

1-1-2004

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Recommended Citation

Wilson, Richard J. (2004) "Training for Justice: The Global Reach of Clinical Legal Education," *Penn State International Law Review*: Vol. 22: No. 3, Article 5.
Available at: <http://elibrary.law.psu.edu/psilr/vol22/iss3/5>

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Training for Justice: The Global Reach of Clinical Legal Education

Richard J. Wilson*

In the United States, clinical legal education has become an integral component of the curriculum at virtually all law schools. Within the last five years, the number of persons identifying themselves as clinical professors rose above 1,800.¹ Clinical teachers can proudly assert that clinical legal education is one of the most significant and successful pedagogical developments since Langdell's case method at the beginning of the Twentieth Century.

Clinical legal education has also taken firm root outside the United States as well. In fact, as early as 1901 clinical legal education was proposed by a Russian professor, Alexander Lyublinsky, who believed that a law school clinical component could be modeled on medical training. This was sixteen years before the earliest proposals for clinics appeared in the United States.² In some cases, particularly in Latin America and India during the late 1960s and early 1970s, law school clinics began operation at virtually the same time clinical education

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1. Prof. David Chavkin, my faculty colleague who served faithfully as custodian of a clinical program and faculty database for several years, provided this useful information.

2. *Clinical Legal Education: Forming the Next Generation of Lawyers*, in PURSUING THE PUBLIC INTEREST: A HANDBOOK FOR LEGAL PROFESSIONALS AND ACTIVISTS 257, 261 (Edwin Rekosh et al. eds., 2001). The earliest academic reference in the United States is to William V. Rowe, *Legal Clinics and Better Trained Lawyers—A Necessity*, 11 ILL. L. REV. 591, 591 (1917). One of the most cited references for the conceptual origins of clinical legal education in the United States comes from the era of the Legal Realists. Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907 (1933).

expanded significantly in the United States.³ More often, however, clinical legal education is an innovation sought in areas of the world in which there has been a gradual transition away from autocratic and dictatorial regimes, such as Africa, some parts of East and South Asia and Latin America. In these and other areas, like Eastern Europe and the former Soviet Union, where acceptable boundaries have been loosened by massive political shifts, clinical legal education has grown by leaps and bounds. After a period of deep repression in China, the legal profession has reconstructed itself from scratch. There, clinics are an integral component of new and reformed structures of legal education. In fact, the only area of the world in which clinics have not taken hold is Western Europe, where the traditional lecture method and post-graduate apprenticeships continue to dominate legal training.⁴

This paper will provide an overview of the development of clinical legal education outside of the United States. I will provide a working definition of clinical legal education and examine how foreign legal clinics adhere to that definition or seriously depart from it. Because governments and law schools seldom take the initiative to provide sufficient financial support for clinical programs, I will then examine five significant international funding sources for clinical legal education. I will examine clinics in a few countries in which some of the best practices have developed, and conclude the paper with a critique of what might be called, without pejorative intent, the globalization of clinical legal education.

I. What is “Clinical Legal Education”?

When I use the term “clinical legal education” in this paper, I am referring to a particular model, perhaps an ideal model, but nonetheless one that operates in the best of clinics, both here and abroad. Under my

3. See generally, Richard J. Wilson, *Three Law School Clinics in Chile, 1970-2000: Innovation, Resistance and Conformity in the Global South*, 8 CLINICAL L. REV. 515 (2002) [hereinafter Wilson, *Clinics in Chile*]. In an earlier article I suggested that clinics were proposed by indigenous reformers in Latin America as early as 1961. Richard J. Wilson, *The New Legal Education in North and South America*, 25 STAN. J. INT'L L. 375, 394 (1989) [hereinafter Wilson, *North and South America*]. A brief history of Indian clinical legal education is provided in N.R. MADHAVA MENON, A HANDBOOK ON CLINICAL LEGAL EDUCATION 17 (1998). The clinical movement in the United States began to really take root during the 1960s with a grant from the Ford Foundation. See, PHILIP G. SCHRAG & MICHAEL MELTSNER, REFLECTIONS ON CLINICAL LEGAL EDUCATION 3, 4-7 (1998).

4. See, e.g., CLINICAL LEGAL EDUCATION: ACTIVE LEARNING IN YOUR LAW SCHOOL (Hugh Brayne et al. eds., 1998) (published for use in the UK). The United Kingdom is something of an exception, with a modest clinical movement and some important writing, but it is more noteworthy because, for its size and history, clinical legal education has been quite slow to take root.

definition, a law school clinical program would have six components. First, it is created through a law school with the intent that the program be integrally linked to the academic program of the institution. Second, law students, usually in their final years of law school, learn experientially by providing legal services or advice to real clients who qualify for representation by the law school's clinic. Third, those students are closely supervised by an attorney admitted to practice in the relevant jurisdiction, preferably by a member of the law school faculty or a private practitioner, who shares the pedagogical objectives of the clinical experience. Fourth, the clients served by the clinical program generally are not able to afford the cost of hiring private counsel, and they usually come from traditionally disadvantaged, underserved or marginal sectors of the community. Fifth, supervised case representation by students is preceded or accompanied by a pedagogical program that prepares students in what might be called theories of the practice of law. This would include components of substantive doctrine, skills, ethics, and values of law practice, and would be taught by a professor who knows the students' cases well enough to integrate that experience into the clinic classroom. Sixth, the students would receive academic credit toward graduation, hopefully for both the case and class-work they undertake as part of their participation in a clinic.

Even inside the United States debate continues as to the appropriate definition of clinical legal education. Many schools, for example, include externships and/or simulation-based courses as components of their clinical program.⁵ Some schools include "Street Law" as a part of clinical education, under which students provide education on legal rights in local high schools.⁶

Law students in clinics also provide needed legal services to poor and underserved populations. Their involvement in such representation is often their first exposure to persons from a different social and economic class than their own. That exposure may, but need not, motivate them to pursue careers in public interest. In my view, however,

5. Elliott S. Milstein, *Clinical Legal Education in the United States: In-House Clinics, Externships and Simulations*, 51 J. LEGAL. EDUC. 375 (2001). My own more narrow definition of clinical legal education is not intended to deprecate those valuable components of legal education in any way, but simply to provide a working framework within which clinical education is cast as a unique opportunity to provide law students with direct experience in acting in a role within the attorney-client relationship, which will be the primary context in which most law graduates work throughout their professional lives.

6. Street Law, Inc., at www.streetlaw.org. (last visited Mar. 8, 2004). My own law school at American University offers a course in which our students teach local high school students their rights as students, called the Marshall-Brennan Fellowship Program, at <http://www.wcl.american.edu/westudents/mbindex.cfm>, (last visited Mar. 8, 2004).

the legal services provided to clients are a collateral benefit to the community, arising from the training of students to recognize the range of choices they have in serving clients, the ethical issues that will arise in that context, the character of the legal institutions and personnel with whom they will interact during that representation, and some of the values they explicitly or implicitly bring to their own vision of law practice. In short, the goal is not the efficient provision of legal services to clients but rather reflective experiential training for law practice. This goal comports not only with predominant theories of adult learning, but also with the creation of a reflective and public-minded legal profession in the future.

I also recognize full well that my own definition of clinical legal education arises from a context in which law school clinics are able, in large measure, to work as an adjunct to, and not a replacement for, government-funded programs of legal services for the poor in civil and criminal cases. In developing and transitional countries throughout the world, the tension between service and education is much more acute, and law school clinics often operate as the exclusive source of legal services for poor and marginal communities. Often the government fails to meet its responsibility to provide funding for legal aid services, and the bar is either too weak or too self-absorbed for its members to contribute to access to justice. In my view, the service—education tension is the single greatest factor contributing to whatever shortcomings exist in clinical legal education in developing and transitional parts of the world.

II. Five International Funding Sources for Law School Clinics

Law schools abroad seldom have the knowledge, experience or resources to start a program in clinical legal education. Governments in those countries are rarely willing, at least initially, to commit funds for the development of clinical education when facing seemingly infinite demands on their meager budgets. While some law schools have drawn from indigenous sources to create effective clinical programs, most of the new clinical programs started overseas are begun with funding from a foreign donor. I am aware of five significant donors with priority funding for clinical education.

A. *The Soros Foundations*

George Soros, the Hungarian-born philanthropist, funds a broad array of public interest and democracy-building initiatives. His programs began in Eastern Europe under both national and regional Open Society initiatives and had their physical and intellectual headquarters in

Budapest, Hungary, where Soros founded and financed the highly prestigious Central European University.⁷ More recently, clinical legal education initiatives have been organized within the “capacity building” component of the Open Society Justice Initiative, with headquarters in New York City and Budapest, and with an expanded geographic mandate in Latin America, Africa, and Asia.⁸ A related initiative is the Public Interest Law Initiative, or PILI, which has affiliations with Columbia University’s law school and its principal office in Budapest. PILI also has done much to support the expansion of clinical legal education in the European region.⁹

Starting in about 1996, the combined forces of the Soros-funded initiatives resulted in the establishment of more than 75 new law school clinical programs that focused primarily on the ten countries that would eventually gain accession to the European Union in 2004; this also included programs sprinkled through Central Asia as well.¹⁰

B. *The Ford Foundation*

The Ford Foundation has long included clinical legal education on a global basis among its core initiatives.¹¹ The foundation funded major initiatives in clinical legal education in South Africa, where it reports that more than twenty clinical programs have begun operation since the 1980s.¹² It has also funded a major effort to establish public interest law clinics in the Southern Cone countries of Latin America: Chile, Argentina, and Peru.¹³ Ford has been the major funding source for clinical legal education in China, as well as in other parts of South Asia, such as India, Sri Lanka and Bangladesh.

7. Soros program at www.soros.org. (last visited Mar. 8, 2004).

8. See Justice Initiative work on clinical legal education at <http://www.justiceinitiative.org/activities/lcd/cle> (last visited Mar. 8, 2004).

9. PILI at <http://www.pili.org/aboutpili/CLE.html>, (last visited Mar. 8, 2004). PILI also published the book *PURSUING THE PUBLIC INTEREST*, *supra* note 2.

10. It might be noted that eight of the ten new EU accession countries have operational clinics, while the existing fifteen member countries, as noted in the text, have virtually no clinical legal education to speak of, except for the UK. Stephen Golub, *Forging the Future: Engaging Law Students and Young Lawyers in Public Service, Human Rights, and Poverty Alleviation* (Open Society Justice Initiative Issues Paper, Jan. 2004), at <http://www.justiceinitiative.org/publications/papers/golub> (last visited June 24, 2004).

11. Aubrey McCutcheon, *University Legal Aid Clinics: A Growing International Presence with Manifold Benefits*, in *MANY ROADS TO JUSTICE: THE LAW RELATED WORK OF FORD FOUNDATION GRANTEES AROUND THE WORLD* 267 (Mary McClymont & Stephen Golub eds., 2000).

12. *Id.* at 269.

13. I briefly describe the work of the Public Interest Clinics program funded by Ford in *Three Law School Clinics in Chile*. Wilson, *Clinics in Chile*, *supra* note 3, at 555-556.

C. *American Bar Association, Central European and Eurasian Law Initiative (ABA/CEELI)*

CEELI, which is funded through the US Agency for International Development, is the largest pro bono project ever taken on by the ABA. In addition to its reach in Central and Eastern Europe, it now has affiliated programs growing in Asia, Africa, and Latin America. It has helped to establish or develop clinical legal education programs throughout the various regions in which it works. One notable example of its successes is in Russia, where CEELI reports that more than 100 law school clinics operate, and where at least four clinical textbooks have been written in Russian.¹⁴

D. *The World Bank, International Development Bank and Other International Financial Institutions*

The global and regional IFIs have funded a number of clinical legal education initiatives, usually under more comprehensive “access to law and justice” or “law reform” initiatives. In fact, it is hard to assess the extent to which these very large grants to national governments for structural improvements get translated into operation at the law school level. Little is written about this at the programmatic level, at least where one is able to count and assess clinical legal education programs funded through these sources.

E. *The UN High Commissioner for Refugees (UNHCR) and Legal Assistance through Refugee Clinics (LARC)*

Under the early leadership of Stephan Anagnost, an energetic employee based in Vienna, UNHCR undertook the funding of a number of new refugee law clinics in the Central and Eastern European regions, often affiliated with Soros-funded projects in the same region.¹⁵ His work led to the more permanent establishment of a regional entity, LARC. The LARC program continues to sponsor, under the auspices of Hungarian Helsinki Watch, an annual English-language refugee law clinic moot court competition. LARC now funds or supports training for some twenty refugee clinics in the region.¹⁶

14. See Katarina Shugrina, *Legal Clinical Education in Russia: Helping Young Lawyers Gain the Practical Skills They Need*, 12 CEELI UPDATE 3 (2002).

15. U.N. HIGH COMMISSIONER FOR REFUGEES, 10 STEPS TOWARDS A REFUGEE LAW CLINIC: A FIELD GUIDE (2000); Stephan Anagnost, *The Challenge of Providing High Quality, Low Cost Legal Aid for Asylum Seekers and Refugees*, 12 INT'L J. REFUGEE L. 577 (2001).

16. Legal Assistance through Refugee Clinics (LARC) at <http://larc.info/clinics.d2>. (I participated as a judge in the 2003 competition, held in Brno, Czech Republic in

In addition to these five funding sources, there are a few other resources for international work in clinical legal education that are worth mentioning here. One is the Global Alliance for Justice Education (GAJE),¹⁷ which, as its name implies, focuses on a broader agenda of justice education for legal educators and activists. The GAJE draws a number of clinical legal educators to its bi-annual meetings. Another group that includes a large representation of clinical programs from abroad is the one begun through the work of Louise Trubek and Jeremy Cooper, at the annual meetings of the Law and Society Association.¹⁸ Finally, Roy Stuckey, a professor at the University of South Carolina Law School, maintains an online data-base of clinical teachers who have worked overseas and what the nature of their work has been,¹⁹ and the Clinical Section of the AALS has often hosted foreign clinicians at its annual meetings.

III. Best Practices in Clinical Education: Developed and Developing World

In the developed world, there is little doubt that the most sophisticated and extensive clinical legal education programs, and the most highly developed literature on skills and theories of practice, are in the United States and Canada. Australia has a growing number of clinical programs, but that country is the exception in South Asia, and clinical legal education is virtually unknown in Japan.

If one were to assess the clinical programs in the rest of the world, either in development or transition, one would have to count the clinics from the Jagiellonian University in Krakow, Poland and those from the ELTE University in Budapest as among the best in the European and Commonwealth of Independent States regions. In Latin America, the clinic at the University of Buenos Aires, conducted with CELS, an aggressive legal NGO there, is certainly a good regional example, as are

March. The quality of argument, particularly in a second language for virtually all participants, was truly stunning. The moot court problem dealt with a gay male refugee from Iran seeking asylum in a fictional European country. The students addressed the difficult issues of discrimination based on sexual orientation with dignity, force, and a high level of intellectual engagement. It was a pleasure to participate.) (last visited Mar. 8, 2004).

17. Global Alliance for Justice Education (GAJE) at <http://www.gaje.org/> (last visited Mar. 8, 2004).

18. EDUCATING FOR JUSTICE: SOCIAL VALUES AND LEGAL EDUCATION (Jeremy Cooper & Louise G. Trubek eds. 1997); EDUCATING FOR JUSTICE AROUND THE WORLD: LEGAL EDUCATION, LEGAL PRACTICE AND THE COMMUNITY (Louise G. Trubek & Jeremy Cooper eds., 1999).

19. See Prof. Roy Stuckey's personal web site at <http://www.law.sc.edu/clinic/compile.htm> (last visited Mar. 8, 2004).

the clinical programs at the Diego Portales and University of Chile Law Schools in Santiago. On the African continent, there is little doubt that clinics at the law school of South Africa's University of Natal, led by its dynamic clinical pioneer, Professor David McQuoid Mason, are among the intellectual and spiritual leaders of the clinical movement there. In India and the Philippines, there are a number of long-established law school clinics that might serve as models for their neighbors.

What makes these clinics examples of best practices in the field? Perhaps they come closest to meeting the six criteria set out at the beginning of this article as definitions of what constitutes an effective program of clinical legal education. In addition, there are other less obvious factors that nonetheless figure in the strength of these programs. First, the clinics have gained wide acceptance by students, faculty and administration as an essential institutional and curricular component of legal education. Second, the faculty who are involved in the direction of these clinics are often intellectual leaders within traditional law school faculties and thus carry the weight and prestige necessary to establish the legitimacy of clinics. Moreover, in most institutions, the clinical faculty come either from the tenured or otherwise senior members of the faculty, so that no arbitrary distinctions are made between the teaching of the theory and practice of law, or between the teaching of law as "a science" or "a trade," which all too typically create false dichotomies in some law schools. Third, the clinics at these schools work for students because they use the highly effective adult learning tools of experiential learning (indeed, their entire focus is on student learning rather than faculty teaching, which sometimes contributes to resistance from more traditional faculty). The clinics also prepare students for their first steps into law practice, and save firms hundreds of hours in lost training time for novice associates. Finally, in these clinical programs, students have multiple topical or doctrinal options in which to hone their clinical skills, ethics, and values. While the most typical clinics are general criminal or civil law practice, there are a growing number of options such as community or NGO development, immigration, domestic violence, and other more cutting edge areas such as international human rights law.

IV. Issues in the Advancement of the Global Movement for Clinical Legal Education

Perhaps the greatest overall concern in the development of clinical legal education outside the United States is the one that arose at the time of the last great effort to export American legal pedagogy during the 1960s and '70s, in what came to be called the Law and Development Movement. Is the export of clinical legal education to developing or

transitional countries another form of what was then called “legal imperialism”?²⁰

I would emphatically reject that characterization of this work in virtually all respects. The vast array of international funding programs, many of which are not uniquely American in their conception or operation, makes obvious the argument that the globalization of clinical legal education is not a uniquely American business. Also, I believe that clinical legal education sells itself on its merits, not as a distinctly American version of legal education that is forced on unwilling recipients. While the allure of international funding may motivate law schools to seek the development of new clinical programs, it is usually the leadership of the law schools and the students who seek out these reforms, having heard or seen for themselves the benefits of clinical legal education as an effective methodology for the preparation of new practicing attorneys. Moreover, it is clear that there is no single model of clinical legal education that is forced on interested law schools. In fact, clinical models have shown resiliency and adaptability that makes them ideal candidates for adoption. Recipients of funding for clinics often accept or reject particular aspects of clinical legal education, as local political, financial and other institutional factors are weighed and balanced. Finally, the virulent academic critique that emerged during the Law and Development movement is nowhere to be seen, despite the ample time for it to have been developed within the academic community carrying out the implementation of these programs.²¹ In fact, I believe that those of us who have participated extensively in these developments generally find them to be exciting and energizing for both the teachers and students who participate.²² The “breath of fresh air” brought about by clinical legal education to the otherwise arid and formal law school classroom is almost palpable.

20. See, e.g., JAMES A. GARDNER, *LEGAL IMPERIALISM: AMERICAN LAWYERS AND FOREIGN AID IN LATIN AMERICA* (1980).

21. There is an ongoing critique of rule-of-law exportation by the United States, grounded in “legal imperialism,” or, more recently, “legal transplant” schools of thought, but contemporary critique goes deeper, to the meaning of rule of law itself. See, e.g., David Kariys, *Searching for the Rule of Law*, 36 SUFFOLK U. L. REV. 307 (2002); Thomas Caruthers, *Promoting the Rule of Law Abroad: The Problem of Knowledge* (Carnegie Endowment Working Paper No. 34, 2003) at <http://www.ceip.org/files/Publications/wp34.asp?p=1&from=pubauthor> (last visited June 24, 2004). For the “legal transplant” critique, see, e.g. Jonathan M. Miller, *A Typology of Legal Transplants: Using Sociology, Legal History and Argentine Examples to Explain the Transplant Process*, 51 AM. J. COMP. L. 839 (2003); Maximo Langer, *From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure*, 45 HARV. INT’L L.J. 1 (2004).

22. See Rodney J. Uphoff, *Why In-House Live Client Clinics Won’t Work in Romania: Confessions of a Clinical Educator*, 6 CLINICAL L. REV. 315 (1999).

This is not to say that there are not serious problems in the development of law school clinics abroad. Ironically, perhaps, the greatest resistance to the development of such programs comes from faculty members whose sense of tradition and place is threatened, or from the organized bar, which sees clinics as a potential threat to their control over the practice of law and the earning of fees. The bar often resists changes in rules that permit even limited student practice. A related issue arises from the confusion of missions for clinical legal education. In developing clinics in some law schools, the service mission is given a primary place in the design of the clinic, usually because, as noted at the outset of this presentation, governments and the bars have not assumed their legitimate responsibilities for the adequate funding and institution of legal services for the poor. Law school clinics are promoted as a repository for legal services to the poor, often the only such program in a region or even a country.

A conception of the primary mission of clinical legal education as that of service to the poor rather than training of students risks failure in both. Students participating in those clinics often provide less than adequate legal services because they are attending too many cases for their effective supervision, and the clients are often poorly served by these novice practitioners who lack the judgment to make legal decisions without effective guidance. A primary emphasis on training rather than service does not in any way diminish the importance of clinical legal education as a vital source of services to underserved populations. Indeed, the clinical experience is often crucial in creating a sense of mission and commitment to public service for participating students. Clinics, because of their location within the vibrant intellectual community of the law school, are often able to detect and act upon issues affecting the poor and other marginal populations in ways that contribute to the true legal empowerment of those groups.

There are, however, many more positive aspects to the movement to globalize clinical legal education. There is strong evidence that recent developments in adult learning theory support the experiential approach of clinical pedagogy.²³ Some believed that clinical legal education was so labor- and cost-intensive that it could not be effectively implemented outside the developed West and North. However, all the evidence indicates that the costs of implementing an effective and diverse clinic are not beyond the means of any law school, particularly if international funding is provided for the start-up costs associated with creating a law office within, or associated with, a law school.

Some have also argued that clinics are an unnecessary adjunct to

23. See e.g., Wilson, *Clinics in Chile*, *supra* note 3, at 569-573.

existing programs of post-graduate apprenticeship that are often required to gain admission to the bar, particularly in Civil Law jurisdictions. This may have been true when apprenticeships were true opportunities to work closely with practicing lawyers and slowly build one's skills in the craft of the profession. However, the proliferation of private law schools and the lack of systematic supervision over the administration of apprenticeship programs have made the law school clinic an attractive and effective alternative to them.

Those who have worked with clinical legal education over time have discovered that it is more than training in litigation skills, that it is more than a method, and that it is more closely related than much of the rest of legal education to the bar's professed interest in access to justice and stabilization of the rule of law. It is more than training in litigation skills because clinical programs have tackled a wide range of non-litigation skills areas, such as legal literacy, legal advice and counseling, alternative dispute resolution, and legislative or administrative law advocacy. The existence of some new clinics whose work is devoted to the legal creation and counseling of the work of non-governmental organizations is some testimony to the imaginative and flexible approaches in which clinical pedagogy operates. It is more than a method because its adherents have now developed a rich scholarly body of work in theories of law practice. In addition to inter-disciplinary writing on skills and ethics, that literature addresses such issues as training in judgment and the range of ethical options available to lawyers, as well as the operation of governmental institutions and their treatment of the poor. That literature contributes to an alternative vision of law practice, values and legal culture, and ultimately to the transformation of legal culture.

Finally, clinical legal education is closely related to the broader goals of teaching justice. It engages students in a meaningful relationship with their clients, legal institutions, and the community around them. It also raises consciousness, both within the law school and in the local legal culture, as to the appropriate role of the bar in defending the right of equal access to justice. In some countries, advances in clinical legal education have led to related reforms in the creation of new legal institutions such as legal aid programs or alternative dispute resolution centers. For most clients served by clinics, experience with the enthusiastic and loyal representation provided by law students gives the clients an experience of the justice system that makes them greater believers in the all-too-often aspirational axiom of equal justice for all.

