 1980s, accentuated experience or action as a fundamental prerequisite to reflection, particularly in the education of professionals. Schön explained:

in the midst of their education for practice there was a profound sense of mystery. This feeling resulted from the fact that the students literally did not know what they were doing, and their teachers could not tell them – because what the teachers knew how to say the students could not at that point in their experience understand.

The students had to have the experience of trying to do the thing before they would be ready to understand the kind of explanations that the teachers could give them about what they were doing.<sup>14</sup>

Kolb, writing at much the same time, focused very specifically on the learning process, conceptualising a cycle that involved concrete experience, active experimentation, abstract conceptualisation and reflective observation. We return to this below, but Kolb's point was that effective learning involves all four elements of the cycle in a kind of constant rotation.<sup>15</sup> While the learner could enter the cycle at any point,

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13 John Dewey, cited at footnote 10.

14 Donald A Schön, 'Educating the Reflective Legal Practitioner' (1995) 2 *Clinical Law Review* 231, 249.

15 D Kolb, *Experiential Learning* (1984) Prentice Hall.

Kolb clearly linked the cycle to concrete experience, and reflection flows from that. Gibbs, in his book *Learning by Doing*,<sup>16</sup> also conceptualised the process in a circular way through his reflective cycle. The reflective cycle includes description, feelings, evaluation, analysis, conclusion and action plan. Description requires a simple retelling of what happened, and the reflective thinker then expresses the feelings these events produced in them. They then move to assessing the good and the bad in the situation before engaging in a deeper analysis in order to find meaning. From there they consider what they could have done differently in order to get a different (improved) outcome; and finally they consider an action plan of what they would do if the situation arose again.

More recently, Bain and others suggest a ‘five Rs’ framework of reporting, responding, relating, reasoning and reconstructing,<sup>17</sup> which Ryan<sup>18</sup> reduces to four through the merging of reporting and responding. This framework also begins with a concrete experience, which then becomes the subject of each action described in the four Rs. Bain’s framework is very helpful in the context of clinical legal education, and is discussed in more detail in a report commissioned by the then Australian Learning and Teaching Council.<sup>19</sup>

For Schön, true reflective practice comes not only from action or experience but more specifically from the uncertainty, uniqueness and conflict of that experience. Schön believed that this uncertainty goes to the heart of professional work in that professionals do something more than simply apply the technical rationality of their discipline; they use judgment, experience, intuition and reflection-in-action to solve problems. It is this idea—that reflection generates uncertainty and conflict—that is most interesting for clinicians’ purposes. It describes the ability of reflection to question assumptions, and acknowledges that this can be a very unsettling experience. In some cases the assumptions may even be unconscious, but they nevertheless form and influence our perspective.

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16 G Gibbs, *Learning by Doing: A guide to teaching and learning methods* (1988) Oxford Polytechnic Further Education Unit.

17 JD Bain, R Ballantyne, C Mills and NC Lester, *Reflecting on practice: Student teachers’ perspectives* (2002) Post Pressed.

18 Mary Ryan, cited at footnote 8, 144–55.

19 Mary Ryan and Michael Ryan, *Developing a systematic, cross-faculty approach to teaching and assessing reflection in higher education* (2012) ALTC.

The process of reflection, therefore, not only suggests a questioning of these assumptions, but leads to inquiry and discovery and, commonly, culminates in perspective transformation.

## Why do we want to teach reflective practice?

Now that we know a little more about what reflective practice looks like, and perhaps what it aims to achieve, why do we want to teach it as part of clinical legal education? Expressed slightly differently, the question might actually be: why is clinical legal education so well placed to teach reflection? Stuckey asserts that helping students learn how to learn from experience ‘may be the most important goal of legal education’.<sup>20</sup>

Four main reasons to teach reflection emerged from our research:

- Clinical legal education has a unique ability to provide rich and unpredictable experience that so lends itself to deep reflection.
- Reflection can offer a perspective on (and perhaps respite from) the dominance of positivist black letter law within legal education.
- Teaching reflection can develop our students’ resilience in a profession that has some of the highest incidences of mental stress.
- Reflection assists students to understand and critique the law in context, which is particularly important because of the unique position that lawyers hold within the community.

We deal with each of these in turn.

## Reflection aids the educative process, while experience aids reflection

Clinical legal education has a unique ability to expose students to new, strange and previously unimaginable experiences. This is particularly because it involves working with live clients; that is, when students are asked to participate in a real legal practice with clients and their actual legal cases. Unlike a case study, or even a simulation, which is selected or written by the educator, a real client enters the students’ experience as a bundle of unpredictable, often contradictory, facts, feeling and impulses.

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<sup>20</sup> Roy Stuckey and others, cited at footnote 1.

Students must respond to all of these. Of course they need to develop the skills that will enable them to identify the relevant legal facts, just as they would in a class exercise, but they cannot do it in the kind of isolation that non-clinical methods allow.

Almost any client seeking legal advice will have a problem that encompasses different areas of law, and the facts are never presented neatly. This means that students dealing with such situations cannot simply fall back on conventional classroom teaching. They need to develop new strategies and approaches to problem-solving, through the process of reflection.<sup>21</sup>

If new strategies are required, then the best way for the student to learn the reflective lesson is to be exposed to these experiences over and over. We should successively ask them to respond, to think about their response, and then to alter their response the next time as a result of their thinking. The multiple layers of the clinical method allow and then stimulate a deep, rich reflection in this way.

Students often feel the weight of responsibility of working with real clients. That sense of responsibility can inspire them to put aside their focus on their own performance for assessment purposes and immerse themselves in their client's case. They become part of the experience because they are in the role of the practitioner, with a responsibility to do the best for their client; not simply a spectator with an opinion on how to proceed. Teaching students to reflect in this context has two interrelated benefits. First, it gives them a framework as they grapple with how they process this new and daunting experience and how they make sense of it. Secondly, it improves their ability to actually use the knowledge they have; to see their client's issues in the broader context and then use this knowledge to build a solution.

Reflection can be applied to a range of areas of clinical legal education. In the area of skills acquisition, reflection may be used to develop a student's client skills, such as accurate fact-gathering. Take, for example, the student who assumes a client who cannot recall detail must be lying; if the student has the opportunity to consider the experience of their client, including the client's personal history and circumstances, then the student may start to question this assumption. The student may discover

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21 Georgina Ledvinka, cited at footnote 9, 34.

that their client is receiving counselling for post-traumatic stress, or that the client suffered a brain injury that interferes with memory or, simply, that the client fears losing their children into state care due to the circumstances they are being asked to describe. The student might acquire these extra facts as part of the process of taking instructions, but if the student can go beyond simply noting them and think about how these facts might influence or affect their client, then they have begun to reflect.

Without reflection, clinical legal education becomes simply skills acquisition or, at best, work-integrated learning (WIL).<sup>22</sup> WIL is undoubtedly an important part of education, and the exposure to workplace experience is an important step for students to begin to apply the knowledge they have obtained in the classroom. WIL placements may well encourage reflection; however, it is the intense and deliberate nature of the supervised clinical experience, the close relationship between the supervisor and their student and the recognition of immediate responsibility within the practice environment that particularly stimulate deeper learning through reflection.

## Reflection as an antidote to the technical/positivist nature of legal education

One of Schön's major criticisms of the professions, including law, is their overemphasis on technical rationality. Technical rationality is Schön's term for the substantive knowledge of a profession. In the case of the legal profession, technical rationality refers to the legislation, secondary rules and case law. Schön argues that the legal academy has privileged the knowledge of these sources over the application of that knowledge, and therefore requires a distinction between thinking and doing.<sup>23</sup> In this model, professional educators first teach their students the basic relevant science, then teach them the applied relevant science and then give them a practicum in which to work on applying that science to the everyday problem of practice.<sup>24</sup>

This process does not sound foreign to anyone engaged in the teaching of law in the last few decades. However, the ongoing difficulty in the eyes of Schön is that it privileges basic knowledge over practice and

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22 See Chapter 2 of this book; see also *Work Integrated Learning 2012 – Toolkit for Employers and Industry* at [perma.cc/ZV4C-FKR4](http://perma.cc/ZV4C-FKR4).

23 Donald A Schön, cited at footnote 14.

24 Donald A Schön, cited at footnote 14, 235.

narrowly defines what practice is. In this process, the basic knowledge is pre-eminent and alone gives legitimacy to the applied knowledge, which in turn legitimises the practice. But, in Schön's view, the practice is far broader than anything the basic knowledge can clearly support. He points to the reality faced by those who practise and try to teach practice: that the knowledge that seems relevant to the problems they address is often not the knowledge that is taught in the classroom.<sup>25</sup> It is the assumption that professional practice is merely the application of a body of knowledge to a practical situation, which is so unhelpful and inadequate yet dominant within legal education.

One possible side effect of this privileging of source knowledge over practice is the tendency of the legal academy to hold on to positivist approaches to the law. Positivists argue that the value and therefore validity of a law comes from its source—not its merit.<sup>26</sup> It is not difficult to see how such a doctrine could develop within an academy that is divorced from practice and therefore divorced from the people affected by the operation of the law. For Schön, this privileging of the knowledge over its application in practice was an inversion of the natural order of things because the delivery of high-quality work for the client is the reason why we have professions in the first place.<sup>27</sup> A shift to focus on the problem-solving that takes place in practice would allow a reconsideration of the needs of the very people that the law is supposed to serve.

A review of Australian law schools undertaken by the Pearce Committee in 1987 led to recommendations that teaching be integrated with intellectual skills,<sup>28</sup> while the Carnegie Report in the United States called for an 'integration of realistic and real-life lawyering experiences throughout the curriculum, and challenges [to] American law schools to produce lawyers who are not only smart problem-solvers but also responsible professionals committed to service of both clients and the larger society'.<sup>29</sup>

25 Donald A Schön, cited at footnote 14, 235.

26 For further discussion, see e.g. John Gardner, 'Legal Positivism: 5½ Myths' (2001) 46 *American Journal of Jurisprudence* 199.

27 Richard K Neumann Jr, 'Donald Schön, The Reflective Practitioner, and the Comparative Failures of Legal Education' (1999) 6 *Clinical Law Review* 401–26.

28 DE Pearce, E Campbell, and D Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission: A Summary and Volumes I–IV* (1987) AGPS.

29 William M Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond and Lee S Shulman, *Educating Lawyers: Preparation for the Profession of Law* (2007) John Wiley and Sons.

In response to the Carnegie Report, one Australian professor observed: 'If students receive the message that intellectual capacities are prized beyond all else, then they will rely upon that in their future behaviour as legal practitioners. They will tend to be unconcerned with the impact their behaviour has on others.'<sup>30</sup>

The other major consequence of this approach is that it can set students up for failure. In fact, nothing they have been taught in law school, no matter how hard they have studied, can fully prepare them for practice. This is because legal practice is not just about substantive legal knowledge, it is also about processes: the process of building rapport with a client so that they can get the full picture; the process of applying the different silos of legal knowledge taught in law school to think about a holistic solution to the client's issue; the process of applying legal knowledge and thinking through the effect on the client and their situation while discussing this with the client to ensure they are acting on instructions. These are but a few of the complex processes that are part of practice, and they all rely on reflection. It is the practitioner's ability to reflect, and then to alter their part in the process to produce a better outcome, which develops them as a practitioner.

This practice-based approach to legal education sees students as active participants in their own learning. It has many benefits that respond to deficiencies in the way in which law is traditionally taught. Law is usually taught as if there is one right (correct and ethically compliant) answer to every legal problem and as if the practice of law does not need to engage in any way the practitioner's own judgment, values or ethics. This leads students to see ethical practice as something that is solely a matter of source knowledge, such as ethical rules, rather than the result of well-developed professional judgment. By ignoring the personal aspect of ethical practice, that part that relies on the practitioner's own skills and judgment, legal education leaves students ill prepared for ethical, sustainable legal practice.

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30 Gary Davis, International Conference on the Future of Legal Education (20–23 February 2008) Georgia State University College of Law, USA; Report to Council of Australian Law Deans (April 2008).

## Reflection to educate for lifelong learners and resilient practitioners

Reflection can serve as a useful link between study and practice. Students who are taught how to reflect, and who are exposed to the benefits arising from reflection, are unlikely to stop reflecting once they have handed in their last journal entry for their clinical course or graduated from law school. Properly developed, genuine reflective skills become a practice, a habit that leads the practitioner to greater understanding of themselves and their practice:

What [an individual] has learned in the way of knowledge and skill in one situation becomes an instrument of understanding and dealing effectively with the situations which follow. The process goes on as long as life and learning continue.<sup>31</sup>

It is this incremental type of reflection that develops and supports lifelong learners, as it allows an understanding of how thinking and doing interact. Understanding this link then allows development that draws on both. Theorists have articulated the link between experience, reflection and learning,<sup>32</sup> one describing reflection as ‘the bridge of meaning that connects one experience to the next that gives direction and impetus to growth’.<sup>33</sup>

Some studies have pointed to the fact that students feel a sense of loss because their commitment to social justice principles and public interest practice diminishes over the course of their studies.<sup>34</sup> The reflective dimension of clinical legal education can address this problem by inculcating a sense of belonging through involvement, engagement and connectedness with their degree, educators and fellow students.<sup>35</sup> During our research, we heard many anecdotal accounts of students’ gratitude for feeling connected with fellow students in clinical legal settings, something many of them had not experienced in the broader law school environment.

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31 John Dewey, *Experience and Education* (1938) Collier Books, Macmillan.

32 See e.g. D Boud, R Keogh and D Walker (eds), *Reflection: Turning Experience into Learning* (1985) Kogan Page.

33 C Rodgers, ‘Defining Reflection: Another look at John Dewey and reflective thinking’ (2002) 104(4) *Teachers College Record* 850.

34 T Walsh, ‘Putting justice back into legal education’ (2007) *Legal Education Review* 119, 120.

35 M Kenny, ‘Roundtable Trends in Legal Education for Practice’ (2012) Australian Academy of Law Australasian Law Teachers Association, Perth, 19 September 2012.

In addition to fostering growth, reflection can also promote resilience, which has become more important in light of recent research pointing to the particular difficulties the legal profession has with mental stress and depression. As we discussed more fully in Chapter 2, law students are susceptible to mental stress and face real challenges to their wellbeing.<sup>36</sup> Reflection gives students a structure and a process that can be applied not only to their legal practice but also to themselves and their experiences. For example, reflection allows a practitioner to explore their views on the legal system, or on the hierarchal structure of the firm or organisation in which they are working. They are able to step back and critique the structures in which they find themselves operating, rather than feel powerless and be swept along by them. As Kegan explains, being able to reflect ‘is an active demonstration of a mind that can stand enough apart from its own opinions, values, rules, and definitions to avoid being completely identified with them. It is able to keep from feeling that the whole self has been violated when its opinions, values, rules, or definitions are challenged’.<sup>37</sup>

In this way, the ability to reflect and to develop from that reflection offers a lifeline for practitioners, and fosters resilience in the face of a stressful profession.

## Reflection to expose students to law in context

Reflection can be a mechanism that raises the student’s awareness of law in context. The phrase ‘law in context’ sums up the desirability of teaching law students to think critically about the law, rules and practices from a range of perspectives.<sup>38</sup> Teaching students this kind of critical reflection was consistently recognised throughout our research as an important role of clinical legal education. This was reflected not only in the initial process,

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36 See, for further discussion, N Kelk, G Luscombe, S Medlow and I Hickie, *Courting the blues: Attitudes towards depression in Australian law students and lawyers* (2009) Brain and Mind Research Institute Monograph, 1; and Massimiliano Tani and Prue Vines, ‘Law Students’ Attitudes to Education: Pointers to Depression in the Legal Academy and the Profession?’ (2009) 19(1/2) *Legal Education Review* 3–39.

37 R Kegan, *In over our heads: The mental demands of modern life* (1994) Harvard University Press, 231.

38 This phrase and more on this topic can be found in Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Mary Anne Noone, Simon Rice and Ebony Booth, *Best Practices: Australian Clinical Legal Education* (2013) Government of Australia, Office of Learning and Teaching, 53, at [perma.cc/2J6E-ZMQX](https://perma.cc/2J6E-ZMQX).

which recorded the views of those actively engaged in delivering clinical legal programs, but also in the focus groups and our further development of *Best Practices*.

Reflection is an important part of this kind of learning; when students are provided with opportunities to examine and reflect on their beliefs, philosophies and practices, they are more likely to see themselves as active change agents and lifelong learners within their professions.<sup>39</sup> This is a powerful educative tool, particularly in light of Dewey's assertion that it is the aim of progressive education 'to take part in correcting unfair privilege and unfair deprivation, not to perpetuate them'.<sup>40</sup>

Many students make far-reaching assumptions about the ways the law operates. For example, a student may start with a fundamental belief that the operation of the law is fair and equitable. If they accept that sometimes the outcome of legal proceedings might not be just, then they may attribute it to the poor performance of one of the lawyers, or to the absence of crucial information before the decision-maker, or to some procedural mishap that was not the intention of the law. However, reflecting on the actual experience can show that this is not necessarily the case; legal proceedings may result in an overtly or apparently unfair result exactly because of the intended operation of the law. For example, property laws are often designed to protect the rights of owners, which can lead to tenants being evicted without consideration of their housing rights or personal circumstances.

Clinical programs can expose students to what actually happens in the practice of law when they reflect on these realities. Often it is the first time that a student can see the impact of a client's circumstances, such as a lack of financial resources, a lack of cultural and linguistic knowledge, or simply a lack of knowledge of the law and how it operates. Clinics can shift the focus from the law and the legal system, which students examine in law school, to its effect on the client. The client and their experience become the central concern and, from this new position external to the legal system, students are better able to critique the legal system. It is reflection that both enhances and supports this process. This different

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39 Jack Mezirow, as cited in Mary Ryan and Michael Ryan, cited at footnote 19, 3.

40 John Dewey, *Democracy and Education* (1944) Collier McMillian, 119 (original work published in 1916).

understanding of law and the legal system can be uncomfortable for students, but a student who can reflect is better placed to deal with these new insights than one who is never taught the reflective method we describe below.

## How should we teach reflective practice?

We now have a clearer vision of what reflective practice might look like and why we want to develop it in our students. The next issue is, how do we do so? There has been some criticism of Schön for failing to satisfactorily explain exactly how the coaching for reflective practice might be conducted.<sup>41</sup>

This leads to one of the very common frustrations of students who are trying to become professionals, what Schön calls the ‘paradox of ... having to plunge into doing – without knowing, in essential ways, what one needs to learn’, in order to learn by doing.<sup>42</sup> In encapsulating the essence of the clinical method, Schön is also referring to the practice of reflection—it is necessary to ask students to reflect from a very early stage in their clinical experience, and possibly even before they have a full grasp of what reflection is. This process is, of course, best supported by good supervision, which we discussed in Chapter 6.

We propose three crucial aspects to teaching reflection, summarised as: value it, explain it and support it.

### Value it

Reflective thinking and practice must be valued, and be seen to be valued, by practitioners and supervisors within the clinic. For some clinical teachers, who may have come from high-turnover, high-pressure practices such as legal aid or community law, reflection can be seen as a more academic pursuit and not central to the legal work. If this message is given to students, then they are more likely to consider reflection as an irritation

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41 See comments of M Eraut, *Developing Professional Knowledge and Competence* (1994) Routledge, as referenced in Helen Bulpitt and Peter J Martin, ‘Learning about reflection from the student’ (2005) 6 *Active Learning in Higher Education* 207.

42 Richard K Neumann Jr, cited at footnote 27, 408.

that takes their time and attention away from the ‘real’ legal work, and are more likely to turn in reflective pieces that attempt to ‘give the marker what they want’, rather than engage in real reflection.

One crucial way that clinicians can demonstrate the importance of reflection to their students is to model it in their own practice. Clinical supervisors who are unwilling to reflect on their practice by, for example, admitting difficulties or mistakes and verbalising how it could have been done better are ill placed to extol the virtues of reflection. Reflection has to be integrated into the clinical course; it should be the work of all supervisors, and not just fall to those most interested in that ‘touchy feely’ stuff. It may be that for students to value reflection it must also be assessed in some way, an issue we explore below.

Reflective discussion can be a useful tool to stimulate and deepen reflection, but clinicians need to ensure that they move away from placing the teacher in the only ‘power’ role at the front of the class.<sup>43</sup> Clinicians should resist the practice of commenting authoritatively on all contributions by students and, rather, try to facilitate discussion within the group. This approach can be difficult within the traditional pedagogy of a law school. Even clinicians find it hard to break the habit of allowing their students to look to the teacher and the teacher alone for validation of students’ contributions.

## Explain it

To foster reflection, both supervisors and students must understand what it is, in both a theoretical and practical sense. This starts with an appreciation of the role of the clinical supervisor as facilitator.

The role adopted by the clinical teacher should be that of facilitator, rather than that of the master who can give the answers on every issue—‘indeed to be an effective facilitator the teacher should resist the temptation to give answers, and try to guide the student towards finding them for themselves’.<sup>44</sup>

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43 Rachel Spencer, cited at footnote 4, 196.

44 Georgina Ledvinka, cited at footnote 9, 36 and note 32.

The foundation for understanding this facilitative role is transparent discussion underpinned by a theoretical framework—both the supervisors and the students need a theoretical grounding and a commitment to open and transparent exchange. Many writers have pointed out the benefits of teaching theory in an integrated way,<sup>45</sup> arguing that a theoretical background enables students to better understand reflection and why it is part of their course. The Kolb cycle of learning is commonly used to illustrate the differences between concrete experience (doing), reflective observation (thinking), abstract conceptualisation (extrapolating) and active experimentation (testing).

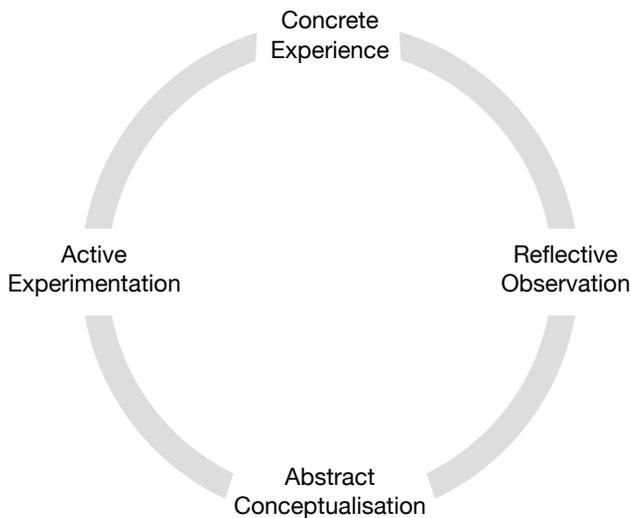


Figure 1: Kolb cycle of learning<sup>46</sup>

This visual representation of a cycle, through which students might pass numerous times within one interaction, can be very helpful to them while grappling with the theory of reflection. Answering criticism that this cycle oversimplified learning by reducing it to a mechanical step-by-step process, Kolb has further identified ‘[t]he two dialectically related

45 See e.g. C Maughan and J Webb, ‘Taking Reflection Seriously: How was it for us?’ in J Webb and C Maughan (eds), *Teaching Lawyers’ Skills* (1996) Butterworths. See also the comments of Georgina Ledvinka, cited at footnote 9, 29–56.

46 DA Kolb and R Fry, ‘Toward an applied theory of experiential learning’ in C Cooper (ed), *Theories of Group Process* (1975) John Wiley.

dimensions of grasping experience via concrete experience and abstract conceptualisation and transforming experience via active experimentation and reflective observation'.<sup>47</sup>

Other students may prefer Gibbs' approach, which, with its grounding in common language and experience, is perhaps of more use to students trying to relate the concept of reflection to their own developing practice as lawyers. Gibbs also describes reflection through a cycle, but includes description, feelings, evaluation, analysis, alternative approaches and action plan.

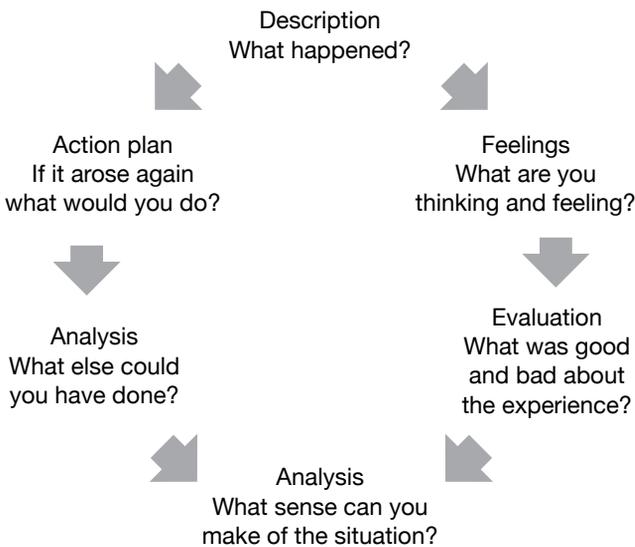


Figure 2: Gibbs' learning cycle<sup>48</sup>

Whichever framework is chosen, there is great value in exposing students to the academic work that has been done on reflection. The exploration of the theoretical basis of reflection might serve as a starting point. However, the practical manifestations of reflection beyond the theory must also be explained to answer this ever-present question for a clinical teacher: what, exactly, are we looking for as evidence of students' reflection? Are personal ruminations enough, or are there specific criteria that can guide assessment? To answer these questions, clinicians need to clearly

<sup>47</sup> DA Kolb, *Experiential Learning: Experience as the Source of Learning and Development* (2015) Pearson Education Inc, 2nd ed, 56.

<sup>48</sup> G Gibbs, cited at footnote 16.

explain to their students why they want them to reflect, what they mean by reflection and, finally, how their reflection is being assessed (if indeed it is being assessed).

Actual demonstrations to students of reflective practice are vital. This demonstration starts with supervisors modelling good reflection in their discussion of their own practice. It should also involve tangible examples: if students are being asked to keep a reflective journal then they need to see and discuss some examples of good reflective journal writing. Such examples might come from past students, with due recognition of privacy issues, or may draw on material that, while not written for that purpose, may nevertheless provide an opportunity for analysis and critique. Looking at a literary work unrelated to law but familiar to the students, with the question ‘is this piece reflective?’, can also be useful.

At its essence, reflection is relatively simple: ‘Reflection is a basic mental process with either a purpose, an outcome, or both, applied in situations in which material is unstructured or uncertain and where there is no obvious solution.’<sup>49</sup>

Dewey helps us to understand *how* we think, and subsequent theorists such as Schön and Kolb suggest the *processes* by which those ways of thinking might work together to produce new insights and action. A clinical teacher must build on this to explain to their students how such processes can support and develop their professional judgment and therefore their practice. Jennifer Moon has asserted that ‘there is no point in defining reflection in a manner that does not relate to the everyday use of the word’.<sup>50</sup> She then observes that reflection is a means of working on what we already know.

This is a very good starting point for the use of reflection within clinical teaching. What the student *knows* prior to meeting with a client might be a collection of assumptions arising from the circumstances the client is in (that is, what legal issue they may have) and the ‘truths’ that student might hold about those circumstances. For example, a client seeking advice about a looming eviction from public housing may trigger in the

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49 Jennifer A Moon, *Reflection in Learning and Professional Development: Theory & Practice* (1999) Kogan Page, 10.

50 Jennifer A Moon, *Reflection in Higher Education Learning*, PDP Working Paper 4, LTSN Generic Centre, 1.

student a range of assumptions and conclusions based on their view of public housing. Depending on their own background and experience, these assumptions may be either negative or positive.

Then the student meets the client; now they have a lot of new information. What they *know* has suddenly doubled and much of the new information may challenge what they thought they knew prior to meeting the client. Reflection is the process by which the student can make sense of this—through reflection they can identify the assumptions they held prior to meeting the client, and think through how those assumptions affected their approach. This can raise new questions, which will spark another round of fact-gathering through research or further discussion with the client. This is reflective and it can assist the student to arrive at a more nuanced and detailed understanding of their client and their legal issue. But it does not end there. Reflection can also assist the student to think about their own approach. They may ask: ‘Why did I have those assumptions prior to meeting the client? What were they based on and do I see it differently now?’

## Support it

The way clinicians support reflection is to allow space for it within the course they teach. Clinical programs in Australia are often highly frenetic environments. There are often too many clients to see and many complex issues to deal with. In addition, there can be a tension between addressing the educational development and skills acquisition of the student while also trying to encourage engagement with the broader social issues. In the midst of all this it is easy to overlook the structural and practical requirements to support good reflective practice. The major requirement is time; that is, ensuring there is time to properly reflect on the work being done, the observations of the students, and the assumptions and challenges that come with them.

Taking enough time may mean ensuring that time is made available for group debriefing around case issues or client work, for scheduled meetings between student and supervisor in which deeper discussion of the day’s practice is encouraged, or for regular meetings where reflections are shared with peers and discussion of both the work and the students’ experience of the work is encouraged. It could mean allowing time at the end of the day for students to write in their journals. It might also require each student to produce a piece of reflective writing about their experiences

and then share these within the class. Whatever form it takes, taking time for reflection has to be a central part of the structure of the course, and it has to be designed so that sufficient energy can be directed towards it.

Spencer explains that paramount to teaching reflection is the establishment of an appropriate environment.<sup>51</sup> She suggests a set of exercises that starts with private reflection, moves on to reflection in pairs on set topics, and finally moves into encouraging the students to share their reflections with the class. Stuckey advocates a similar creation of structures and protocols in order to assist students' self-learning.<sup>52</sup> Spencer observes that, in her experience, '[s]tudents are prepared to take that risk if they feel supported and know that the risk will produce a positive result in the form of a validation of their feelings and encouragement for the future'.<sup>53</sup>

## Should we assess reflective practice?

Some argue that an important way to value reflection is to ensure that it is assessed.

Regrettably, for many students learning is driven largely by assessment. If reflection is not to be assessed then there must be a risk that some students will view it as less important than assessable work, and therefore potentially expendable.<sup>54</sup>

While this may be true, there are two major concerns that arise from the assumption that reflection should always be assessed. The first is that any assessment risks driving students to simply express what they think those assessing them want to hear. The second is that assessing reflection becomes a kind of Trojan horse designed to 'get into our students' heads' so we can determine whether they have achieved other learning outcomes.

The first concern was well expressed by Boud in a seminar given at Sheffield University in 2001 and cited by Ledvinka in 2006: 'assessment is inappropriate because it will stultify or even destroy "raw reflection",

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51 Rachel Spencer, cited at footnote 4, 196.

52 Stuckey's approach is set out in Rachel Spencer, cited at footnote 4, 196; see also R Stuckey, also cited at footnote 4, 813.

53 Rachel Spencer, cited at footnote 4, 196.

54 Georgina Ledvinka, cited at footnote 9, 40.

including students' confidence in expressing themselves freely and exploratively, and that it may lead to unethical levels of disclosure and confession'.<sup>55</sup>

In addition to this anxiety there is some concern that, if assessed, students will be searching for the 'right' thing to say or write, rather than really engaging in reflection of their experiences, thought and actions. This reservation of course leads to another question: is it appropriate to assess the content of the reflection, or simply the process of reflection? If the process is done well, then the resulting content may well reveal the core values or beliefs of a student. But is it ever appropriate for clinicians to 'assess' such material?

This dilemma leads us back to the issue raised at the beginning of this chapter: that our research revealed that reflection and reflective writings such as journal entries and blogs are often used to assess other aspects of what clinicians are trying to teach students. This purpose is inappropriate. As we repeat in Chapter 8, assessment of reflection is legitimate only to gauge whether a student understands the purpose of reflection in their learning. In other words, it is the *process* of reflection—as an aide to their learning—that we need students to comprehend and which it is legitimate to assess. If clinicians are going to use reflection to assess course content, then they are looking for the 'right answer' rather than whether the student can engage in the process. Some might argue that if the student doesn't know their supervisor is using the reflective piece in this way then they will not necessarily try to provide the 'right answer' or the content that is being sought. However, the fact that this is perhaps 'kept' from the student does not improve the situation, because it is a fundamentally dishonest use of the reflective process. Accordingly, if clinicians are seeking to identify whether students understand the content of the course or the law involved, then they need to be clear about the assessment criteria of the task and at that point it is no longer purely an exercise in reflective practice.

Our research led us to suggest some best practices: for example, that reflective practice must be informed by relevant literature and incorporated into every clinical course in a structured, planned and thoughtful way.<sup>56</sup> This, we suggest, includes providing students with a theoretical

55 Georgina Ledvinka, cited at footnote 9, 40 and note 47.

56 See Adrian Evans and others, cited at footnote 38 ('Reflective Student Learning').

underpinning and a set of relevant resources/readings. We also suggest that prompt feedback be given on the reflective practice. Included in the best practices is a suggestion that any reflective practice builds on reflection in which students have already been engaged. However, this goal is aspirational as almost no clinical programs surveyed in our research clearly articulated this practice. Finally, we also suggest that reflective practice should be assessed and that assessment be criteria-based, with criteria that focus on the process rather than the content and that are always clearly linked to the learning outcomes of the particular course or unit.<sup>57</sup>

## How do we assess reflective practice?

There are many different ways in which reflective practice is assessed. In our research, clinicians described journals and blogs, class discussions and supervisor/student meetings among other methods. There is undoubtedly a correlation between the use of reflective practice to assess other aspects of clinical teaching and the more formal methods of reflection. For example, reflective journals were often cited as tools of assessment for a wide range of other skills and knowledge. At the same time, supervisor/student discussions were hardly ever cited as assessment tools. Although it can be argued that the role of such discussion in a supervisor's assessment of student performance is implicit, there is no doubt such discussion is a less formal and more flexible opportunity for exchange. We suggest that for this reason there may be value in keeping some space for reflection that is as informal as possible, perhaps in the form of impromptu discussions or debriefing sessions. It may further suggest the need for particular attention to be paid to the use of journals and blogs to ensure they remain truly reflective practice exercises and not just alternative forms of assessment.

Schön was very clear that eliciting and developing good reflective practice is a coaching, not a teaching, role. This idea was also articulated by Mezirow, who said that the ideal learning conditions for reflection are facilitative, with value conflict being handled effectively and underpinned

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57 Adrian Evans and others, cited at footnote 38, 20 and 21.

by the principles of andragogy.<sup>58</sup> Dewey saw community as important to reflection, a point picked up on by Rodgers<sup>59</sup> when she identifies the following factors that highlight the benefits of collaborative reflection:

1. affirmation of the value of one's experience: in isolation what matters can be too easily dismissed as unimportant;
2. seeing things 'newly': others offer alternative meanings, broadening the field of understanding;
3. support to engage in the process of inquiry.

In relation to this last point, Rodgers observes that 'when one is accountable to a group, one feels a responsibility toward others that is more compelling than the responsibility we feel to only ourselves'.<sup>60</sup> We suggest, in addition, that this collaborative aspect may also play a role in deconstructing the highly competitive individualisation of legal education and this may, in turn, have a positive effect on the mental health of our graduates.

## Conclusion

In this chapter, we have examined the role of reflection within clinical legal education, a role that goes beyond a simple endorsement of the importance of teaching reflective practice. Most clinicians agree that reflection should be a fundamental part of legal education, and that the clinical method offers unparalleled opportunities to develop reflective practice in our law students. Reflection is more than asking students to write down their thoughts as a way of making what they have actually learnt more visible. More importantly, it is a way in which clinicians can develop resilience in students by offering a powerful framework and process by which they can examine themselves, their role, and the system in which they are being asked to operate. In doing so, clinical legal education can produce practitioners with good ethical judgment, clear understanding of the law and a commitment to how it can benefit the broader community.

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58 J Mezirow and Associates, *Fostering Critical Reflection in Adulthood* (1990) Jossey-Bass, as cited in Helen Bulpitt and Peter J Martin, cited at footnote 41.

59 C Rodgers, cited at footnote 33.

60 C Rodgers, cited at footnote 33.

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