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Combining community empowerment and clinical legal education: the Scottish University Land Unit

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Abstract

For two years an initiative called the Scottish University Land Unit has partnered volunteer law students with an existing support agency that brings law students (with academic support) together with communities in Scotland seeking empowerment opportunities through access to local land or buildings. Drawing on the information and experience garnered over that period of operation, this paper will offer some reflections on the early life of the Scottish University Land Unit – or SULU – and also highlight the scheme to an international audience. It does this by giving an overview of existing scholarship and highlights the potential clinical benefits a student who engages with clinical legal education might gain, before giving an overview of the contemporary context and law relating to community empowerment and land reform in Scotland. Next, it will detail how SULU brings together the complementary goals of student development and serving the community. Lastly, this paper will conclude with a discussion on the future of SULU, and by offering some insights that may inspire similar schemes in different sectors or jurisdictions.

I INTRODUCTION

In January 2018, an initiative called the Scottish University Land Unit launched as a partnership between the Scottish charity the Development Trusts Association Scotland, through its Community Ownership Support Service,¹ and volunteer law students studying at the University of Aberdeen.² As will be explained in this paper, this pilot scheme aimed to demonstrate that various complementary outcomes could be achieved in terms of clinical legal education and serving the public good. The hope was that the scheme would accomplish this by bringing law students (with academic support, where relevant) together with communities seeking access to land, either by way of using Scotland's land reform laws or through more orthodox channels.

The exact reasons why Scottish communities might feel motivated to acquire land might not be immediately evident to a non-Scottish audience. As will be explained further below, there are some Scots law mechanisms to facilitate the transfer of land to legal entities representative of communities, which were introduced by the Scottish Parliament in recent years. Some communities might struggle to appreciate or apply these mechanisms to their circumstances, and in turn, struggle to unlock or afford existing advice and assistance channels for a community land scheme. Pro bono assistance for such communities might offer a solution to what would otherwise be an unmet legal need, and an initiative like the Scottish University Land Unit might be particularly suited to play this role. The availability of support through students helping under the banner of a reputable and established host organisation could increase the resource of that host and simultaneously develop the skillset of volunteer students. Further, if implemented properly and strategically, volunteer students might be insulated against potentially problematic issues, such as difficulties of obtaining insurance for its activities or causing friction with commercial firms who might otherwise have been instructed to provide legal support.

After an initial pilot phase of a year, the Scottish University Land Unit – generally abbreviated to SULU, in the full knowledge that Gene Roddenberry decided to boldly go for that name when he created a Star Trek character – has since expanded to include volunteer students from the universities of Dundee, Glasgow and Strathclyde. January 2020 marked the second full year of SULU's operations, and the experiences of SULU's volunteers, those supporting the scheme (including the Scottish Government, which has provided some financial support), and the communities it has helped are beginning to offer a dataset that can be analysed in terms of its overall impact. The circumstances of the Covid-19 pandemic and the related pause of everyday life provided an opportune time to engage in this exercise. Further, even without those experiences to reflect on, a general discussion of SULU can also serve to highlight this system to an audience outside of Scotland. This discussion may even inspire, or at least inform, similar schemes in different jurisdictions.

This paper is presented in five parts. First, the case for any initiative like SULU will be analysed with reference to existing scholarship in order to provide an overview of the benefits that students who engage with clinical legal education might gain. Second, the paper will give a brief overview of the contemporary context and law relating to community empowerment and land reform in Scotland. This will be presented in the expectation that those reading it will not need anything more than a primer, but that primer will help to set the scene for the existence of an organisation for students to partner with. Third, there will be an explanation of how the scheme works in practice. Fourth, the dataset of the first two years of SULU operations will be presented and initial

¹ 'About COSS', *Community Ownership Support Service* (Web Page) <<https://dtascommunityownership.org.uk/about-coss>>.

² 'Scottish University Land Unit', *Community Ownership Support Service* (Web Page) <<https://dtascommunityownership.org.uk/community/community-asset-transfer/build-land-law-law/scottish-university-land-unit-sulu>>.

analysis offered. Finally, the paper will offer several learning points, in terms of what SULU can itself learn from its operations, and also by providing more general insights for schemes in different sectors and indeed jurisdictions.

II THE CASE FOR INITIATIVES LIKE SULU

Clinical legal education (CLE) now plays a recognised and important role in education, scholarship and providing access to the law in many jurisdictions.³ Student law clinics or other schemes (including placements and internships) whereby students can interact with and gain experience from real clients or consumers engaging with public legal education form a recognisable part of the architecture of many law schools.⁴

In brief, using the skill and enthusiasm of law students,⁵ whether that is part of a formal curriculum or an extra-curricular activity,⁶ 'live-client' clinical legal education seeks to provide practical support to those who need assistance but cannot otherwise obtain it (perhaps owing to a lack of legal aid eligibility coupled with a lack of funds, or an inability to recognise a legal problem).⁷ Such support is broadly of two types: '*just in case*'; and '*just in time*'.⁸ '*Just in time*' advice is usually a distress purchase (by someone who can afford a lawyer) or a distress request (by someone who cannot), made when circumstances require information or guidance at short notice. '*Just in case*' advice gives people useful information that they may need at some point in

³ Consider: E Chemerinsky, 'Why Not Clinical Education' (2009) 16 *Clinical Law Review* 35; K Kerrigan and V Murray, *A student guide to clinical legal education and pro bono* (Palgrave Macmillan 2011); Jeff Giddings, *Promoting Justice Through Clinical Legal Education* (Justice Press, 2013); Linden Thomas et al, *Reimagining Clinical Legal Education* (Hart, 2018); Lydia Bleasdale, Beverley Rizzotto, Rachel Stalker, Lucy Yeatman, Hugh McFaul, Francine Ryan, Nick Johnson and Linden Thomas, 'Law clinics: What, why and how?' in Linden Thomas and Nick Johnson (eds), *The Clinical Legal Education Handbook* (University of London Press, 2020) at <<https://humanities-digital-library.org/index.php/hdl/catalog/book/clinical-legal-education>>. For a recent update, see E Hall, 'Editorial: Reflecting on the "Power" of Clinical Legal Education' (2020) 27(1) *International Journal of Clinical Legal Education* 1. Recent UK data on students and pro bono was published by the UK charities LawWorks and the Clinical Legal Education Organisation, in Law School Pro Bono and Clinic Report 2020: <<https://www.lawworks.org.uk/solicitors-and-volunteers/resources/lawworks-law-school-pro-bono-and-clinics-report-2020>>.

⁴ The Australian context for this was explained in a recent article: Francina Cantatore, 'New Frontiers in Clinical Legal Education: Harnessing Technology to Prepare Students for Practice and Facilitate Access to Justice' *Australian Journal of Clinical Education* (Online Journal Article, 2019) [5(1) 1-18, 2-3] <<https://ajce.scholasticahq.com/article/11191-new-frontiers-in-clinical-legal-education-harnessing-technology-to-prepare-students-for-practice-and-facilitate-access-to-justice>>. On public legal education more generally, see David McQuoid-Mason (ed), *Street Law and Public Legal Education: A collection of best practices from around the world in honour of Ed O'Brien* (Juta, 2020).

⁵ It is acknowledged that there can be some scepticism and perhaps even, in some circumstances, risk of letting students loose before they are fully-fledged lawyers: see, for example, S Zeidman, 'Sacrificial Lambs or the Chosen Few?: The Impact of Student Defenders on the Rights of the Accused' (1996) 62 *Brooklyn Law Review* 853. This being said, in the circumstances of SULU under discussion in this article it is hoped that the field of operations and procedures can suitably protect against any perceived risk.

⁶ On this point, see Malcolm Combe, 'Selling intra-curricular clinical legal education' (2014) 48(3) *The Law Teacher* 281; Stephan van der Merwe, 'A Case Study in Advocating for Expanded Clinical Legal Education: The University of Stellenbosch Module' (2017) 28 *Stellenbosch Law Review* 679. There is also a debate that might be had about voluntary pro bono and compulsory pro bono work. That will not be explored here.

⁷ See generally Hazel Genn, *Paths to Justice: What people do and think about going to law* (Hart Publishing, 1999) and, for a Scottish perspective, Hazel Genn and Alan Paterson, *Paths to Justice Scotland: What people do and think about going to law* (Hart Publishing, 2001).

⁸ The distinction between the two was explained in the UK Parliament as follows (per the then Solicitor General): 'There are two types of PLE. "Just in case" PLE is all about ensuring that people have skills, information and knowledge about their rights. "Just in time" PLE is all about giving people knowledge and support when a legal issue happens to arise. Both types of provision are equally important...' United Kingdom, *Parliamentary Debates*, House of Commons, 15 May 2018, vol 641, column 101 (Robert Buckland). See also the (undated) resource provided by the UK charity LawWorks: 'A Ten Year Vision for Public Legal Education', *LawWorks* (Online Article) <<https://www.lawworks.org.uk/sites/default/files/files/10YearVisionForPLE-web.pdf>>.

the future without any critical time implications. As we will see below, SULU is more towards the 'just in case' end of the spectrum, albeit communities may be subject to (or may benefit from) legal effects in the not too distant future depending on what courses of action they take after receiving information from SULU.

Another point that can be considered is the objective of clinical legal education. At this point we often meet the [false] dichotomy of whether CLE should be about social justice or student development: is it to improve law students by making them a more polished processor and presenter of information, or is it to improve society by deploying students into the provision of access to justice?⁹ CLE can be for *both*. That is to say, properly delivered CLE can improve both students and society, not to mention having a longer-term benefit of inculcating notions of access to justice early in a legal career in a way that can be carried forward.¹⁰

III SCOTTISH LAND REFORM AND THE CASE FOR SULU

With suitable acknowledgement of the brevity of the above discussion regarding CLE in general, the next issue to consider is the Scottish University Land Unit in particular. Clinical legal education activities might focus on specific areas of the law, or they might be deliberately generalist (but often subject to particular exceptions from the scope of service, for example in relation to family law).¹¹ Naturally, SULU falls in the former, specialist category.

The present author, one of the founding partners of SULU, has a particular interest in land reform and community empowerment in Scotland.¹² This might lead to one critique, related to the extent to which a clinician should seek to use their own research interests to direct CLE activities. Any perception of such overbearing overall supervision should give a degree of pause, but then again it does seem relatively uncontroversial that an academic specialising in, say, employment law, immigration law or landlord and tenant law will feel more comfortable supporting students in relation to those specialist topics.

This paper will now provide a brief overview of the contemporary context and law relating to land reform in Scotland. This overview, presented as a primer rather than an in-depth study,¹³ will

⁹ As regards the latter question, there might be an issue whether that should be something for students to do, as if there is a problem maybe it should be for the state rather than students to take appropriate action. In Scotland, higher education for Scottish students has been largely funded by the Scottish Government for many years, so that might be deployed as an argument for the deployment of students in this way. Separately, there may be an indirect social justice benefit by way of encouraging and shaping law clinic students to commit to assisting those most in need of support after their involvement with student pro bono work has concluded, perhaps through career choice or by continuing to offer other forms of assistance: consider Donald Nicolson, "Our roots began in (South) Africa": Modelling law clinics to maximise social justice ends' (2016) 23(3) *International Journal of Clinical Legal Education* 87.

¹⁰ See Donald Nicolson, 'Calling, Character and Clinical Legal Education: A Cradle to Grave Approach to Inculcating a Love for Justice' (2013) 16 *Legal Ethics* 36.

¹¹ For example, the University of Strathclyde Law Clinic states on its website: 'We provide help on a wide variety of problems and disputes... *although we will usually not take on family disputes where children are involved*' 'Become A Client', *University of Strathclyde Law Clinic* (Web Page) <<https://www.lawclinic.org.uk/legaladvice/become-a-client>>.

¹² The author was an adviser to the Scottish Government's Land Reform Review Group from 2013-2014. Its Final Report, 'The Land of Scotland and the Common Good' was published by the Scottish Government in 2014 and can be found online: <<https://www.gov.scot/publications/land-reform-review-group-final-report-land-scotland-common-good/>>. The most recent manifestation of this interest is an interdisciplinary co-edited collection: Malcolm M Combe, Jayne Glass and Annie Tindley (eds), *Land Reform in Scotland: History, Law and Policy* (Edinburgh University Press, 2020).

¹³ More detailed analysis can be found in Malcolm M. Combe, 'Community Rights in Scotland', in Ting Xu and Alison Clarke (eds), *Legal Strategies for the Development and Protection of Communal Property* (Oxford University Press, 2018) and Malcolm M. Combe 'Legislating for community land rights' in Combe, Glass and Tindley, *Land Reform in Scotland* (n 12) 154.

highlight the contemporary appetite for land reform and community empowerment in Scotland, and indeed the context for the existence of a community-oriented support organisation for students to partner with.

A Land reform in Scotland – a primer

The so-called Scottish land question,¹⁴ which broadly relates to how land in Scotland is owned and used (and the apparent injustices (broadly and imprecisely defined) relating to that),¹⁵ has been a slow-burning and occasionally not-so-slow-burning issue for hundreds of years, particularly in the Highlands and Islands of Scotland. That locality and its traditional occupiers were affected by a historical episode that has come to be known as the Highland Clearances, whereby non-owner occupiers of land vacated their traditional areas (perhaps with some encouragement from landowners or their agents who wished to engage in land schemes that they felt were incompatible with such traditional occupancy), and the effects of the Clearances linger in folk memory and even in the rural demographics that prevail today many years after the land struggles of the 19th century that led to the introduction of the highly-regulated system of crofting tenure¹⁶ in Highland Scotland.¹⁷

The preceding paragraph is, of course, an oversimplification of a complex situation. It also says nothing about the pressing challenges that exist in some of contemporary Scotland's urban areas,¹⁸ the concentration of land ownership,¹⁹ the power balance between the owners of large estates and those who live on or near them,²⁰ or the diverse issues that prevent the delivery of

¹⁴ See Ewen A. Cameron, 'Still on the Agenda? The Strange Survival of the Scottish Land Question, 1880-1999' in Combe, Glass and Tindley, *Land Reform in Scotland* (n 12) 94.

¹⁵ Consider Andy Wightman, *The Poor Had No Lawyers: Who Owns Scotland (and How They Got it)* (Edinburgh: Birlinn, 2015), which was first released in 2010 but is now in its fourth Edition, and John McEwen, *Who Owns Scotland? A Study in Land Ownership* (Polygon, 2nd ed, 1981).

¹⁶ Crofting law operates to regulate individual croft holdings and the common grazings shared by crofters in various townships across the Highlands and Islands of Scotland. It was introduced to provide protections to occupiers of land who were not owners of the land they lived and worked on, providing them with security of tenure, a system of rent control, and compensation for any improvements they made to land. Further information about crofting can be found on the website of the Crofting Commission, a non-departmental public body that has a statutory role in relation to crofters and croft land: *Crofting Commission* (Web Page, 2020) <<https://crofting.scotland.gov.uk/>>. Relevant detail is also provided below.

¹⁷ On the Highland Clearances and the later formation of crofting communities in the Highlands and Islands of Scotland, see Jim Hunter, *The Making of the Crofting Community* (Birlinn, 2000) (first published 1976).

¹⁸ For a flavour of the urban context, see David Adams, 'The potential for urban land reform in Scotland' *AESOP-ACSP Joint Congress* (Research Publication, 15-19 July 2013) <<http://eprints.gla.ac.uk/81527/>>, and the collected resources at 'Urban Land' *Community Land Scotland* (Web Page, 2020) <<https://www.communitylandscotland.org.uk/urban/>>.

¹⁹ On this topic, a paper submitted to the Scottish Affairs Committee at the UK Parliament suggests a figure in the region of 432 landowners (or related landowning entities) own 50% of the privately-owned rural land in Scotland: James Hunter, Peter Peacock, Andy Wightman and Michael Foxley, '432:50 – Towards a comprehensive land reform agenda for Scotland: A briefing paper for the House of Commons', (Scottish Affairs Committee, 2013) <<https://old.parliament.uk/business/committees/committees-a-z/commons-select/scottish-affairs-committee/news/land-reform-inquiry/>>.

²⁰ For example, see this media release by the interest group Community Land Scotland which characterised the exercise of monopoly-esque power by some land owners as an 'affront': 'Monopoly exercise of landowner power is an affront to a modern, democratic and socially progressive Scotland, says Community Land Scotland', *Community Land Scotland* (Online Article, 2020) <<https://www.communitylandscotland.org.uk/2019/03/monopoly-exercise-of-landowner-power-is-an-affront-to-a-modern-democratic-and-socially-progressive-scotland-says-community-land-scotland/>>. That media release followed on from work by the Scottish Land Commission, a body created by the Land Reform (Scotland) Act 2016, in relation to the scale and concentration of land ownership in Scotland: >. 'Scale and Concentration of Land Ownership' *Scottish Land Commission* (Online Article, 2020) <<https://landcommission.gov.scot/our-work/ownership/scale-and-concentration-of-land-ownership>>.

affordable rural housing.²¹ It would be impossible to correctly catalogue all the factors that have fed into the recent push for, and legislation relating to, Scottish land reform. For present purposes, and with a legally qualified audience in mind, it might be useful to pick out some relevant details and two key dates that can be used to set some of the scenes.

Scotland has shared a legislature with the rest of Great Britain (and later the United Kingdom) since the Anglo-Scottish Union of 1707, although Scots law – which had developed into a recognised system before 1707 – remained as Scotland’s own legal system after the Union with England and Wales. The UK Parliament did on occasion pass law that reformed Scottish land law as a whole or delivered a legal regime with a specific geographical effect (as it did with the introduction of crofting law in 1886),²² but it was the passage of the Scotland Act 1998 and the advent of devolution from the UK parliament to a delegated authority that delivered a Scottish legislature with law-making power over a wide range of matters, including Scots private law, with both the legislative time and the political inclination to embrace many aspects of land reform.

Numerous Acts of the Scottish Parliament on Scottish land law were enacted in its early years. Whilst some of these might have been about more technical aspects of the discipline,²³ the Land Reform (Scotland) Act 2003 had a decidedly policy-oriented outlook and function. It brought in two rights of community acquisition, with Part 2 of the Act giving rural communities a right of pre-emption (first refusal) over land that they had publicly registered an interest in, securing ‘first dibs’ on the targeted asset if the present owner decided to sell, and Part 3 of the Act allowing communities in crofting areas to force a sale of specific crofting land from a private land owner (for value).²⁴ (For completeness, and to explain the numbering of the Parts of the legislation, Part 1 relates to the separate topic of public access rights to the outdoors.)²⁵ In both cases, the land would then be owned and administered by a locally accountable organisation, and the transfer would only be allowed to take place if that organisation and the transfer itself had been vetted by the Scottish Ministers as being in-line with the twin goals of the transfer being in the public interest and compatible with furthering the goal of sustainable development.

Those rights to buy turned out to be but the first wave of land reform measures. Further reform followed, notably through the Community Empowerment (Scotland) Act 2015 and then the Land Reform (Scotland) Act 2016.²⁶ Both these statutes introduced additional rights of acquisition that provided for forced sale from the existing owner, either owing to that owner allowing the land to be in a neglected, abandoned or environmentally detrimental state, or where a community was able to demonstrate that a transfer of the land was necessary to further sustainable development, subject to many caveats including a need to demonstrate that a lack of any transfer would cause the local community harm.²⁷ The 2015 Act also widened the earlier pre-emptive right to buy

²¹ See this news item and the related report prepared by the Scottish Land Commission in partnership with Savills (UK) Ltd (part of the global real estate business Savills PLC): ‘Rural Housing’, *Scottish Land Commission* (Online Article) <<https://landcommission.gov.scot/news-events/news-blog/rural-housing>>.

²² By way of the Crofters Holdings (Scotland) Act 1886. Crofting law was consolidated into one statute by the UK Parliament by the Crofters (Scotland) Act 1993. It has been much amended since then and a full explanation of it is beyond the scope of this essay. See further Eilidh I. M. MacLellan, ‘Crofting Law’ in Combe, Glass and Tindley, *Land Reform in Scotland* (n 12) 293.

²³ Consider the Abolition of Feudal Tenure etc. (Scotland) Act 2000 and the Title Conditions (Scotland) Act 2003.

²⁴ See Malcolm M. Combe, ‘Parts 2 and 3 of the Land Reform (Scotland) Act 2003: A Definitive Answer to the Scottish Land Question?’ 2006 *Juridical Review* 195.

²⁵ See Malcolm M. Combe, *The ScotWays Guide to the Law of Access to Land in Scotland* (John Donald, 2018).

²⁶ See Malcolm M. Combe, ‘The Land Reform (Scotland) Act 2016: another answer to the Scottish land question’ 2016 *Juridical Review* 291.

²⁷ See Malcolm Combe, ‘Rights to buy: the new addition’ (2020) 65(7) *Journal of the Law Society of Scotland* 34.

contained in Part 2 of the 2003 Act to cover both urban and rural Scotland²⁸ and provided a scheme to facilitate asset transfers from public sector entities to local communities where that was appropriate.

B Land reform in Scotland – the role of SULU

As is clear from this overview, Scotland's ongoing land reform journey has brought it to a place that offers various rights to communities when interacting with land owned by public entities and private individuals. Consequently, even sophisticated (non-lawyer) professionals might struggle to fully grasp the necessary components for successful land acquisition or be able to quickly ascertain whether making use of one or more legislative scheme is appropriate at all. On simple access to law analysis, there is a case for making appropriate help available.

Communities have had a degree of support in recent years, including via the Development Trusts Association Scotland and its Scottish Government-backed Community Ownership Support Service. There has also been some *ad hoc* grant support for individual schemes at suitable stages through the Scottish Government-backed Scottish Land Fund.²⁹ Such support notwithstanding, there is nevertheless a perception that some communities or local projects could benefit from further backing at certain stages of a community scheme. This can be anecdotally confirmed by the enthusiastic reaction to a tweet³⁰ sent by the author announcing the launch of the SULU initiative. Prior to that social media episode, a more robust academic case was presented by McKee and Roberts in their 2016 report for the Scottish Government. That report, entitled *Good practice in overcoming barriers to community land-based activities*, noted:³¹

Whilst there is a need for the appropriate professionals to progress transactional/legal processes..., an opportunity is recognised for a specific support role between community bodies and lawyers in particular, which may be more economical.

Another point that might be noted here is that acquiring land *without* reference to a community right to buy process, this being something that several important examples of Scottish community ownership have managed to do,³² is still not an easy process to navigate. Communities engaging in the Scottish conveyancing process will not ordinarily be able to do so with in-house resources, especially if a non-land reform but altogether more classic land transfer issue crops up, perhaps relating to a dispute about ownership of a parcel of land or a dubious right of access.³³ This would

²⁸ On the inaugural use of an urban community right to buy, see John A Lovett and Malcolm M Combe, 'The parable of Portobello: lessons and questions from the first urban acquisition under the Scottish community right-to-buy regime' (2019) 80(2) *Montana Law Review* 211.

²⁹ Although backed by the Scottish Government, this fund is administered by the National Lottery and Highlands and Islands Enterprise on its behalf. In recent years the Scottish Land Fund has had an annual budget of £10 million, but it is unclear what will happen in the future. See 'Scottish Land Fund' *TNL Community Fund* (Web Page) <<https://www.tnlcommunityfund.org.uk/funding/programmes/scottish-land-fund>>.

³⁰ @MalcolmCombe (Twitter, 25 January 2018, 15:28) <<https://twitter.com/MalcolmCombe/status/956549235574484994>>. The tweet garnered approximately sixty retweets (including a share by the Scottish Cabinet Secretary with land reform in her portfolio).

³¹ Annie McKee and Deb Roberts, 'Overcoming Barriers to Community Land-based Activities: Guidance' *Scottish Government* (Report, 29 July 2016) [7.2] <<https://www.gov.scot/publications/good-practice-overcoming-barriers-community-land-based-activities/>>.

³² For a general overview of community schemes in the Scottish Highlands and Islands, including some prominent examples which happened prior to the legislative routes coming into existence and others that came to pass owing to the potential for resort to the legislative route, see Jim Hunter, *From the Low Tide of the Sea to the Highest Mountain Tops: Community Ownership in the Highlands and Islands of Scotland* (The Islands Books Trust, 2012).

³³ For an overview of what needs to happen in a standard transaction (in terms of what culminates in a transfer of ownership in line with section 50 of the Land Registration etc. (Scotland) Act 2012), not to mention insight into the various thing that can prove problematic, see George L. Gretton and Kenneth G. C. Reid, *Conveyancing* (W. Green, 5th ed, 2018).

be a hiccup even if there happened to be a willing seller.³⁴ Further, any non-statutory community acquisition would still need to be routed through a suitable and locally accountable juristic entity (which might need to be incorporated in a way that is flexible enough to engage with a future statutory land acquisition), and any funders from the public or private sector might expect certain things of the community. Meanwhile, a community might be faced with legal problems that are not connected to a new acquisition of land, which might relate to the use of existing community-owned land or land owned by a neighbour. Once again, such issues might require some help from outside the community's existing stock of social capital.

It is not anticipated that law students will be able to solve all these potential issues for a community or indeed handle the nuts and bolts of the conveyancing process, but SULU volunteers are able to detail options or perhaps even stave off problems for the future, and also identify when an appropriate point for instructing legally qualified advisers has been reached. With this in mind, it is hoped that SULU's activities would not irritate lawyers by taking instructions away from them. In terms of the point made by McKee and Roberts, they identified a gap where legal instructions were not happening *anyway*, so the activities of SULU should not deny solicitors an income stream and in turn, undermine goodwill for the CLE activity. Meanwhile, SULU students are not expected to (for example) report on a title to land or offer a definitive view on the existence or scope of a servitude right of access, so again there should be no ill-will generated concerning activities for which professional advice would be more appropriate.

For completeness, it might be worth explaining that existing landowners who could be faced with a community seeking to acquire their land should not have any particular concerns about SULU activities. Beyond the act of getting involved as a volunteer, which might in and of itself indicate a certain land reform sympathy, SULU students are not encouraged to adopt a partial position and (as with any law clinic advisors) are warned against the dangers of adopting the views of anyone who engages them on a wholesale basis. The scope of works for SULU volunteers is to detail the law and set out options in a comprehensible way, without going beyond that. Further, it might even be hoped that providing communities with realistic and pragmatic options early in the process will help to manage expectations and avoid certain conflicts that could emerge, which would be a positive outcome for the majority of (rational, non-disputatious) landowners.

IV HOW DOES SULU WORK?

Having set out the context behind and the case for the Scottish University Land Unit, it now falls to explain how it is structured and how it functions. It is hoped that this will be of comparative interest, but at this point, it must also be acknowledged that having a partnership with the Development Trusts Association Scotland and its Community Ownership Support Service (COSS) was serendipitous in the extreme. The relationship with COSS is crucial; absent such an existing resource, starting something like SULU from scratch would have been a challenging undertaking with implications for matters such as publicity, supervision and insurance.

³⁴ Negotiated sales are catered for in terms of a protocol agreed between what might be thought of as contrasting interest groups, namely Community Land Scotland (which represents its membership of community land owners: *Community Land Scotland* (Web Page) <<https://www.communitylandscotland.org.uk>>) and Scottish Land and Estates (which represents rural businesses including what might be thought of as more traditional country estate owners: <<https://www.scottishlandandestates.co.uk>>): see 'Community Land Scotland and Scottish Land & Estates: Protocol for Negotiated Sales' *Community Land Scotland* (Online Report, May 2016) <<https://www.communitylandscotland.org.uk/wp-content/uploads/2016/06/CompleteCLSPProtocol.pdf>>.

The tie-in with COSS does bring to mind a certain overlap with farming student volunteers out for placements or internships. That is a recognised model of CLE,³⁵ which, done properly, is a win-win of providing student development opportunities and increasing provision.³⁶ SULU is not, however, a full internship. Instead, SULU has what might be termed a 'bank' of volunteers, who operate on a reactive basis whenever COSS receives an instruction that is appropriate for delegation and triage.³⁷

At this point, it might be worth noting two benefits of the SULU model that flow from the partnership with COSS. The first benefit is that SULU assistance is not restricted by geographical region (i.e. the city in which the students are based at a particular university). This, of course, assumes that COSS is suitably able to engage across Scotland, but this point at least seems more likely to be true for COSS than for a new-start project trying to replicate its specialist field.

The second benefit is a benefit that SULU shares with more immersive CLE placements: clients do not need to do anything special or go anywhere new to seek out advice and assistance. Users liaise with a provider in precisely the same manner that they would be doing anyway.

With SULU, the provider is COSS, and the users are community groups in Scotland. After communities have made contact with the established entity of COSS, SULU students then assist where COSS advisers deem that appropriate. This might be when they are looking for an explanation of what the law says (where the research skills of law students in the midst of studying land law to an advanced level would be well-utilised), or simply where the resources of COSS can be better deployed elsewhere. SULU volunteers would then undertake the delegated task, with designated academic contacts at each university assisting with any questions about the law, and COSS fielding any questions about the scope of the work, before reporting their findings to COSS. COSS would take matters forward with the community or make a supervisory intervention to render any advice into a client-facing resource. No contact details for the service user are provided to the student volunteers throughout this process, to reduce the risk of a student volunteer going straight to the community representative without going through quality assurance.

At least two aspects of the SULU volunteer bank merit further interrogation, namely: who is eligible to volunteer; and what is expected of them as a volunteer. At both its pilot phase and in its second year of operation SULU was open to volunteers enrolled in a suitable Scottish degree or postgraduate diploma programme and, where relevant, at an appropriate stage of study. There is no need for a student to be part of an existing law clinic: a deliberate design-feature of SULU is that students from institutions with no law clinic (as is currently the situation at Dundee and Glasgow universities) are as entitled to join as those who study at an institution with a law clinic. All that is asked of volunteers is that students have read and noted acceptance of SULU's mission statement³⁸ and that they are at an appropriate stage of study. It might be useful to set out the route to Scots law qualification to put the latter point in context.

³⁵ For an outline, see the discussion at Cantatore (n 4) 3 (at footnote 8), including a reference to Graeme Coss, 'Field Placement (Externship): A Valuable Application of Clinical Education' (1993) 4(1) *Legal Education Review* 29. See also Liz Curran, 'Responsive Law Reform Initiatives by Students on Clinical Placement at La Trobe' (2004) 7(1) *Flinders Journal of Law Reform* 287 and Giddings (n 3) 89-94.

³⁶ Cf Nicolson, "'Our roots began in (South) Africa": Modelling law clinics to maximise social justice ends' (n 9) 123.

³⁷ See Francine Ryan and Hugh McFaul, 'Online/virtual clinics: Open Justice Law Clinic case study' in Thomas and Johnson (eds) *The Clinical Legal Education Handbook* (n 3) 47 at 50, where a similar system of triage is identified for the online Open Justice Law Clinic.

³⁸ The short mission statement is available online. It states: '*The Scottish University Land Unit (SULU) has been set up to encourage law students across Scotland to take an active interest in land reform, community empowerment, and community rights in respect of land; and, working in partnership with the Development Trusts Association Scotland (DTAS) and the Community Ownership Support Service (COSS), to provide practical support to*

The various means by which someone can qualify as a Scottish solicitor are detailed on the Law Society of Scotland website.³⁹ For present purposes, it can be noted that law students intending to become a solicitor would typically study for a law degree (the LLB). After completing that degree, there is a further gatekeeper qualification called the postgraduate diploma in professional legal practice (the DPLP). There is no further academic qualification needed subsequent to the DPLP, but there is still a further 'on the job' stage of working as a trainee solicitor in a legal office for two years (after which those who navigate a traineeship and are signed off as fit and proper become a fully qualified solicitor). This final stage is not relevant to SULU, which only seeks volunteers at the LLB or DPLP stage. One other point worth flagging about Scottish law degrees is that they can be, and more often than not are, completed as a first degree (i.e. there is no JD model in Scotland). There is however an 'accelerated' or 'graduate entry' LLB, which allows students who already have a degree in a different discipline to complete the LLB in two (rather than the usual minimum of three) years.

All of this scans across to SULU as follows: student membership of SULU is open to anyone enrolled at a Scottish University as an undergraduate LLB student *in their second year or above*; an accelerated LLB student; or a DPLP student. There are two reasons for the single stage-related stipulation for undergraduate students. First, property law modules are not generally studied in the first year of a Scots law LLB, and at least a grounding in that subject would be helpful for SULU volunteers. Furthermore, undergraduate students may be adapting to a new life in higher education (never mind as a new law student). Those combined reasons contributed to the second-year stipulation for undergraduate LLB students. It was felt unnecessary to extend the stipulation to 'graduate entry' students, given their proven academic track record.

Finally, the means by which cases are allocated, or claimed, by eligible student volunteers need to be set out. Once a community representative has detailed an issue to COSS, the enquiry will, if appropriate, be delegated to SULU as a whole with details of the background to the case, what the specific query is, whether a particular form of response is sought, and any deadline for a response. To date, this has been done by way of an email to all SULU volunteers, and then the first available student (or a student team of two or more people who work well together) to respond is allocated the work. In the academic year 2020/21, at the suggestion of COSS, there is a trial system where volunteers are divided into pools sorted by university and tasks are delegated to *all* the universities, after which the first volunteer (or volunteers) for such a task at each university will complete the relevant task, and COSS will receive more than one report. Whilst this will increase the workload of the contact at COSS, this should allow for the best individual response or a suitable composite response to be developed for the user.

Admittedly, and like any sort of volunteering, some volunteers might be less inclined to pick up tasks than others, or conversely, some students might even pick up too much. Any potential for either of these issues can be mitigated by the delegation and logging of tasks by one person at COSS. As to the potential problem of avoiding their responsibilities, student volunteers are asked

community bodies looking to exercise these rights. 'Scottish Universities Land Unit (SULU)', *Community Ownership Support Service* (Web Page, 2020) <<https://dtascommunityownership.org.uk/resources/fact-sheets-and-tools/scottish-universities-land-unit>>.

³⁹ 'Qualifying as a Scottish Solicitor', *Law Society of Scotland* (Web Page, 2020) <<https://www.lawscot.org.uk/qualifying-and-education/qualifying-as-a-scottish-solicitor/>>. This note does not, and indeed SULU's eligibility criteria do not, consider the possibility of an alternative route to qualification (i.e. one that does not involve a university degree). That route would involve working in a solicitor's office completing a work-based learning module alongside studying then sitting certain exams, set by the Law Society of Scotland. Given the relatively low numbers who embark on this route to qualification, not to mention the fact such individuals would tend to have a full-time job in a law firm (e.g. as a paralegal), opening up SULU to such individuals was not mentioned in SULU's criteria, although SULU was approached by such an individual there would it might be thought appropriate to allow that person to volunteer (albeit the first U in the SULU acronym might need to be revisited).

to confirm acceptance of SULU's mission statement when they volunteer, and the delegation process documentation makes clear that student volunteers are expected to respond if they are able (subject to past workloads on SULU and other pro bono projects). In the event that no student volunteers with capacity are available, the work would be returned to the COSS team, meaning the community will not be left in the lurch.

That gives a flavour of some of the key governance points of SULU. The process for volunteering, delegation and supervision is set out in more detail in a 'Heads of Terms' document on the DTAS website.⁴⁰ Having such governance arrangements for any organisation is, of course, necessary, but the proof of the pudding is in the eating. The next portion of the paper will accordingly analyse the data that exists so far.

V SULU SO FAR

As detailed above, the first year of SULU ran as a pilot involving students at the University of Aberdeen. Twelve students volunteered to work in partnership with the Development Trusts Association Scotland and its Community Ownership Support Service to provide practical support to communities. After an initial declaration of interest, a training session involving representatives of COSS and the Scottish Government's community land team took place at the University of Aberdeen in March 2018. Subsequently, students undertook tasks that were delegated to them in line with the process detailed above.

SULU students provided advice on a range of issues in its first year, as detailed in an online update from 2019.⁴¹ Three cases were explicitly highlighted. Without going into the finer details of Scots law regarding these problems, the publicised issues included:

- i) rights of pre-emption that exist in a title to land (such pre-emptions, or rights of first refusal, being something that can be imposed on the land in certain circumstances by way of something known as a 'real burden' in Scots law, roughly equivalent to real condition/restrictive covenant in common law systems), and how such a pre-emption right might be triggered or extinguished;
- ii) economic development burdens (being another species of real burden, albeit a rare one that was recently introduced by the Title Conditions (Scotland) Act 2003, with that novelty requiring a degree of original research into the circumstances where such a burden might be appropriate); and
- iii) some more traditional property law issues, including access rights to a site over neighbouring land (such a right of use is known as a servitude in Scots law, roughly analogous to an easement) and encroachment (i.e. a possible issue of development on land by someone who was not the owner of that land).

In these situations, SULU student volunteers provided advice on the relevant legal framework(s) to furnish the client with more information and in turn, help them decide what to do next. Interestingly, most of the advertised issues in the first year were not about Scottish land reform legislation. Instead, they dealt with issues that could crop up with any conveyancing transaction. That being the case, some advice was provided to a community who had been asked by a landowner to consider a scheme which was perceived to be a potential workaround relating to a community right to buy, even though that advice was not alluded to on SULU's 2019 online

⁴⁰ 'Heads of Terms', *Community Ownership Support Service* (Web Page, 2020) <<https://dtascommunityownership.org.uk/sites/default/files/SULU%20-%20Heads%20of%20Terms%202020.pdf>>. This is the second incarnation of the SULU Heads of Terms, having been updated in 2020 from the initial version drafted in 2017.

⁴¹ 'Who, What and Where are we going from here?', *Community Ownership Support Service* (Blog Post) <<https://dtascommunityownership.org.uk/SULU-Blog>>.

update; it was decided *not* to publicise the nature of that advice on the internet, as any benefit of showcasing SULU's work might have had the by-product of allowing an untested workaround to gain traction in a way that caused issues for future community acquisition schemes.

The 2019 update then went on to note, more generically, that there was '*a lot of interest in SULU and the potential support that can be provided to groups, with scope for a lot more queries to be fed through to SULU students.*' Naturally, the webpage was trying to promote SULU and its impact, but even with that disclaimer any such interest does go some way to justifying the SULU initiative.

The 2019 update also noted a desire to '*commission SULU students to prepare specific resources that could then be made available to communities everywhere, and to open up access to SULU to other organisations and anyone involved in community ownership anywhere in Scotland.*' This has now happened, in the form of a factsheet on the legal implications of the dissolution of a company that owns land for a community seeking to acquire such land under community right to buy legislation.⁴²

At the time of writing, further activity from SULU's second year has not been recorded on the internet, save for the development of a fact sheet on the interaction of the rules relating to a community right of acquisition for abandoned, neglected and detrimental land and how that right interacts with dissolved companies (i.e. companies that are no longer in existence and therefore no longer able to own property).⁴³ That lack of internet information does not mean that there is a lack of data. With due acknowledgment to COSS for sharing its annual report to the Scottish Government with the author, it can be noted that launch events for new SULU outposts were held at the universities of Dundee and Glasgow in the academic year 2019/20, with 24 students and 39 students respectively signing up. A further eight students from the University of Strathclyde intimated an interest in the second semester of that academic year (albeit these students joined the initiative too late to have an impact on this dataset).

During that academic year, nine questions were put to the students, with COSS's (as yet unpublished) report noting that '*all questions were very promptly picked up by the students and answered*'. A selection of questions related to environmentally detrimental land in the context of Part 3A of the Land Reform (Scotland) Act 2003 (such land being susceptible to community acquisition); abandoned and ownerless land (again in the context of Part 3A of the Land Reform (Scotland) Act 2003, and also the more technical senses of ownerless land in terms of Scots private law and UK company law); and the definition and treatment of the verge of a road in a situation where that had an impact on a local community. Interestingly, this report noted that there was both desire from the volunteer students to help and capacity to provide support to volunteers, before noting that, '*The limiting factor is the number of questions being submitted from community groups.*' Clearly, there is a resource that is ripe for development here – a point that is illustrated by the fact the number of volunteers actually outnumbers the number of questions set – and the COSS 19/20 report noted that the development of referral routes would be a key area of activity for the future. This is not to say there has been no publicity of the initiative. Specific SULU literature was handed out to delegates at the Community Land Scotland conference in 2018, for example. It is now incumbent on the parties involved with SULU to ensure that the groundwork that has been put in place can be developed and publicised further, to allow it to reach its full

⁴² 'Abandoned, Neglected or Detrimental Land - Dissolved Companies', *Community Ownership Support Service* (Web Page) <<https://dtascommunityownership.org.uk/resources/fact-sheets-and-tools/abandoned-neglected-or-detrimental-land-dissolved-companies-sulu>>.

⁴³ 'Abandoned, Neglected or Detrimental Land - Dissolved Companies', *Community Ownership Support Service* (Fact Sheet) <<https://dtascommunityownership.org.uk/sites/default/files/SULU%20Factsheet%20%28Abandoned%2C%20Neglected%20or%20Detrimental%20Land%20-%20Dissolved%20Companies%29.pdf>>.

potential to benefit the society in which it operates and also to lay the foundation for further research.

VI CONCLUSION

This paper has set out the basis for and structure of an initiative that is inherently context-specific. As such, it may be optimistic to hope that mirror ULUs could develop in jurisdictions that do not have the same land reform drive and architecture as Scotland, or it might even be downright inappropriate to assume that such a model could be simply transplanted to other jurisdictions that have different dynamics in terms of, for example, indigenous groups. That being said, other jurisdictions might have already developed some solutions that work for them, with the Land and Environment Court Clinic of UNSW Law offering a glimpse of an Australian model (and perhaps a point of mutual learning).⁴⁴

That clinic is something of a reaction to the existence of the Land and Environment Court of New South Wales, which is described on its website as 'the first specialist environmental superior court in the world'.⁴⁵ From the explanation of the Land and Environment Court Clinic online, it is clear that is much more integrated with a formal degree programme than SULU is, but it does offer a potential general lesson of the need for CLE to be adaptive to the context and legal framework in which it operates.

In terms of further general lessons from the SULU initiative, as with all CLE arrangements, it can only work with willing and able law students. The SULU model has, so far, attracted students and indeed academics from four universities. SULU offers a mechanism that can quickly be adopted at law schools, whether such schools have a history of providing CLE or otherwise. For schools without current pro bono provision, SULU can operate in a manner that should not trigger the antennae of heads of school or other governors who might be otherwise worried about seed-funding, insurance implications and supervision, plus it allows students to make a positive contribution in a field where advice is needed and do so in a way that should not upset any apple-carts (for example, by ostracising the local legal profession). One might even hope that it offers a model for a proverbial dipping of toes into pro bono waters, which could lead to further initiatives at schools where there has not been a history of CLE.

As regards the further development of SULU and related research, one aspect that should be analysed in future is the impact that volunteering at SULU has had on the students themselves. Those who administrate the scheme at COSS have reported no particular complaints from students, and also noted that an in-person meeting of volunteers had been planned by students at one university, although that was cancelled with the lockdown restrictions of 2020. This could be revisited at the end of the current academic year. There might also be scope to survey former volunteers in the coming years, to gauge what impact the activity has had (if any) on their future practice and specialisms. Relatedly, further study might be undertaken into initiatives like SULU that are directed towards groups rather than individuals, in terms of whether that affects the approach of volunteers, but also in terms of what represents a satisfactory outcome for the users of the service.

To conclude, some Scottish communities may be in a place (literally and metaphorically) where they can obtain legal advice in relation to land-based barriers that they face. Others might not be

⁴⁴ 'Land and Environmental Court Clinic', *UNSW Law* (Web Page) <<https://www.law.unsw.edu.au/students/clinics/land-and-environment-court-clinic>>.

⁴⁵ See 'About Us' *Land and Environmental Court* (Web Page) <<http://www.lec.justice.nsw.gov.au/Pages/about/about.aspx>>. It was created by the *Land and Environment Court Act 1979* (NSW).

in such a place, or might not be at the stage where tailored advice is needed. These are the communities SULU may be able to help. Through its actions to date, SULU has already played a small part in Scotland's land reform journey, and also in the educational journey of the law students who volunteer. It is hoped that reflecting on its activities can improve its offering in the future, and also that this discussion can showcase a useful model to those who might be inspired by it.