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LEGAL AID, PUBLIC SERVICE AND CLINICAL LEGAL EDUCATION: FUTURE DIRECTIONS FROM INDIA AND THE UNITED STATES

Frank S. Bloch* and Iqbal S. Ishar**

INTRODUCTION

The role of public service in clinical legal education has been debated regularly and, with equal regularity, has receded as an issue unresolved.1 Enough time has passed, however, to note a trend: public service goals for clinical programs are being pressed as such less often and with less intensity.2

This movement away from public service as a major, let alone dominant, goal for clinical legal education may be a natural and inevitable byproduct of increased integration of clinical programs into the traditional law school curriculum and regularization of the status of clinical faculty. Concerns have been raised about the lessening of the public service dimension brought to legal education by the clinical legal education movement; however, they tend to be based on a relatively limited and often nostalgic look back to the “glory days” of 1960s and 1970s activism.3

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1. The debate began when clinical programs were first set up as legal aid clinics. See infra notes 12-14, 21-25, and accompanying text. It continues today. See, e.g., Norwood, Requiring A Live Client, In-House Clinical Course: A Report on the University of New Mexico Law School Experience, 19 N.M.L. REV. 265 (1989).

2. See generally Kotkin, Reconsidering Role Assumption in Clinical Education, 19 N.M.L. REV. 185, 189-93 (1989). There are, of course, exceptions. See, e.g., Wizner, What Is a Law School? 38 EMORY L.J. 701, 701 (1989) (“[T]he dynamic relationship between legal education and the law must be channelled toward a greater fulfillment of a law school’s social obligation to the public and its educational obligation to its students. These responsibilities include the provision of free legal services to the poor and underrepresented through live-client clinical programs.”); Feldman, On the Margins of Legal Education, 13 N.Y.U. REV. L. & SOC. CHANGE 607, 637 (1985) (“The dominant orientation of clinical activities and, in particular, of client representation and casework should be an attention to the legal problems of those who are unrepresented and under-represented.”). The fact that these voices are exceptions makes the same point.

3. This is perfectly understandable as many mid-career clinicians are themselves products of
Missed from the debate has been a broader, international perspective. This is not surprising because most clinicians in the United States work in their own communities without paying much attention to related developments elsewhere in the world. The tremendous growth of clinical legal education in the United States during the past fifteen to twenty years and its general acceptance as an important element of the law school curriculum have led most clinicians to look inward and to promote greater success and influence for the clinical methodology in legal education generally; they have not tended to question the direction of clinical legal education in relation to parallel developments in the field outside of the United States. Although there are some signs of greater interest in international exchange among clinical law teachers, much more can be gained by looking beyond our own borders.

India and the United States present a good opportunity for such a transnational look at clinical legal education. In both countries legal aid projects have played an important part in the development of clinical legal education, and in both countries public service goals for legal education have usually been addressed in the context of clinical programs. Clinicians in the United States have not paid much atten-


5. There have been some exceptions, most notably between clinicians in the United States and some British Commonwealth nations. See, e.g., Peden, *Role of Practical Training in Legal Education: American and Australian Experience*, 24 *J. LEGAL EDUC. 503* (1972); Smith, *Developments in Clinical Legal Education in England*, 11 *COUNCIL ON LEGAL EDUC. FOR PROF. RESP. NEWSL.* (No. 3) 1 (1979) (description of visit by law professor from University of Maryland to University of Warwick); Nash, *Clinical Education in Australia - The Monash Experience*, *COUNCIL ON LEGAL EDUC. FOR PROF. RESP. NEWSL.* (No. 1) 1 (1979) (description of the clinical program at Monash University in Australia); Park, *The Teaching of Civil Claims in the South Australian Legal Practice Course*, 4 *J. PROF. LEGAL EDUC. 53* (1986). For some examples outside the Commonwealth, see Voss, *Methods of Training Young Advocates in the Netherlands*, 4 *J. PROF. LEGAL EDUC. 7* (1986); Wilson, *The New Legal Education in North and South America*, 25 *STAN. J. INT'L L. 375* (1989).

6. For example, UCLA and the University of Warwick held an international conference on clinical legal scholarship in 1986. Some of the papers from that conference were published at 34 *UCLA L. REV. 577-923* (1987). A second UCLA/Warwick international conference was held in 1989. Also, the Section on Clinical Education of the Association of American Law Schools ("AALS") presented a session on clinical legal education outside the United States at the AALS annual meeting in 1988.
tion to India, thereby matching a lack of significant interest in India in the legal education community in general. However, clinicians in India have drawn on the experience of the American clinical education movement, most notably in planning the structure and public service content of early programs in the 1960s and 1970s. The purpose of this article is to explore the direction clinical legal education is taking and should take in relation to the balance between public service and educational goals — by comparing and evaluating the experiences of these two very different yet not so different countries.

In the next two sections of this article, the legal aid traditions and broader public service agendas of clinical legal education in both countries are explored. These sections are followed by a comparison of the legal aid and public service components of the clinical curriculum in the two countries. It is observed that while clinical programs in the United States have tended to shift their focus away from legal aid and public service goals to broader academic and educational goals consistent with the integration of clinical legal education into the law school mainstream, clinical programs in India have remained firmly rooted in and closely tied to the legal aid movement. The article concludes with

7. As Marc Galanter pointed out at the plenary session of the 1986 annual meeting of the Association of American Law Schools, at that time there was no academic program at any law school in the United States that focused on India or South Asia; nor was there, to his knowledge, any faculty member at any law school spending a substantial portion of his or her time on the law of India. Galanter, When Legal Worlds Collide: Reflections on Bhopal, The Good Lawyer, and the American Law School, 36 J. LEGAL EDUC. 292, 293-94 (1986). There is no indication that this has changed significantly, if at all, during the past few years. There has been, however, greater interest in the other direction. Id. at 294-95; see generally Dhavan, Borrowed Ideas: On the Impact of American Scholarship on Indian Law, 33 AM. J. COMP. L. 505 (1985).


9. Some of the differences and similarities are obvious. India is a poorer country with a much larger population occupying a substantially smaller space. India has an older cultural history and a more recent history of foreign control. Both countries are constitutional democracies and both have legal systems which were adapted in large part from systems put in place during British rule. For a further discussion of similarities and differences in the legal systems of the two countries, see Galanter, supra note 7; Galanter, Legal Torpor: Why So Little Has Happened in India After the Bhopal Tragedy, 20 TEX. INT'L L.J. 273 (1985).
an assessment of the potential value of a similar shift in focus for clinical legal education in India and some questions about whether the price paid for the shift in the United States can be justified in either country.

I. THE LEGAL AID TRADITION

The traditional law school curriculum in the United States has all but ignored legal aid practice, except for a brief period during the late 1960s and early 1970s. During that period, courses were offered at many schools on law and poverty, and there was a dramatic upswing in law school-based legal aid projects. However, most of those projects were student-run, extra-curricular activities that had to rely on the emergence of clinical legal education to gain curricular legitimacy. Even then, legal aid activity, as such, was, and certainly today remains, outside the core educational mission of the American law school. Legal aid work in the United States is supported by the profession through organizations such as the American Bar Association and the National Legal Aid and Defender Association and funded primarily by the federal government through the Legal Services Corporation. Evidence of at least some renewed interest in this area by law teachers is the recent move to establish a new Section on Poverty Law in the Association of American Law Schools. Also, a new law school text on law and poverty is scheduled for publication in 1990.

On the other hand, legal aid has been a vital part of the clinical legal education movement in the United States from the beginning. The University of Denver operated a "Legal Aid Dispensary" as early as 1905; clinical programs in the 1920s and 1930s were described and debated using the interchangeable terms "legal clinic" and "legal aid clinic." By whatever name, early proposals to establish a clinical

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10. For descriptions of programs at the University of Denver, the University of Minnesota, the University of Michigan, Boston University, Harvard, New York University and Notre Dame, see CLINICAL EDUCATION AND THE LAW SCHOOL OF THE FUTURE 138-222 (University of Chicago Law School Conference Series No. 20, 1970). The major casebooks for courses on law and poverty at that time are cited in note 11, infra.


13. See, e.g., Bradway, The Beginning of the Legal Clinic of the University of Southern Cali-
curriculum at American law schools always included legal aid functions and an examination of related aspects of professional responsibility.14

In India, law school involvement in legal aid activity began from the opposite direction: when the legal aid movement took hold in the 1960s, it was assumed that law schools would have a significant role in dispensing legal services and that they would do so through legal aid clinics. There are a number of related reasons for this. First, there is a public commitment to legal aid expressed in the Constitution of India as a principle of State policy.15 This is, of course, a massive and difficult task in India, given the number of potential clients and the limited legal and financial resources available to provide legal services. Law students offer a ready pool of workers at relatively little cost. A second reason favoring significant law school involvement in legal aid programs in India is the wide range of activities included in the legal aid mission. In 1973, the Expert Committee on Legal Aid, established by the Ministry of Law, stated that legal aid services should include “every step or action by which legal institutions are sensitised to respond to the socio-economic realities” of India.16 Both the Expert Committee and the Juridicare Committee, a successor committee of the Ministry of Law reporting in 1977, specifically rejected the notion of case-by-case or litigation-based legal services for India, opting in-

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14. Thus, in an early, influential article Jerome Frank argued that providing legal aid services as part of a clinical program would benefit both legal education and legal aid. See Frank, Why Not a Clinical Lawyer-School, 81 U. PA. L. REV. 907, 917-20 (1933). See also David, The Clinical Lawyer-School: The Clinic, 83 U. PA. L. REV. 1, 22 (1934) (“The existence of a legal clinic in itself seems to be one of the best means of advancing public relations with the Bar: it is tangible evidence that lawyers and law schools are concerned about the affairs of those who are underprivileged and financially distressed in these troublous times.”); Speigal, Theory and Practice in Legal Education: An Essay on Clinical Education, 34 UCLA L. REV. 577, 592 (1987) (“an important rationale for clinical education ... was the teaching of professional responsibility”).

15. Under article 39A of the Indian Constitution, the State is committed to securing that “the operation of the legal system promotes justice on a basis of equality” and providing free legal aid “to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability.” However, article 39A falls in the part of the Constitution dealing with Directive Principles of State Policy and therefore is not enforceable in any court. Nonetheless, as with all other directive principles set forth in the Constitution, it is considered fundamental in the governance of the country. Agarwala, Directive Principles of State Policy, in 1 CONSTITUTIONAL LAW OF INDIA 649-733 (M. Hidayatullah ed. 1984). To discharge its obligations under article 39A, the Government of India has set up the Indian Council of Legal Aid and Advice, with branches in various states. Article 39A was inserted by the 42nd constitutional amendment in 1976. For a discussion of the constitutional obligation of the State for legal aid to the poor prior to the insertion of article 39A, see EXPERT COMMITTEE REPORT, supra note 8, at 4-15.

16. EXPERT COMMITTEE REPORT, supra note 8, at 180.
stead for services designed to reach out to the most helpless members of the society and to identify the broadest possible types of assistance that could be made available to them under the law, including education, community development and community organizing. As a result, current models for legal aid programs in India include relatively little individual client representation and a much higher concentration of larger projects aimed at surveying the legal needs of particular communities, providing community education in selected legal issues and attempting to institutionalize informal, alternative dispute resolution techniques in selected types of cases through lok adalats or "legal aid camps." These broader types of legal aid activity are, of course, more open to law students than direct client representation particularly in a country like India which has no rules allowing law students to practice in court. Finally, in India all universities are public institutions dependent on public funds. Therefore, the government has a direct interest in making law school resources available to implement its national policies on legal aid, which is exactly what the Expert Committee and the Juridicare Committee recommended in the 1970s.

Most members of the Indian legal community — law teachers, the bar, the bench, legal aid experts — agreed that law schools should play an active role in the country's fledgling legal aid movement, believing that isolation or exclusion of law schools from legal aid programs would be self-defeating for legal aid, legal education and the legal profession. The time and expertise of law teachers as well as the motivated minds of enthusiastic and youthful law students were considered a national resource to be harnessed in the national interest to achieve

17. See id. at 185; JURIDICARE REPORT, supra note 8, at 23-26.

18. For example, legal literacy, which is "an absent commodity among the masses" in India, and research and reform in the law and its administration, with a view to removing the difficulties faced by the poor, were identified as integral components of the legal aid movement in India. See JURIDICARE REPORT, supra note 8, at 5, 52-54, 64-65; EXPERT COMMITTEE REPORT, supra note 8, at 165-71. See generally Bhaskaran, Legal Aid to the Poor, 10 COCHIN U.L. REV. 1 (1986). Lok adalats and legal aid camps and their role in clinical legal education are discussed more specifically. See infra text accompanying notes 104-06.

19. See infra note 101 and accompanying text.

20. These recommendations are discussed in detail at infra text accompanying notes 21-25.

21. See Resolutions of the 12th All India Law Teachers Conference, 2 DELHI L. REV. 291 (1973) (Resolution No. II); Jethmalani, Objectives of Legal Education, in LEGAL EDUCATION IN INDIA 52, 56-57 (S. Agrawala ed. 1973) (the views of Mr. Jethmalani, the then Chairman of the Bar Council of India); EXPERT COMMITTEE REPORT, supra note 8, at 155-64; JURIDICARE REPORT, supra note 8, at 66-74; Sangal, Legal Services Clinic: Director's Report, 1975-76, 4 & 5 DELHI L. REV. 193, 195 n.2 (1975-76) [hereinafter 1975-76 Delhi Report] (statement of the then Prime Minister of India while inaugurating the Indian Council for Legal Aid and Advice in 1975 and the resolution of the 1975 National Seminar on Legal Aid and Advice).
the constitutional goal of equal justice for all. The service-mindedness acquired by students from legal aid work was thought to be a national gain that could influence the social sensitivity of the bar in the long run. As stated in the Juridicare Report, the involvement of students in legal services activities during “the formative period of their professional career” can be expected to develop in their minds a “deep appreciation of the importance of [legal aid] activities and also a sense of personal responsibility to see that such activities gather strength.” Thus, for many reasons law schools have been, and continue to be, seen as ideal places to provide inexpensive and efficient legal aid.

The argument for establishing legal aid projects at Indian law schools was also supported by the belief that the experience would benefit the schools’ academic programs. Thus, it was urged that legal aid work would broaden the interests of law professors; stimulate increased scholarship in the problems of the poor; make legal research less abstract and more inter-disciplinary; make the learning and teaching of law stimulating, challenging, and productive; and enhance the standing of law schools in the community. As one senior law teacher observed, “[s]uch experience would be of much use in improving the curriculum pattern, and making legal research more society oriented.” Courses on law and poverty, modeled to some extent on similar courses developed in the late 1960s and early 1970s at America.

22. As the Expert Committee observed in 1973, “Properly channelised and co-ordinated, the idealism and zeal of enthusiastic youth in our law schools can meet these new demands [upon the legal profession] and help transform our society to desirable goals.” EXPERT COMMITTEE REPORT, supra note 8, at 156. The Juridicare Committee reiterated this view in 1977: “It must not be forgotten that a significant sector of human resources for legal services to the poor is student power. It can destroy, if misguided, but equally it can build, if channelized in constructive channels.” The Juridicare Committee also stressed the importance of “utilizing this energetic, idealist, vast and yet untapped student power” for legal services programs, and went on to suggest that there should be university and law college schemes for conversion of law students' enthusiasm for the law into a potent resource on behalf of the poor and indigent. The Committee was of the opinion that “[l]aw teachers, legal researchers and law students, once harnessed to the process of legal aid will produce spectacular and substantial results.” See JURIDICARE REPORT, supra note 8, at 67-68.

23. V.R.K. IYER, supra note 8, at 115.

24. JURIDICARE REPORT, supra note 8, at 68. Moreover, participation by law teachers and students in legal aid work without motives for personal financial gain was seen as having the advantage of preventing legal aid from becoming aid to needy lawyers instead of aid to persons in need of legal services. Gupta, Legal Aid and Legal Education: Work Brain Teasers, 2 DELHI L. REV. 246, 246 (1973).

25. See Sharma, Clinical Legal Education: An Effective Mode for Implementing Legal Aid Scheme, 4 INDIAN J. OF LEGAL STUD. 181, 186 (1984); Gupta, supra note 24, at 246. See also EXPERT COMMITTEE REPORT, supra note 8, at 26-27.

26. Id. at 158; JURIDICARE REPORT, supra note 8, at 68; Menon, supra note 8, at 232-33.

can law schools, were introduced at about the same time into the Indian law school curriculum. These courses are still taught today at many law schools in India.

II. The Public Service Agenda

Closely related to clinical legal education's legal aid tradition in India and the United States is its public service agenda. Involving students in legal aid work should not only expand students' horizons during their law school years, but should also orient them toward public service activity throughout their professional careers. As stated with respect to one Indian law school clinic, law students' exposure to clinical work develops in them "a high degree of professional responsibility in the broadest sense of the term acquainting them with social service dimensions of the legal profession." An even broader public service component of clinical legal education is skills training, the goal of improving the overall competence of the bar. Thus, fields such as trial practice, interviewing and counseling, negotiation and other aspects of the lawyering process, as well as the various substantive areas in which clinicians have tended to practice, all have been enriched by the work of faculty and students in clinical programs. This has been true for some time in the United States; however, the trend toward greater interest by clinicians in these more traditional fields has become more pronounced in recent years. In India, clinicians are just beginning to move in a similar direction.

There is an ambivalent attitude about public service in the legal profession which is typified by the issue of a lawyer's obligation to provide pro bono representation, a matter of long-standing concern to the profession in both India and the United States. The major thrust

28. Thus, the current law and poverty course at Delhi University was developed during a visit by Columbia Law School Professor Arthur W. Murphy to Delhi in 1969-70, sponsored by the Ford Foundation. The leading American texts from that time are cited at note 11, supra.

29. The term "public service" is used in this article to refer to the public responsibility of lawyers resulting from their status as the licensed representatives in the legal system. Public service is, therefore, a component of lawyers' professional responsibility. The broader field of professional responsibility itself has had close connections with clinical legal education. See infra text accompanying notes 71-73.

30. JURIDICARE REPORT, supra note 8, at 108 (Annexure III) (details of Benares Hindu University Law School scheme for the legal services clinic). See also Pillai, Role of Teachers and Students of Law in Public Interest Litigation, 8 COCHIN U.L. REV. 503 (1984).


32. Thus, N.R. Madhava Menon, Director of the National Law School of India, is preparing a manual for clinicians in India in which specific aspects of the lawyering process are identified and discussed. See note 117, infra, and accompanying text. For a similar move toward greater focus on the lawyering process in the clinical curriculum at the National Law School of India, see note 93, infra.
of organized American bar activity in this area recently — at least as far as the American Bar Association is concerned — has been active support of federally-funded legal services programs in the face of serious efforts by the Reagan Administration to eliminate the federal Legal Services Corporation. Consistent with this attitude — that the government should fund legal services programs for the indigent — and the limited right to appointed counsel in civil cases in American constitutional law, Rule 6.1 of the American Bar Association’s Model Rules of Professional Conduct contains only an aspirational standard for pro bono representation. Although many local and state bar associations actively support pro bono programs, with rare exceptions donations of time and money are purely voluntary. The private bar has consistently opposed any mandatory obligation to represent indigent clients.

As a result of social and economic conditions in India, pro bono representation of indigent clients is regarded as part of the social responsibility of the legal profession: “[t]he professional obligation of the Bar behoves it to help the poor in a country of poverty.” The Expert Committee on Legal Aid rightly observed that “[a]ccess to the Courts would be illusory unless representation of the under-privileged by counsel is recognised as a professional mandate.” The Expert Committee, therefore, recommended in 1973 that the privilege of representing a client before judicial tribunals to the exclusion of all others must carry with it a binding obligation to appear in cases of legal aid.

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34. There are some exceptions: a few local bar associations require some pro bono activity as a condition of membership. Graham, Mandatory Pro Bono/The Shape of Things to Come? 73 A.B.A. J., Dec. 1987, at 62. A statewide requirement has been proposed in Oregon. See Arango, Defense Services for the Poor, 2 CRIM. JUST. (Number 2) 20, 21-22 (1987). An increasingly popular source of funding is the IOLTA (Interest on Lawyer Trust Account) approach, in which lawyers put trust accounts in banks that forward interest on the accounts to the bar association for pro bono activity. See generally Comment, Funding Legal Services for the Poor: Florida’s IOTA Program - Now Is the Time to Make it Mandatory, 16 FLA. ST. U.L. REV. 337 (1988).

35. See McKay, In Support of the Proposed Model Rules of Professional Conduct, 26 VILL. L. REV. 1137, 1147 (1981); Note, No Bono: The Efforts of the Supreme Court of Florida to Provide the Full Availability of Legal Services, 41 U. MIAMI L. REV. 973, 973-75 (1987). This view found support recently in Mallard v. United States District Court, 490 U.S. 296 (1989). For an unusual case discussing a possible ethical responsibility to provide pro bono representation in a civil rights case, see Branch v. Cole, 686 F.2d 264, 267 (5th Cir. 1982). See also United States v. State of Washington, 795 F.2d 796, 800 (9th Cir. 1986).


37. Expert Committee Report, supra note 8, at 182.
clients assigned to advocates by the legal aid organization.\textsuperscript{38} The committee submitted a scheme for giving effect to this proposal and recommended that failure to carry out the assigned legal aid duties should be treated as professional misconduct.\textsuperscript{39} However, these recommendations were not given full effect;\textsuperscript{40} instead Bar Council of India rules continue to require the members of the profession only to bear in mind in the practice of law that "within the limits of an advocate's economic condition, free legal assistance to the indigent and oppressed is one of the highest obligations an advocate owes to society."\textsuperscript{41} This obligation of advocates to render legal aid is only moral, and, in the absence of machinery put in place by which an advocate could be made to discharge this obligation, it is easily possible for advocates who are so minded to evade their \textit{pro bono} obligations. More conscientious members of the profession have been providing assistance and representation on a purely voluntary basis to clients with limited or no means, often without assignment by any legal aid organization. However, these individual efforts are said to suffer from an air of charity, and the legal profession as a whole has been castigated for not undertaking a public legal aid and advice program in an organized manner.\textsuperscript{42}

Serious concerns are often voiced in India about a lack of professional morals, a fall from ethical standards and the adoption of questionable practices by young entrants into the legal profession.\textsuperscript{43} Greater emphasis has been urged for the law school curriculum on what is expected of an advocate in terms of his or her obligations to society.\textsuperscript{44} This view was reinforced by certain negative perceptions of the role of the legal profession during the period of internal emergency

\textsuperscript{38} Id. at 176. By 1977, however, the Juridicare Committee appeared to recognize that only voluntary action could be expected. See Juridicare Report, supra note 8, at 5-6.

\textsuperscript{39} See the Expert Committee Report, supra note 8, at 177.

\textsuperscript{40} The only result of the recommendations of the Expert Committee appears to have been the amendment of the Advocates Act, 1961, in 1973 to include in the functions of the Bar Council of India and the State Bar Councils that they organize legal aid to the poor in the prescribed manner; compulsory appearance for legal aid clients is not prescribed. See Advocates Act of 1973 sec. 6(eee), 7(ib) (India). The bar councils are not bound by the requirement, also inserted by the amendment to constitute legal aid committees. Id. at sec. 9A.

\textsuperscript{41} Rule 39.B of the Bar Council of India, under authority of the Indian Advocates Act, 1961 (quoted in the Expert Committee Report, supra note 8, at 176). This restricted view of lawyers' professional responsibility toward legal aid had the support of the Law Commission of India, which considered the social obligations of the legal profession to be analogous to other professions such as medicine. Law Comm'n of India, 14th Report 587-600 (1958).


\textsuperscript{43} See, e.g., Shankar, \textit{Rationalisation of Legal Profession}, 8 J.B. Council of India 313 (1981); see also Menon, supra note 8, at 240.

\textsuperscript{44} See 7 J.B. Council of India 1, 4 (1978) (address by the Law Minister in the Government of India).
in India in the mid-1970s, which led a senior member of the Bar to emphasize the need to ensure that a young lawyer "who becomes qualified as an advocate not merely knows a minimum of law but has also had instilled into him the right idea as to the nature and quality of the profession to which he is to belong." In the United States, at about the same time, Justice Clark wrote of the Watergate affair as "a direct product of what the late Chief Justice called 'the tendency of the profession to develop as a craft rather than as an instrument of justice.'"

It is not clear, of course, that law school is the place to instill proper attitudes of lawyers' public service responsibility, or, even if it is the proper place, whether it has the capability to do so. Many in the United States have expressed serious doubts. In India, on the other hand, the capacity of law schools to meet, or at least to attempt to

45. From June 1975 to March 1977, thousands of people, including many opposition leaders in the Parliament and state legislatures and other prominent public men and women, were imprisoned without trial. Severe restrictions were imposed on the press. Constitutional amendments of far-reaching importance and statutory changes in election law were pushed through and passed without any genuine debate. See generally M. KAGZI, THE JUNE EMERGENCY AND AMENDMENTS (1977).

46. Daphtary, President's Page, 17 INDIAN ADVOC. 1, 2 (1977). The "right idea" is that the legal profession "is a noble profession, a profession in the service of the people, not merely for its problems in law but also as a member of a body to which the people look for counsel and leadership] on matters of public interest." Id. Daphtary's remarks followed references to the tacit approval during the emergency of the Union Law Minister, who happened to be an advocate and a former High Court judge, to subtle attacks on the legal profession; the conduct of those advocates who gave up their opposition to the government in return for the government's offer to represent it in important cases; and the efforts of advocates "loyal" to the government to disturb meetings convened by independent-thinking sections of the bar. Id. See also 7 J.B. COUNCIL OF INDIA, supra note 44, at 4, for appreciation of Daphtary's comments and suggestions by the Union Law Minister in the new government that replaced the emergency era government after the 1977 general elections.


meet, this challenge has been taken for granted. There is a broad consensus that the function of legal education is "not only to impart legal skills but to impart an understanding as to the ends for which those skills are to be used."49

Serving the public by improving the quality of the legal profession in one sense simply encompasses the primary educational mission of the professional law school. During the past two decades there has been, however, an increasing belief that this central educational mission has failed as concerns have grown in both India and the United States relating to the general integrity and competence of lawyers. The basic competence of practicing lawyers was put in question most recently in the United States in the early 1970s, when former Chief Justice Warren Burger began to speak out on this issue.50 In response, there has been a greater emphasis on skills training both in law schools and in post-graduate continuing legal education programs; however, serious attempts at articulating an acceptable standard of competence or creating a mechanism for measuring and enforcing such a standard have not been made.51

Although the primary mechanism for controlling who can practice law in the United States remains the bar examination, there has been some movement toward evaluating how an applicant might act as a lawyer, as opposed to how he or she would be able to rule on a question of law. Recently, at least a technical mastery of the professional responsibility rules has been added to the process in the form of the Multistate Professional Responsibility Examination, which is required for admission to the bar in more than thirty states.52 Moreover, the California State Bar's Consortium on Competence has proposed requiring training in lawyering skills as a requirement for admission in addition to a "practice item" now included on the California bar examination intended to test a broader set of lawyering skills than the traditional substantive law questions included in bar examinations.53

49. Shelat, Defining the Purposes of Legal Education, in LEGAL EDUCATION IN INDIA, supra note 21, at 9, 13 (presidential address by Justice Shelat of the Supreme Court of India to the session on 'Objectives of Legal Education' during the All India Seminar on Legal Education at Poona, 1972). See also Baxi, Notes Towards A Socially Relevant Legal Education, 5 J.B. COUNCIL OF INDIA 23 (1976); Menon, A National Policy on Legal Education, 8 J.B. COUNCIL OF INDIA 290 (1981).


53. See Board Action: Proposal Adds 'Lawyering Skills' to Bar Exam, 8 CALIF. LAW. (No. 8) 84 (1988).
Integrity is evaluated as such only in various state "character" requirements for admission to the bar, and these evaluations tend to be far from searching.\textsuperscript{54} Integrity and competence of the members of the profession are among the major concerns of the Bar Council of India and the country's state bar councils.\textsuperscript{55} The original Advocates Act in 1961 required an entrance examination for enrollment of advocates. The examination was to be conducted by the respective state bar councils at the end of a course of practical training, which was to be provided by the state bar councils, after the candidate had successfully completed two years of legal education in a law college or university. The plan was never implemented, however, apparently due to opposition from candidates for enrollment in the bar.\textsuperscript{56} In the absence of a bar examination, the character and integrity of candidates and their training in accordance with the standards prescribed by the Bar Council of India for legal education are currently the only important criteria for the enrollment of advocates.\textsuperscript{57} The candidate must furnish a certificate of good character along with the application for enrollment as an advocate; however, in practice this requirement tends to be more formal than substantial, as certificates of good moral character are often granted after casual or no inquiry.\textsuperscript{58} There are many documented instances

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  \item \textsuperscript{54} See generally Rhode, \textit{Moral Character as a Professional Credential}, 94 \textit{Yale L.J.} 491, 512-15 (1985). Although law schools screen applicants for moral character as well, a recent survey has shown that less than 1% of law school applications present a reason for even questioning admission due to possible deficiencies in character, and that only about .3% of applicants are denied admission on this basis. \textit{Id.} at 520-21. In a few states, the bar association participates in the screening of law students. \textit{Id.} at 518-519.
  \item \textsuperscript{55} One of the primary responsibilities and functions of the Bar Council of India is to promote legal education and to lay down standards for legal education in consultation with universities and the state bar councils. \textit{Advocates Act}, 1961 sec. 7 (India). The state bar councils and the Bar Council of India have the power, \textit{inter alia}, to remove the name of an advocate from the roll of advocates on grounds of professional ethics, professional negligence or moral turpitude — presumably arising after enrollment. \textit{Advocates Act}, 1961 secs. 35, 36 (India). For a discussion of what may constitute professional misconduct, see R.N. Dwivedi & R.B. Sethi, \textit{Sanjiva' Row's Advocates Act and (Unrepealed Sections of) Legal Practitioners Act} 410-540 (1966) (commentary to section 35).
  \item \textsuperscript{56} See Jethmalani, supra note 21, at 54. In response, the Bar Council of India, in 1967, increased the duration of university and college legal education from two to three years and later directed that a part of the third year of law school should be used for providing practical training in law. For critical comments on the transfer of the responsibility for practical training from the bar councils to the universities, see Agrawala, \textit{Some Objectives of Legal Education and Their Realization}, in \textit{Legal Education in India}, supra note 21, at 43; Jethmalani, supra note 21, at 55 (reply by then chairman of the Bar Council of India).
  \item \textsuperscript{57} Other requirements for enrollment include Indian citizenship and reaching twenty-one years of age. \textit{Advocates Act}, 1961 sec. 24 (India). Foreign citizens may be allowed to be enrolled if properly qualified Indian citizens are eligible for enrollment in their country of citizenship. \textit{See id.} at proviso to secs. 24(1)(a), 47.
  \item \textsuperscript{58} Thus, in \textit{In re Inder Singh}, 1963 \textit{Punjab L.R.} 619, the applicant managed to secure character certificates from two advocates and a District Judge despite the fact that he was al-
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where the person issuing the certificate did not act on any well-founded belief.\textsuperscript{59}

Legal education standards are set by the Bar Council of India to ensure minimum basic competence.\textsuperscript{60} It is not easy to enforce them, however, because current Indian socio-politico-economic conditions make it difficult to enforce higher standards which might lead to more restricted access to the profession.\textsuperscript{61} This is particularly true with respect to the requirements relating to the development of skills, as opposed to substantive law teaching.\textsuperscript{62} As the then-Law Minister in the Government of India noted in his inaugural address to a Bar Council of India seminar on legal education in 1977, "[t]he contrast . . . between the practical experience of would-be entrants to legal profession in India and other professions like medicine and accountancy is striking."\textsuperscript{63} Although the Bar Council of India has made some efforts to organize continuing education workshops for lawyers, with regard to a great majority of lawyers in the country, there are no institutional arrangements in place to ensure a minimum quality of professional standards.\textsuperscript{64}

In an attempt to deal with the poor quality of legal education, par-ready registered as a pleader (a category of trial court lawyers abolished under the Advocates Act, 1961) and had an inquiry for professional misconduct pending against him.

\textsuperscript{59} See, e.g., Joginder Singh v. Bar Council of India, 1975 A.I.R. (Delhi) 192, 195 (certificate provided — for applicant who had been convicted of offenses involving moral turpitude and who was on bail with other criminal charges pending — by a local magistrate whose “acquaintance [with the applicant] was slight and who could really have had no such contact as could enable him . . . to give a certificate of character”).

\textsuperscript{60} See supra note 55. These include, besides a prescribed curriculum of compulsory and optional courses, minimum standards covering teacher-student ratios, the percentage of full-time teaching in the curriculum and full-time teachers on faculties, minimum compulsory attendance in classes, the quality of libraries and other facilities and the need to supplement the lecture method with the case-method, tutorials and other modern techniques of imparting legal education. Jethmalani, supra note 21, at 55; See generally The Bar Council of India, Legal Education — Circular to Universities, 4 THE INDIAN ADVOC. 129 (1964); Srivastava, Legal Education: The Role of Bar Council, 8 J.B. COUNCIL OF INDIA 284 (1981); Cottrell, 10+2+5: A Change in the Structure of Indian Legal Education, 36 J. LEGAL EDUC. 331, 332-337 (1986).

\textsuperscript{61} See Srivastava, supra note 60, at 286 (“from our experience of the last about 16 years, it is disappointing to find that rules of the Bar Council of India on legal education have not at all been faithfully observed”); Cottrell, supra note 60, at 344-45 (“all is not as it should be in the world of Indian legal education”). See also Baxi, supra note 49, at 24-25, for some “well known, but frequently laid aside, facts” about Indian legal education.

\textsuperscript{62} Practical training for law students has been mandated officially since 1971. Cottrell, supra note 60, at 334, n.22. The Bar Council of India has provided that some credit should be reserved for practical training as part of its latest reform, discussed at text accompanying notes 65-67, 95-96, infra. See also Sharma, supra note 25, at 187.

\textsuperscript{63} 7 J.B. COUNCIL OF INDIA, supra note 44, at 3. See also Baxi, supra note 49, at 51-52 (training in the skills of legal writing and research should be at LL.M level because the same could as yet not be provided at the earlier stage). At least one law department has included clinical work in its requirements for the LL.M. degree. See UNIVERSITY OF COCHIN, DEPT. OF L. BULL. 8 (1985).

\textsuperscript{64} See Menon, supra note 8, at 240.
ticularly at private law colleges, the Bar Council of India has adopted a new five-year curriculum for professional legal education with a view "to reassert some control over the quality of the legal education offered to entrants into the legal profession." This new scheme, which calls for mandatory skills training and includes detailed standards for admission, medium of instruction, library and other facilities and quality of teaching staff, could force the closure of many law colleges unable to meet these requirements. However, from the very beginning these reforms have been surrounded by doubts and controversy. Delay in their adoption by some leading law schools is adding to the uncertainty about the future of the new scheme. Moreover, recent changes by the Bar Council of India in the new scheme to accommodate some of the criticism tend to defeat some of the major objectives of this new education scheme. Also, there remains the all-important question of whether the Bar Council of India in the face of social and political pressure will be able to strictly enforce the new rules regarding legal education strictly and refuse enrollment to the law graduates of universities and colleges which do not conform.

65. Cottrell, supra note 60, at 348.


67. See generally Cottrell, supra note 60, at 349-56. The Bar Council had set 1987 as the changeover deadline. Id. at 357. However, the Delhi University Law School, which in the last two or three decades has emerged as a leader in Indian legal education, is among the major law schools that failed to meet the changeover deadline of 1987. Id. at 357. Further delays and postponements of the changeover date cannot be ruled out. A significant development in the process of nationwide implementation of the new scheme may be its adoption at the newly established National Law School of India, sponsored by the Bar Council of India. The first year of the National Law School's academic program, based on the new scheme, began in the fall of 1988. See BULLETIN OF THE NATIONAL LAW SCHOOL OF INDIA (1989) [hereinafter NATIONAL LAW SCHOOL BULLETIN]. Its implementation there would be watched closely by many other law schools and would likely affect decisions about the enforcement of the new scheme. For a discussion about the significance and role of the National Law School, see Sharma, Some Thoughts on a National Law School for India, 3 JAIPUR L.J. 256 (1963).

68. Thus, an amendment to the rules relating to the new scheme has been made by the Bar Council of India to provide for admission of students with a graduation degree in the third year of the new five year law program and for the exit of students after finishing only two years of the program, with a graduation degree instead of the law degree. This modification of the original scheme could defeat the objectives of reducing numbers and improving the motivation and competence of all eligible candidates for enrollment as advocates. For a typical illustration of the kind of criticism that led the Bar Council of India to modify its new legal education scheme, see Tripathi, Five-Year Law Course, The Hindustan Times, Dec. 24, 1983, at 66, col. 3 (New Delhi ed.).

69. In India the entire issue of education and especially of legal education, which offers prospects of financially gainful activity, tends to be a very sensitive social and political issue, making the Bar Council of India's control of legal education quite a complex affair. For some discussion, see Cottrell, supra note 60, at 353-56; Tripathi, supra note 68.
III. LEGAL AID, PUBLIC SERVICE, AND THE CLINICAL CURRICULUM

Clinical legal education has played an important role in heightening awareness of legal aid and public service issues in law schools in both India and the United States. As a result, there has been a tendency in both countries to link together clinical legal education, law school legal aid projects and support for professional public service. It is not clear, however, that these assumed curricular connections are present today, at least in the United States. The legal aid and public service dimensions of the clinical curriculum in India and the United States will be examined in greater detail in this section, with an eye toward assessing the importance of maintaining a legal aid and public service orientation in clinical legal education for the future.

The curricular goals for clinical legal education cited most often by proponents in the United States tend to fall into three major groups: training law students in lawyering skills; introducing students to the complexities of law practice, including the difficulties of interacting with the various institutions and actors involved in the legal system; and assisting students in developing an awareness and understanding of professional responsibility issues. The modern era of clinical legal education - identified with the birth of the Council on Legal Education for Professional Responsibility ("CLEPR") in the late 1960s — reintroduced the topic of professional responsibility and propelled it unquestionably to the forefront. When raising professional responsibility issues was put forward as a key goal of and rationale for clinical programs in law schools, the emphasis was on the public service aspects of professional responsibility, as opposed to the more operational aspects of lawyers' ethics. Thus, the central message conveyed by William Pincus, the founder and only president of CLEPR, usually focused on skills training and public service: clinical legal education should prompt law schools to become "involved as the place to train practitioners, and as a center working to reform the machinery of justice through clinical work."

Beginning with CLEPR's first grants — dominated by programs combining legal education with improved legal services for the poor —


its professional responsibility (public service) agenda for clinical education was clear.\textsuperscript{72} Moreover, and in part because of CLEPR's influence, the public service goals for clinical legal education were identified by many in the field as primary during the early years, more so than the other goals of teaching lawyering skills or legal process.\textsuperscript{73}

To a certain extent, the success of CLEPR's efforts in the 1970s can be attributed to the fact that legal aid was seen at that time as the leading vehicle for social and economic reform in the legal system in the United States. Indeed, many clinical programs were essentially transformed legal aid projects: service organizations taken over by law faculty (or quasi-faculty) and imbued with law school curricular objectives. Ultimately, this merger of legal aid and legal education through the clinical movement has been important because a lawyer's professional life really begins when he or she enters law school. Although for some students a sense of the profession has been instilled earlier through personal experience, such as where a family member is a lawyer or where the law student worked as a clerk or paralegal before entering school, the law school years represent for most the first time in their lives that self-identification as a lawyer can have any real meaning. This self-identification as a lawyer is particularly important for law students when they are first exposed to legal aid activities and the notion of professional public service.\textsuperscript{74}

Because of the central role of a client's case in most clinical courses in the United States, there is no doubt that there is a substantial professional responsibility content in virtually all clinical courses.\textsuperscript{75} However, the clinical teaching of professional responsibility is done pervasively.\textsuperscript{76} The clear focus again is on public service concerns. It is

\textsuperscript{72} The first grants were announced in January, 1969. See \textsc{1 Council on Legal Educ. for Prof. Resp. News.} (No. 1) 1 (1969).


\textsuperscript{74} The extent to which law students are made to feel a part of the profession, as opposed to students studying the profession, depends in large part on the teaching methods used. One important value of the clinical methodology is its emphasis on experimental learning and other interactive teaching techniques that give students a sense of participating in the process as adults and draw them into the role of a lawyer. See generally, Bloch, supra note 70, at 336-44. The Juridicare Committee saw the same value in placing law students in legal aid programs. See text accompanying note 24, supra.

\textsuperscript{75} Even simulation-based clinical courses usually rely on an imagined client's case as the basis for the experience. Cf. LaFrance, supra note 4, at 358 (technology may compromise the "ethical commitment to involving law schools in the life and times of the world around them").

\textsuperscript{76} The idea that professional responsibility training should pervade the law school curriculum has been incorporated into a methodological proposal. See Smedley, \textit{The Pervasive Approach on a Large Scale - "The Vanderbilt Experiment."} 15 \textsc{J. Legal Educ.} 435 (1963). For criticism
in the classroom — not the clinics — that full-scale professional responsibility education, including issues such as rules on advertising and solicitation of clients, confidentiality and conflict of interest, takes place in the United States.\(^{77}\)

This view of the teaching of professional responsibility in clinical programs is not inconsistent with the views of those who continue to put it at the head of the list of goals for clinical legal education. When professional responsibility issues arise in clinical settings they are presented clearly and unavoidably, even if they are not presented specifically as the central and dominant subject area for study. Moreover, for all the reasons that clinical education works well generally, it works particularly well in the area of professional responsibility. Those professional responsibility issues that arise in the context of actual, or even simulated, representation of a client are addressed with special intensity; students have the opportunity to develop and express their views in direct exchange with their supervisor and often with other students included in comparatively small groups that participate in a clinical program.\(^{78}\) This does not mean, however, that clinical legal education helps students address the full range of professional responsibility issues considered important to the profession and the academic community. The fact that traditional teaching of issues such as conflict of interest and client confidentiality is not necessarily successful does not lead to the conclusion that clinical programs should take up this slack, and apparently clinicians have decided not to do so.

The clear dominance of legal aid and public service as the primary focus of clinical programs began to recede in the United States as soon as the clinical movement began to gain credibility in the broader legal education community. In a sense, CLEPR’s entry onto the scene and its success at creating the opportunity for extensive and meaningful experimentation with the clinical methodology set the stage for this shift.\(^{79}\) This does not mean that public service concerns have disappeared from the agenda of clinical educators, or that the movement


\(^{79}\) Ten years after CLEPR’s entry into the field, David Barnhizer saw clinical legal education as having passed through the first two of four phases — the first a general push for reform and the second a period of serious experimentation with the clinical methodology — and credited CLEPR with making the experimental phases possible. Barnhizer, supra note 73, at 69-70.
away from teaching professional responsibility as the primary focus of clinical legal education has been complete or uniform. Instead, what can be seen is a steady, general trend toward greater concentration on the traditional work of legal educators by clinicians — teaching and scholarship — sometimes with, but often without, a focus on legal aid and public service issues.

The two most important events in clinical legal education since CLEPR closed its doors in the late 1970s have reinforced this more traditional orientation: the publication, in 1980, of guidelines for clinical programs by the Association of American Law Schools and the American Bar Association and the passage of Accreditation Standard 405(e) by the American Bar Association in 1984. Neither the guidelines nor the accreditation standard mandate a particular direction for clinical legal education; however, both demonstrate a general acceptance of clinical methodology into the law school curriculum and as a result have tended to support a broader-based set of goals and ambitions for clinical law teachers and clinical legal education. The natural result for clinical faculty, many of whom worked on and support in varying degrees the guidelines and accreditation standard, is to seek professional recognition and reward in clinical work that offers the greatest opportunity for acceptance and success in the larger legal education community.

In India, on the other hand, there remains an almost complete


81. Thus, the guidelines include “defining professional competence and the lawyer’s professional responsibility in the attorney-client relationship” and “developing a methodology to evaluate one’s own professional performance throughout one’s career” as two professional responsibility-related subject areas among 13 suggested areas for study in clinical programs; the other 11 areas include subjects such as interviewing, fact gathering and investigation, diagnosing problems, developing strategy, legal writing, counseling, negotiation, trial practice and appellate practice. GUIDELINES, supra note 80, at 14–15. Accreditation Standard 405(e) addresses only the status of clinical faculty, not the subject areas to be taught and researched. Nonetheless, its call for “a form of security of position reasonably similar to tenure and perquisites reasonably similar to those provided other full-time faculty members” and “standards and obligations reasonably similar to those required of full-time faculty members” is bound to affect the work and work product of clinicians. See generally Morris & Minan, Confronting the Question of Clinical Faculty Status, 21 SAN DIEGO L. REV. 793 (1984).

82. This opportunity for assimilation can also affect a clinician’s approach to education reform generally. As Barnhizer has noted:

As clinical instructors increase their tenures on law faculties, it is natural to expect they will be more inclined to accept at least part of the perspective held by traditional colleagues. The combination of vested interests, peer pressure, and the heavy and frenetic character of actual clinical teaching can tend to convert the clinical teacher into a rough parody of the traditional academic. In the future this conversion may well be evidenced by the evolution of clinical courses into more traditional classroom formats.

identity of law school clinical programs with legal aid activity. Legal aid work has been the exclusive activity of most law school clinics in India; educational goals of practical training and professional responsibility are not divorced from public service. The number of Indian law colleges and university law departments taking up legal aid work, with the help of legal services clinics, has been rising constantly in recent years. However, from school to school, there are significant differences in objectives, approaches and the range of activities undertaken. Integration of clinical legal aid work into the curriculum has not yet been fully realized, in spite of widespread appreciation of its educational usefulness and importance as a social obligation.

There have been other influences on the development of clinical legal education in India. Most importantly, clinical programs were put forward as an alternative for basic practical training when the system of apprenticeships was removed as a precondition to admission to the Bar in the early 1960s. An infrastructure of court visits, moot courts and field service programs, commenced at law schools in the 1960s, was available to be built upon in the 1970s and 1980s with the full support and cooperation of the clinical education movement. Supporters argue that clinical education ensures a minimum professional competence for recent graduates and develops insight into the important issues of law reform and lawyers' fees.

83. There have been a few exceptions. For example, a clinical course at Benares Hindu University in the early 1970s was not entirely legal aid-based.

84. The Juridicare Committee recommended the setting up of a National Council of Legal Services Clinics at a national level and a State Council of Legal Services in each state to coordinate and promote the development of legal services clinics. See JURIDICARE REPORT, supra note 8, at 73. For similar reasons, an appeal for the establishment of an All India Council for Clinical Legal Education had earlier been made by the 12th All India Law Teachers Conference in 1972. See resolutions of the conference in 2 DELHI L. REV. 291 app., supra note 21.

85. Leading educators believe that students working in law school legal aid clinics find the theory and the practice of law constantly interlaced. They learn to observe the law as practiced, to reach out from the abstractions of the lecture halls and text books to the real world in which lawyers operated and to see the problems and delicacies of the lawyer-client relationship. See Jethmalani, supra note 21, at 56-57; JURIDICARE REPORT, supra note 8, at 66-67, 71; Menon, supra note 8, at 231-32.

86. Another slow-moving reform is the introduction of the case method of teaching as an alternative to the traditional lecture format. Both of these developments remained confined to only some of the more advanced and resourceful law schools, with phased implementation a conscious policy. A suggestion has been made that all practical training should be given only through legal services clinics. See Sharma, supra note 25, at 187.

87. See Menon, supra note 8, at 232.

88. See 1975-76 Delhi Report, supra note 21, at 194.
In terms of practical effort, however, in India, much more than in the United States, legal aid continues to play a dominant role in the development of clinical legal education. Law school clinics were conceived from the start as “visible and effective instrument[s]” for a wide variety of legal services programs. In 1977, the Juridicare Committee spoke about clinical training for law students in lawyering skills to prepare them for their career as lawyers; however, this training would be through legal services clinics which must “[i]n the first place ... render legal services to the poor and the needy who are otherwise priced out of the judicial system.”

Clinical teachers in India have been aware of the need for clinical programs to improve the quality of legal education instead of only providing legal service. However, invariably they have relied on legal aid work in their efforts to build a model for more professionally meaningful legal education. In recent years, there has been no attempt to conceive a clinical instruction program without a legal aid component: law school clinics usually maintain close contact with other agencies involved in legal aid work. For example, the new five-year curriculum includes “practical training” as a compulsory course. Intended generally to make use of clinical methods, the recommendations provide for the implementation of practical training programs through legal aid clinics and student participation in legal

89. In 1973, the Expert Committee emphasized the potential contribution of law school legal clinics towards better legal education only as a “by-product of inducting law students in legal aid.” Expert Committee Report, supra note 8, at 157.

90. Juridicare Report, supra note 8, at 71.

91. See, e.g., Swamy, supra note 8, at 245.

92. At the 12th All India Law Teachers Conference held in Delhi in 1972, for example, it was recommended that all legal education institutions in India introduce the clinical methodology by establishing legal aid clinics. See resolutions of the conference in 2 Delhi L. Rev. 291 app., supra note 21. See also Menon, supra note 8, at 229-33 (outlining the contribution of legal aid in developing a scheme for clinical legal education); V.R.K. Iyer, supra note 8, at 115; Expert Committee Report, supra note 8, at 157-59; Juridicare Report, supra note 8, at 66-72.

93. One possible exception may be the academic program of the newly-established National Law School of India, which went into effect from the fall of 1988. According to the National Law School Bulletin for 1988-89, every student is expected to take six clinical courses during his or her study for a law degree. See National Law School Bulletin, supra note 67, at 18-23. Only some of these clinical courses are related to the programs of the Legal Services Clinic; others, such as trial advocacy and legal counselling, are not. See id. at 23, 51-52. This is a novel and very significant attempt to present free-standing clinical courses.

94. Thus, the director of the Delhi University Law Faculty Clinic was nominated by the Delhi branch of the Council of Legal Aid and Advice to serve on its executive committee. See 1975-76 Delhi Report, supra note 21, at 196. See also National Law School Bulletin, supra note 67, at 11. The Expert Committee on Legal Aid had made a recommendation for such close collaboration between the official legal aid organization and the law schools. See Expert Committee Report, supra note 8, at 163. See also Juridicare Report, supra note 8, at 70.

95. See supra text accompanying notes 65-66.
aid work. Thus, in India it is assumed that clinical work must involve the students in the process of helping the poor with their legal problems and thereby help implement of the national legal aid effort. Indeed, because most law schools do not have sufficient funds to support clinical activities without government funding, promoting the "dual cause" of providing clinical education programs for the students and rendering legal services to the poor and needy of the community may in fact be the only hope for financial viability.

There are a number of institutional factors limiting the progress of clinical legal education in India. Perhaps the most important inhibiting factor has been the delay on the part of the legal education community in devising and implementing suitable proposals for giving appropriate academic credit for legal aid work. As it is, legal aid work remains a non-credit, extra-curricular activity at most Indian law schools today. A related problem is the lack of time for serious clinical work at most law colleges — as opposed to university law departments — which are staffed largely by part-time faculty. Another major handicap is the inability of full-time law teachers and students to appear in courts on behalf of legal aid clients. Full-time law teachers are precluded from practice by a rule of the Bar Council of India that prohibits Bar enrollment of full-time salaried employees. Student practice rules have never been promulgated, despite suggestions to this effect by both the Expert Committee on Legal Aid and the Juridicare Committee. Notwithstanding these limitations, substantial progress is being made. Student response and enthusiasm have been very encouraging, and useful work is being done at many law

96. See Menon, supra note 66, at 313-14.
97. See generally 1975-76 Delhi Report, supra note 21; Sharma, supra note 25, at 189.
98. For example, a scheme for integration of legal aid work with the curriculum with a view to strengthening the legal education component of the legal aid work at Delhi law school was submitted by a faculty committee in 1978. See Kelkar, supra note 27. Another proposal was approved by the faculty in 1987. However, no concrete action has yet been taken towards implementing these proposals.
99. Again there are exceptions. The ILS (Indian Law Society) Law College has been a leader in curricular reform, including clinical legal education.
100. The rule applies to full-time salaried employees of any person, firm, corporation or concern. See section V of the Bar Council of India Rules on Standards of Professional Conduct and Etiquette, in 5 THE INDIAN ADVOCATE 79, 84-85 (1965).
101. See Expert Committee Report, supra note 8, at 164; Juridicare Report, supra note 8, at 72. See also Menon, supra note 8, at 235-36. Under section 32 of the Advocates Act, 1961, the courts have power to grant permission to any person — including law teachers and law students — to appear in a particular case. But this provision has also not been used liberally in favor of student representation of legal aid clients. For one case where a student was allowed under section 32 to represent a legal aid client in court, see Sangal, Report on the Working of the Students Legal Services Clinic, Faculty of Law, Delhi University in the Academic Year 1974-75, 3 DELHI L. REV. 152, 153-54 (1974) [hereinafter 1974-75 Delhi Report].
schools in areas of legal aid where court appearances are not required or where practicing lawyers are able to appear for minimal or no payment.102

The types of activities law students are likely to undertake in Indian clinical programs are very different from those usually available to students in the United States. For example, law school clinics in India often run legal literacy and legal aid camps, organized with or without the collaboration of the state Legal Aid Boards. In a legal literacy camp, the students and teachers, often with the help of local social workers, apprise the rural population about their rights, and inform the illiterate public about the laws enacted for their welfare. The people in the selected areas or villages are told about the various remedies and mechanisms available to them for vindicating their claims against administrative agencies.103 In a legal aid camp, the students, under faculty and legal aid board supervision, lend advice to the rural people for settling disputes among themselves without having to seek legal redress in courts. The students also work to have claims, usually of a routine administrative nature, recognized and enforced by the village and local authorities.104 Another prominent project carried out jointly by state legal aid boards and law school clinics is the organization of lok adalats, which are projects aimed at facilitating conciliated settlement of large numbers of matters pending before the regular courts and tribunals.105 Student participation in lok adalats has included specific operational tasks, such as fact investigation, legal research and negotiations with clients and their lawyers to encourage them to attend the lok adalat for settlement, as well as organizational

102. Cf. Pillai, supra note 30, at 505-06 (advocating clinics manned by law students and teachers). Law school legal services clinics have been given a special role in the delivery of legal aid because of the enthusiasm and success with which law students have carried out such assignments. See EXPERT COMMITTEE REPORT, supra note 8, at 161; JURIDICARE REPORT, supra note 8, at 26, 64, 71-72.

103. In Delhi University, the legal literacy camps also involve the participation of the legal aid unit of the National Service Scheme, a Government of India sponsored and funded social service scheme for students. This helps to broaden the student participation and, more importantly, to augment the limited financial resources of the legal aid clinics; the NSS units usually have large funds available for their activities.

104. See generally 1975-76 Delhi Report, supra note 21, at 195.

105. Such lok adalats, with the involvement of law school clinics, have been held in the states of Maharashtra, Gujrat, Tamil Nadu, Delhi and Madhya Pradesh. In the two lok adalats held in Delhi, one for resolving motor accidents claims and the other for matrimonial matters, the legal aid unit of the NSS also participated along with the legal services clinic of the law school. Because of the personal involvement of the Chief Justice of India, along with the state Legal Aid Boards and the Union Government's Committee for Implementing Legal Aid Schemes, the awards given by the lok adalats are recognized and given effect by the courts and tribunals before which the matters were pending.
 responsibilities. Students have also actively represented claimants whose lawyers did not appear or did not represent their clients adequately. Participation in these *lok adalats* has provided law students the opportunity to apply their developing legal skills and to observe the limits of the legal system in operation first hand.

Delhi University is a good example of a major law school with an active clinical program. In the past, it ran a program in which students registered with the legal services clinic helped poor defendants in the Beggar's Court by writing petitions and making appearances on their behalf, with the permission of the presiding officer of the Court and under the supervision of the Director of the Clinic. Other activities of the legal services clinic members at Delhi University have included visits to the prison to acquaint the students with the legal problems of the inmates and to help the inmates get relief, including release, from the prison authorities; organizing seminars on legal aid related issues; and undertaking research projects on the problems of the poor in the Delhi courts.

In recent years law students at Delhi University have also been working as volunteers with the legal aid committee of the Supreme Court Bar Association and the Delhi Legal Aid Board, often on activities related to *lok adalats*.

Although limited by American standards, some schools, such as Delhi University, have begun to recognize the importance of setting out specific curricular objectives for clinical programs other than simply exposing students to the experience of participating in a legal aid project. Thus, all students involved in the legal clinic at Delhi Univer-


107. Thus, one student commented, "The indifference of the advocate and the ignorance of the claimant would have resulted in a much lesser amount being accepted if I had not intervened." *Id.* at 11.

108. For accounts of the educational gains reported by the students who participated in one of the *lok adalats* organized in Delhi, see *id.* at 10-14, 18-20.

109. Other schools with early, innovative programs include Benares Hindu University, ILS Law College and the University of Cochin. Law faculty at Benares Hindu University were responsible for establishing the All India Clinical Law Teachers' Association.

110. See Kelkar, *supra* note 27, at 94. Begging, though common in the urban areas, is an offense under the laws enacted by the state legislatures. In Delhi, a special court is provided for dealing with the offenses under the Anti-Beggary legislation. This project was suspended when some graduates of Delhi Law School became presiding officers of the Beggar's Court in succession and it was felt by the clinic members that the interests of the defendants were being adequately taken care of by the court itself.


112. See Kelkar, *supra* note 27, at 94-95.

113. Similar collaborations have taken place in other states as well, including Tamil Nadu, Gujrat, Maharashtra, Uttar Pradesh and Rajasthan. See N.R.M. Menon, *supra* note 106, at 2, 4.
sity must participate in an intensive orientation program in which the projects to be implemented in a given year are identified and the students are acquainted with the law and administration of the statutes, institutions and procedures relating to the projects on which they have to work. Moreover, efforts are made to keep track of the educational goals of the projects and to integrate work experience with learning objectives. Although there is some skepticism about the educational aspects of some of the activities undertaken by the law school clinics, it is largely the educational benefit derived by the students from their participation in the legal aid related projects that has, in the absence of academic credit, provoked student interest in the clinics.

A manual for law school clinics covering curriculum content and teaching methodology for clinical programs, including opportunities presented by various legal aid activities such as lok adalats, is being prepared with support from the Government of India’s Committee on Implementation of Legal Aid Schemes. When completed, it will help bring clinical programs within the mainstream of the law school curriculum. With the growth of law school clinics and the beginnings of some integration of clinical education into the curriculum, pressure is likely to increase to amend the Advocates Act so that law students, under supervision, and law teachers could appear in courts for legal aid clients. Proposals have already been made for such an amendment by two legal aid committees. Students and faculty appearing in court would further enhance the status of legal aid work and enrich its quality and educational significance. Most clinical teachers in India are a part of full-time faculties, and their professional recognition has not been a significant issue. Status problems similar to those seen in the United States could develop, however, if practice rules change and full-time positions are created for on-line clinical supervisors.

As noted earlier, there was a widespread belief during the early years of clinical legal education in the United States that clinical programs would offer a superior opportunity for exposing students to the public service aspects of professional responsibility. In India as well, another major argument in favor of clinical education has been the

114. See id. at 6-7.
115. See, e.g., Kelkar, supra note 27, at 92, 97-98. Kelkar’s views appeared before the law school clinics started taking part in lok adalats.
116. See generally, JURIDICARE REPORT, supra note 8, for the level of interest and participation of students in the legal aid related activities.
117. The manual, edited by N. R. Madhava Menon, Director of the National Law School of India, is scheduled for publication in 1991. Professor Menon looked specifically at the educational values to students participating in lok adalats. See e.g., N. R. M. MENON, supra note 106.
118. See note 101, supra, and accompanying text.
expectation that exposure to legal aid activity would develop an awareness of public service issues. Legal aid work is thus expected to influence the personal outlook of law students towards their role as lawyers. In other words, professional responsibility training looks to legal aid projects, which in turn are tied directly to the clinical education movement. Whether they participate in legal literacy projects and legal aid camps, in visits to prisons, in seminars and research projects related to the problems of the poor in the courts or in Beggar's Court projects and lok adalats, law students are encouraged to “watch the human side of Justice, broken homes, juvenile delinquents, ruins of commercial fraud, victims of tyranny and corruption” and are, in a guided manner, exposed to “the delicacy of the client-lawyer relationship, the trust and confidence involved and the lawyer’s soothing balm applied to the smarting wounds of life’s eternal injustice.”

These views persist in both India and the United States, although there is disagreement as to how and to what extent the clinical methodology succeeds in this regard. In India, plans for future development of clinical legal education continue to rely on the operation of legal aid projects. In the United States, the success of clinical legal education in the curriculum and as a teaching methodology has produced a dramatic increase in the numbers of clinicians teaching in law schools and an impressive broadening of areas in which clinical faculty have been active professionally. As a result, there has been a steady erosion of interest in legal aid and public service activity as clinical legal education, once dependent on legal aid and public service activity in its quest for visibility and recognition in the law school world, settles into a reasonably secure position in the curriculum.

IV. CONCLUSION

Legal aid, public responsibility and clinical methodology have been bound together in legal education in both India and the United States.

119. JURIDICARE REPORT, supra note 8, at 67. See also Menon, supra note 8, at 230; Swamy, supra note 8, at 241-43; EXPERT COMMITTEE REPORT, supra note 8, at 26.

120. Jethmalani, supra note 21. See also JURIDICARE REPORT, supra note 8, at 67; EXPERT COMMITTEE REPORT, supra note 8, at 157.

121. See, e.g., Barnhizer, supra note 82, at 1034 (“[T]he most unique capabilities of the clinical method lie within the goal category of professional responsibility.”); Redlich, The Moral Value of Clinical Legal Education: A Reply, 33 J. LEGAL EDUC. 613, 616 (1983) (“[T]he single most important contribution that clinical education makes to the teaching of professional responsibility is to force the individual student to assume some responsibility for his [or her] actions.”); EXPERT COMMITTEE REPORT, supra note 8, at 157 (“[T]he legal aid clinic is an excellent medium to teach professional responsibility and a greater sense of public service. Faced with real challenging problems and conflicting value choices the student develops necessary perspective . . . and skill to articulate [sic] and apply rules of professional ethics in concrete situations.”).
At the same time, the history behind the legal aid movement and the form it has taken, the sources of concern for developing a strong sense of public responsibility in the legal profession and the motivation for introducing clinical legal education into the law school curriculum are very different in the two countries. So too are the current social, political, professional and educational contexts in which American and Indian legal educators in the two countries are attempting to formulate and achieve their goals. However, there is a remarkable degree of similarity with respect to the hopes and ambitions expressed by Indian and American law teachers for more effective and relevant legal education, greater competence in law practice, and a stronger sense of public responsibility in the legal profession resulting from clinical legal education programs based on structured learning through legal aid practice.

The differences in approaches to legal aid, public service and clinical education issues, and how they interact with each other, are significant. Legal aid is a national necessity and a constitutional imperative in India;\textsuperscript{122} massive poverty and illiteracy make the task gigantic. The nature of legal aid programs has determined the shape and activity of law school clinics; the educational benefits of clinical activity are merged with, incidental to, and not more important than the mission of contributing to the national cause of legal aid service. Thus, the view is shared widely in India by political leaders, legal educators and many lawyers and judges that law students can and should take a leading role in providing legal aid and assistance to the poor. Public service ranks high, along with ethics and competence, on the agenda of professional responsibility. Law school legal aid programs are seen not only as resources for staffing legal aid projects, but also as a leading source for innovation in the administration of this massive undertaking.\textsuperscript{123} In the United States, on the other hand, law school clinics are seen only as a relatively modest supplement to federally-funded legal services programs.\textsuperscript{124} Indeed, suggestions by the Reagan administration that law students might be used in a more central role

\textsuperscript{122} See supra note 15 and accompanying text. See also EXPERT COMMITTEE REPORT, supra note 8, at 9.

\textsuperscript{123} Legal aid is a massive undertaking in India not only because of the sheer number of persons needing assistance, but also because of the wide range of activities included within the concept of legal aid schemes. See supra notes 16-18, 103-05 and accompanying text.

\textsuperscript{124} This has been true from the very beginning. Presently, there is a modest program for funding law school clinics through the Legal Services Corporation; a more important source of funding for clinical legal education in the United States is the Department of Education. Legal Services Corporation grants to law school clinics are evaluated at least to some extent with respect to their educational value; identification of underrepresented clients to be served by programs is a factor in the evaluation of applicants for Department of Education grants.
in legal services were met with swift and strong opposition in the legal services and clinical legal education communities.\textsuperscript{125}

Clinical legal education is certainly a less firmly established part of legal education in India than in the United States. Efforts to integrate clinical programs into the Indian law school curriculum have had only limited success. Moreover, the nature and extent of the use of the clinical methodology is severely limited in India by the inability of law teachers and students to appear in courts for legal aid or other clients. It is a challenge for law schools to earn this privilege; the effort is not lacking, but it needs more recognition and support. However, it would be a mistake to equate relative youth and lack of acceptance for lesser substance and sophistication. Although India’s clinical legal education movement is of more recent origin than its counterpart in the United States, the relative degree of acceptance of clinical education by the legal education establishment in the two countries is a complex and debatable issue. The increasing number and greater integration of clinical programs into the general curriculum of law schools are substantial indications of a more established position and relatively greater acceptance of clinical legal education in the United States, notwithstanding continuing problems with respect to the status of clinical faculty.\textsuperscript{126}

On the other hand, the influence of clinical legal education on the legal aid movement in India, and its likely future influence on legal education reform, as demonstrated by the potential growth of clinical programs through the Bar Council of India’s model five-year curriculum, should not be underestimated. Ultimately, the goals for clinical legal education in India and the United States are more common than different, although they are drawn a little more broadly in the Indian case; even the methodologies are not very different. Advances in clinical legal education in the United States have and will continue to influence progress in India, although indigenous constraints and needs may limit development. Certainly, more interaction and exchange of information, experience and expertise between the two countries can be immensely valuable.

An examination of the trends in implementation of clinical programs in both countries reveals that India has moved slowly through essentially one phase of development in which that country’s legal aid agenda is firmly tied to the clinical legal education movement. This

\textsuperscript{125} It is interesting to note that during the Carter administration, when the Legal Services Corporation was operating at its greatest strength, the corporation had little interest in funding law school clinics.

\textsuperscript{126} See generally Morris & Minan, supra note 81.
corresponds to the early period of clinical legal education in the United States, from the mid-1960s through the early 1970s, when clinical programs benefitted from being a part of a broader legal services movement which was viewed by many at the time as the leading vehicle for social and economic reform through the law.\textsuperscript{127} In an updated form, effective legal aid representation remains for some clinicians the most important dimension of the clinical movement in American legal education. There is a strong and growing faction in clinical education in the United States, however, that has been moving steadily away from the mutual interdependence — both programmatic and institutional — between legal aid and clinical legal education. Instead, many clinicians in the United States have substituted an essentially independent teaching and scholarly agenda focusing on lawyering skills and the lawyering process. This shift has helped move clinicians and the clinical curriculum into the mainstream of legal education in the United States at a time when student and public pressure for increased legal aid service activity has been slight.\textsuperscript{128} It raises, however, concerns about the direction of clinical legal education as an educational reform movement. In the United States the legal aid and public service agendas for clinical legal education must be reevaluated in the context of clinical education's relatively secure place in legal education, so that status and curriculum gains of the past few years can be reinforced as part of an effort to revitalize thought and action directed toward current issues of legal aid and professional responsibility.\textsuperscript{129} In India, the challenge will be to gain support for clinical programs as important components of the law school curriculum without losing sight of legal aid objectives and the important political and institutional support legal aid programs bring to legal education reform.


\textsuperscript{128} For a discussion of recent movement away from strong support for the general availability of legal services, as compared to the 1960s and 1970s, see Luban, \textit{The Noblesse Oblige Tradition in the Practice of Law}, 41 VAND. L. REV. 717, 731-37 (1988).

\textsuperscript{129} There are also important issues that have been raised in the past but remain unresolved. See, e.g., Bellow & Kettleson, \textit{From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice}, 58 B.U.L. REV. 337 (1978).