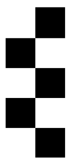
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How to Set up and Run a Law Clinic: Principles and Practice

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Chapter One

Introducing Law Clinics

Introduction

As indicated in the Preface, the purpose of this book is to give detailed guidance on the nature, scope and operation of law clinics run by or affiliated with universities for those thinking of setting up such a clinic or modifying an existing one. However, before we do so, it makes sense to clarify what exactly we mean by a law school clinic and how they far they have come in playing a significant role in both the access to justice and legal education landscapes throughout the world. This, in turn, will also provide context for the following chapters where we explore, in detail, the various reasons for establishing law clinics and the end results they can achieve. As we will endeavour to show, the choice of clinic objectives or goals has a determinative effect on many options and outcomes in terms of design and the daily workings of clinics. First, however, it is useful to have a clear idea of what we mean by a law clinic.

1. Understanding Law Clinics

It is usually acknowledged that the term 'clinic' derives from Latin *clinicus* which in turn comes from the Ancient Greek word *klinikos,* meaning from the bed or couch (*kline)* where a doctor may treat patients.[1] This has been adapted in the legal context to mean a place where legal services are provided to clients. In fact, before the term law clinic became widespread early versions called themselves legal dispensaries, again borrowing terminology and imagery, as well as inspiration, from the medical world, where clinics are places within hospitals and elsewhere in the community, either as permanent sites or on an itinerant basis, where patients are seen and treated by medical practitioners.

In general, it can be said that a law clinic is a vehicle through which individuals, businesses, other organisations, or even the community at large can gain access to, or otherwise receive the benefit of, legal services outside of the traditional legal service sector (such as that provided by law firms and state legal service providers). In some jurisdictions (such as the UK[2]), it is common to use the term law clinic to refer to any such vehicle where legal services are provided (usually for free); hence, the term includes lawyers setting up clinics on their own or in collaboration with other advice agencies to provide free advice and assistance in their spare time – what is commonly called pro bono publico,[3] or simply pro bono, services. As such, 'clinic' can either mean some formal or even informal entity which has been established to provide legal services, or it can refer to the provision of an opportunity for the public to access legal services, such as when service providers are available in a particular locality (or these days increasingly online) to provide those services.

In other words, a clinic in the first, abstract or institutional, sense can hold clinics in the second, physical sense. In most cases, the context will make clear which meaning is being used, though mostly when we speak of clinics, we are talking of organisations set up to provide legal services to the community. What these services consist of will be discussed in much more detail in Chapter Four, but for now we can note that they are not confined to the paradigmatic 'in-

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[1] E.g. Jeff Giddings, *Promoting Justice through Clinical Legal Education* (Justice Press 2013) 13; Richard Wilson, *Global Evolution of Clinical Legal Education: More than a Method* (Cambridge, 2018) 90-93; ch 4.

[2] See LawWorks <https://www.lawworks.org.uk/> which coordinates clinics run by both law firms and universities.

[3] 'For the good of the public' in Latin. For a discussion of the history see Andrew Boon, *The Ethics and Conduct of Lawyers in England and Wales* (3rd edn, Hart Publishing 2014) ch 15.

house' (i.e. law school run), 'live-client' (i.e. representing a real person or group) clinic where law students, either on campus or in external locations, advise and possibly represent clients, under the supervision of the clinic's own staff and/or external lawyers. The actual work done may extend beyond advice-giving and representing clients in legal disputes to providing a range of 'transactional' legal services such as writing wills or contracts, engaging in strategic litigation, pursuing law reform issues, helping to empower and improve communities (what we call community building) or educating the public as to their legal rights and responsibilities (what we call public legal education (PLE), but sometimes referred to as community legal education, legal literacy or 'Street Law').

What makes a law clinic a law school clinic is the fact that it is run by the university usually via its law school or faculty, though sometimes – at least initially[4] - by law students themselves. As we will see in following chapters, this may be on campus, in outreach settings in the community or virtually (online). Where they simply volunteer at a clinic run by an independent organisation such as non-governmental organisations (NGOs), without any law school affiliation we do not see this as law school clinic. In some cases, law schools may have arrangements with other organisations which run law clinics or provide legal services more generally in terms of which the law school places students to work with that organisation in what are often termed externships, but which we call placements. As we shall see, law school clinics may augment their own services with such arrangements and may use student experience on such placements as a form of learning which fits our definition of clinical legal education below. However, we do not see law schools which merely place students with other organisations as running a law clinic per se. So, whereas one can define a law clinic as any means of delivering a service, that may or may not involve a law school, its staff and its students, in this book when we refer to a law clinic, we mean one that is part of, or has a formal link to, a law school (whether operating as part of a university or an independent law school), or one that is run by law students.

Given this, it is not surprising that student education constitutes an important – and for many, *the* most important – function of the clinic. Providing the opportunity for students to learn from their experience through delivering legal services may be a deliberate and overriding goal, and for this reason the clinical experience may form part of the formal curriculum, albeit usually only as an optional course. But even if learning from clinical experience is not a formal goal or part of the curriculum, all students who are involved in providing clinical services are, as we explore in the next chapter, highly likely to benefit educationally through seeing how law works in practice, developing new skills, being exposed to ethical problems and/or learning about problems of access to law and social justice more widely. In other words, all law clinics are potentially educational in that students cannot help learning from their experience, even though such learning might not be structured or formalised as part of the curriculum. In other words, clinics will inevitably involve what is called experiential learning.

It is usual, however, to be more specific about what has come to be known as 'clinical legal education' (almost universally shortened to CLE[5]) and to require something more than simply the clinical experience and informal learning from that experience.[6] What this additional element entails is less clear. Some simply describe it as guided practice.'[7] For many, this

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[4] See Peggy Maisel, 'The Roles of U.S. Law Faculty in Developing Countries: Striving for Effective Cross-Cultural Collaboration' (2008) 14 *Clinical Law Review* 465 on how student law clinics are often later subsumed into the law school, and Chapter 7, section 1.2 on the institutional status of law clinics more generally.

[5] But not in the US, where CLE denotes continuing legal education – what many other countries call CPD (continuing professional development).

[6] Kevin Kerrigan, 'What is Clinical Legal Education and Pro Bono?' in Kevin Kerrigan and Victoria Murray (eds), *A Student's Guide to Clinical Legal Education and Pro Bono*" (Red Globe Press 2011) 7 ('clinical *experience* is not the same as clinical *education*').

[7] Wilson (n 1) 1.

involves a process of reflection whereby students deconstruct their experience and analyse what has happened, what they have learnt from it and why.[8] Others stress that learning is linked to the curriculum more broadly or that students should be given academic credit for their work,[9] address real-world legal matters in interaction with others through supervised practical experience[10] and/or work in small groups with a supervisor and other students and take responsibility for their work while getting feedback.[11] Somewhat more narrow definitions of CLE stress that 'students gain practical skills and deliver legal services in a social justice environment'[12] or more controversially,[13] that the learning must go beyond learning skills and extend to 'instilling professional values of public responsibility and social justice.'[14]

There is a similar lack of consensus on what type of experience qualifies as clinical. Some authors[15] are prepared to include any simulated activity in which students play the role of lawyer or other legal service provider, such as when students act out specific scenarios and exercises in client interviewing, negotiation, mediation, mock trials and mooting, or even take cases from start to finish. Others, however, distinguish CLE from experiential learning more specifically, requiring students to be involved in acting 'for real clients in the handling of their real legal problem'[16] or more broadly in 'real matters'[17] or 'real-life situations,'[18] which could include law reform, community building or PLE.

We do not feel that there is a pressing need to provide a definitive meaning to CLE – not least because our views as authors differ to some extent, though we do all agree that to constitute CLE there must be some conscious effort to use clinical experiences as a way of educating students, whether this be through reflection and/or formal teaching and whether this involves teaching substantive legal rules, lawyering skills, the realities of legal practice and/or values, attributes and professional responsibility. But it is important to note that such an approach to legal education is often referred to as 'clinic'[19] – with the absence of a definite or indefinite article meant to distinguish the notion of 'clinic' as an educational approach from 'a' or 'the' clinic as a place or an occasion through which the public can access legal services or an institution responsible for the provision of legal services. Given that this usage of 'clinic' is more or less synonymous with CLE, we will avoid using it as a description of the CLE teaching

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[8] See eg Giddings (n 1) ch 1; Kerrigan (n 6) 7; Evans et al., *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Programme in an Australian Law School* (Australia National University Press, 2017) 41; Lisa Radke Bliss, 'Reflections on Reimaging Clinical Legal Education: the US Perspective' in Linden Thomas et al. (eds), *Reimagining Clinical Legal Education* (Hart Publishing 2018) 237; Lydia Bleasdale et al., 'Law Clinics, What, Why and How' in Linden Thomas and Nick Johnson (eds), *The Clinical Legal Education Handbook* (University of London Press, 2020) <https://humanities-digital-library.org/index.php/hdl/catalog/book/clinical-legal-education> accessed 4 April 2023 8-9.

[9] See Wilson (n 1) 10; Andrew Boone, Michael Jeeves and Julie MacFarlane, 'Clinical Anatomy: Towards a Working Definition of Clinical Legal Education' (1987) 21(1) *The Law Teacher* 61.

[10] Wilson (n 1) 10; see also Evans et al. (n 8) 41 who combine the focus on supervision with that on reflection to describe clinical legal pedagogy as a system of reflection, self-critique and supervisory feedback.

[11] Giddings (n 1) 14.

[12] David McQuoid-Mason and Robin Palmer, *African Law Clinicians' Manual* (Institute for Professional Legal Training 2013) <https://ir.canterbury.ac.nz/handle/10092/15366 > accessed 4 April 2023, 1.

[13] cf contra Kerrigan (n 6) 16; Wilson (n 1) 10-11; and see further the discussion in Chapter Two, section 3.

[14] Frank S. Bloch and N. R. Madhava Menon, 'The Global Clinical Movement' in Frank S. Bloch (ed.), *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford University Press 2011) 268-9. See also Frank Bloch, 'Introduction' in Bloch, ibid. xxii.

[15] See eg Kerrigan (n 6) 2, 6 and 9; Bleasdale et al. (n 8); Hugh Brayne, Nigel Duncan and Richard Grimes (eds), *Clinical Legal Education: Active Learning in Your Law School* (Blackstone Press Ltd 1998) xiii.

[16] Susan Campbell, 'Blueprint for a Clinical Programme' (1991) 9 *Journal of Professional Legal Education* 121, 122.

[17] Bliss (n 8) 237.

[18] McQuoid-Mason and Palmer (n 12) 1.

[19] See eg Kerrigan (n 6) 8.

methodology and confine the word to its more grammatical usage. Moreover, as this book is about how to set up and develop a law school clinic rather than about legal education in general, we will focus on those forms of experiential learning which derive from or support the running of clinics and the provision of legal services.

But before we do, it is useful to look briefly at the historical context – which for law clinics is both long and complex. As in many aspects of life, if you are to fully comprehend something, in this instance, the nature, purpose and possible future of law clinics, a look back at the past may aid in understanding contemporary practice and may inform future developments. More specifically, a historical overview may provide a framework for understanding clinical goals as well as showing how we came to use the word 'clinic' in the first place.

2. A Short History of Law Clinics: Three Waves and Counting[20]

In broad terms, the history of law clinics can be said to involve three phases or, as has been described elsewhere, waves:[21] The first involved a gradual, if not glacial, development from the very end of the 19th Century; the second, a sudden explosion of activity from the late 1960s/early 1970s, followed by a very steady expansion of clinics within most of the early adopter countries and their rapid export to many other parts of the globe; and the third, from the mid 1990s until today, another noticeable expansion to even more areas of the globe.

The first wave began in the late 19th century. While much clinical expansion and scholarship has been driven by the US, the first clinics appear to have been launched in Denmark and possibly other European countries,[22] also appearing a little later in some Latin American and Asian countries.[23] During these early years, clinics (or dispensaries as many were called) were set up and run by student volunteers advising indigent members of the community often without any law school involvement. Only gradually did they come to be used to redress the lack of law school skills training or the absence of an apprenticeship system for lawyers in the US and many other countries. Accordingly, US law schools increasingly came to heed the call for the use of clinics as a teaching tool, made most famously by the influential judge and jurist Jerome Frank in 1933 in his canonical article entitled 'Why Not a Clinical Lawyer-School.'[24] Even though US law schools began to appreciate the value of law clinics and a few even mandated clinical involvement,[25] many still did not give academic credit to participating students.[26]

Even at this embryonic stage of the clinical movement, there was already emerging an identifiable difference, if not potential tension, that remains relevant today between the idea of the clinic as provider of legal services versus educator of students, or, put another way, between helping to address unmet legal need and wider pubic interests, on the one hand, and supporting students, be that in their immediate education, their personal and professional development, and/or their career aspirations, on the other.

This foundational tension, which is explored in detail in the next chapter and is a theme

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[20] The following draws extensively on the comprehensive description by Wilson (n 1), the chapters in Part 1 of Bloch (n 14) and Giddings (n 1) 5ff, 31ff.

[21] This categorisation is taken from Margaret Martin Barry, Jon C Dubin and Peter A Joy, 'Clinical Education for This Millennium: The Third Wave' (2000) 7 *Clinical Law Review* 1 (who at 4 acknowledge that it is more 'a device for thinking about future rather than … a definitive statement for categorising the past').

[22] See Wilson (n 1) 86-87.

[23] See Wilson (n 1) 166, 271 and 283 regarding Guatemala, Philippines and Thailand, respectively.

[24] (1933) 81*University of Pennsylvania Law Review* 907.

[25] Tilford E. Dudley, 'The Harvard Legal Aid Bureau' (1931) 17 *American Bar Association Journal* 692-694.

[26] Giddings et al. 'The First Wave of Clinical Legal Education: The United States, Britain, Canada and Australia' in Bloch (n 14) 5.

running throughout book, came more into the open in the second wave of clinical development beginning in the late 1960s and early 1970s, and lasting until the mid-1990s. If the first wave moved at glacial pace, the second wave resembles more of a tsunami. In addition to isolated clinics in Chile, India, Indonesia, Malaysia, Taiwan, Philippines, Norway and the Netherlands,[27] the major impact was seen in Australia, Canada, the UK (or more accurately England), the US[28] and Southern Africa.[29] Of these, the US was the earliest, fastest growing, and most influential clinical jurisdiction, with South Africa coming a close second on at least the first two of these three qualities. But while clinics now exist in almost all law schools in these countries and in many African countries, compared to the US, South Africa and to a large extent also Canada, the pace of development was more gradual in the rest of Africa, and in the UK and Australia, where it took until the mid-1980s for the clinical moment to accelerate.

Nor were there uniform motivations or factors encouraging (and sometimes discouraging) clinic development in these second wave countries. African universities tended to be motivated by students responding to the glaring needs for access to justice, exacerbated in South Africa by the desire to redress the injustices of apartheid; though later, or from the outset in conservative South African universities, the need for teaching professional skills and ethics played a bigger role. In fact, throughout the second wave there was a general swing of the pendulum from clinics as a way for students, usually without academic credit, to serve the community, to clinics as a means of providing educational tools as part of the formal curriculum. This has been seen in many second wave Western law clinics, but most obviously in the US where, in response to the highly political zeitgeist of the 1960s associated with Vietnam protests and the civil liberties liberty movement, students demanded greater relevance in their education and took it upon themselves to set up law clinics where these aspirations were not met.[30] Later however, clinics increasingly began to fill the gap in the teaching of legal skills caused by the absence of professional apprenticeships or discrete skills courses and as a way of teaching ethics more effectively after the central role played by lawyers in the Watergate scandal.

Moreover, as important as the political foment was in both the US and elsewhere, as reflected in the rise of feminism and environmentalism and events like the Paris Spring of 1968, a game changer in clinical development was the decision by the Ford Foundation to fund the establishment of law clinics first in the US and later, as we shall see, in many other jurisdictions. Although this injection of funding was a financial shot in the arm rather than a long-term solution to the relatively high cost of CLE, most law schools took over clinic finances once funding ended and, in turn, inspired others to follow their example. Today, almost every US law school has at least one clinic or usually a variety of clinics specialising in different areas of law or treating specific problems or client groups.[31] Reaching this 'saturation' point was also bolstered by the American Bar Association requiring all accredited law schools to have a clinical component, albeit not one that is compulsory, in-house, on campus, or which involves actual rather than simulated services.

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[27] See Juan P. Beca, 'The Civil Law Tradition – A Case Study from Chile' in Richard Grimes (ed), *Re-thinking Legal Education under the Civil and Common Law: A Roadmap or Constructive Change* (Routledge 2018) in relation to Chile; Bruce A. Lasky and M.R.K. Prasad, 'The Clinical Movement in South East Asia and India' in Bloch (n 14); Wilson (n 1) chs 9 and 10 regarding the Asian countries; and Wilson (n 1) ch 12 regarding the two European countries.

[28] See Giddings et al (n 26).

[29] Wilson (n 1); David McQuoid-Mason, George Mukundi Wachira, and Ernest Ojukwu, 'Clinical Legal Education in Africa: Legal Education and Community Service' in Bloch (n 14).

[30] See Giddings (n 1), 64-65, 165.

[31] Robert Kuehn, Margaret Reuter and David Santacroce, *2019-20 Survey of Applied Legal Education* (CSALE, 2020) 6 (reporting that of 185 law schools, all but six schools offered at least one law clinic and that the median number of law clinics is seven per school).

In fact, however, the ‘in-house’ clinic taken by students for academic credit in small, optional courses, often specialising in particular areas of law or serving particular population groups is probably the model which still dominates in the US and in many instances has been adopted by other countries, often with US clinicians’ guidance. In this way, the idea that clinics were as much, if not more, a means of teaching legal skills than serving the public took hold during the second wave.

Another change which occurred relatively early in the second wave was the experimentation with different forms of service provision, led again mostly by developments in the US. One alternative to in-house clinics, which has been particularly popular in Australia and Canada, is to house clinics in community legal or other neighbourhood centres (variously called agency or community clinics), where students attend under law school staff supervision.[32] Even more cost-effective was the early use in the second wave of ‘externships’ or placements where students are hosted by other services providers who oversee their activities.[33]

As regards actual services provided, second wave clinics, not just in the US but also in other countries such as India, soon departed from just helping individual clients to conducting what is often called impact litigation because of its wider community impact.[34] However, such litigation, if successful initially, could eventually be reversed and, in any event, this approach frequently failed to address enduring socio-economic injustice. This led clinics to explore other forms of assisting the community. One way was to seek wider and more long-lasting changes to the law and its application through law reform campaigns. Another was to seek to transform communities more directly by helping them campaign for social change or meet the legal needs of local business or other organisations working to bring much-needed economic activity in the form of jobs and services to deprived communities.[35] Yet another approach, which has since become almost as common as serving the legal needs of individual clients, involves various form of PLE designed to raise awareness in the community about legal rights and responsibilities so that the public recognise relevant entitlements, know where to go if help is required and perhaps solve problems or avoid them arising in the first place.[36] While such legal literacy projects have a long history in countries like India, the most well-known version is ‘Street Law,’ which originated in the US in the early 1970s as a student-inspired project involving volunteers going into local schools and teaching pupils about the law of everyday life on the street. With the support of Street Law Inc., a not-for profit organisation, Street Law has steadily spread to an estimated eighty countries.[37] One reason for its popularity is that it allows clinical services in countries where the law prohibits students and even staff from assisting clients or in some cases doing so for free. Another solution to that problem for clinics more interested in education than social justice is to set up simulation exercises, which have also played a role in many second wave countries.

Before moving to what can be seen as the third wave of clinical development, it is worth noting that the progress made during the second wave led to a critical mass of lawyers and academics becoming involved in clinics (usually called clinicians), who from the 1970s began to write about their work, share ideas at conferences, set up national or regional support networks, and, in the 1990s, began to establish bespoke clinical journals.[38] In 1997, the Global

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[32] See Chapter 5, section 1.
[33] See Chapter 3, section 4.
[34] See Chapter 4, section 3.
[35] See Chapter 4, section 2.3.
[36] See Chapter 4, section 6.
[37] See, e.g., Kamina A. Pinder, ‘Street Law: Twenty-Five Years and Counting’ (1998) 27 *The Journal of Law and Education* 211; Adam Miller, ‘Street Law Uses Legal Education to Empower Underprivileged Youth’ (2008) 13 *Public Interest Law Reporter* 38.
[38] Most notably, the Clinical Law Review, which features extensively in this book, but also the International

Alliance for Justice Education (GAJE) was established, which has since brought together an increasingly large global body of clinicians at bi-annual conferences which include sessions training new clinicians.[39]

These developments not only helped consolidate the rapid progress made in the second wave, but also provided support and inspiration for those involved in the third wave. Admittedly, there was no obvious rupture with the past like with the second wave's tsunami, but rather a series of smaller waves radiating out from this tsunami to all parts of globe. Nevertheless, there is certainly something very symbolic in the flourishing of law clinics in many of the countries of the former Soviet Bloc, largely supported by the US through direct funding and help in kind.[40] Perhaps because of the crucial role played by financial assistance from US donors, many clinics adopted the dominant US clinical model, though placements and simulation have played a more central role in some Balkan states. A similar flourishing of clinics occurred in Latin America.[41] But around the time that many authoritarian governments came to an end in Latin America, there was a rebirth of an earlier clinical movement which had largely been controlled or even repressed by political authorities (though Chilean clinics thrived despite the 1973 military coup possibly because they removed the need for the military rulers to provide legal service to the poor). [42] A particular feature of these new clinics was a focus on enhancing social justice, especially through impact litigation rather than student education, not least because of the dominance of formalism in law schools and the rigidity of law curricula, especially because of their civil, code-based, systems. This contrasts with Central and Eastern Europe which has been described as 'the fastest developing and growing region in the world in its adoption of clinics as part of law teaching.'[43]

Whereas political change seems to have had a role in the development of clinics in some regions, in Japan this development was linked to educational changes which led to sixty-four new law schools being established in 2004.[44] Almost all established CLE courses, though not all followed the standard live-client, in-house clinical model, but relied instead on placements and simulated activities. By contrast, South Korea's rapid expansion of law clinics to almost all law schools seems to have been sparked by the response of students to an environmental disaster, though aided in no small part by a relatively rare example of government funding for clinics.[45]

The impetus for the rapid expansion of the law clinic movement elsewhere in the far East, Central and South-East Asia is more difficult to discern and likely to be as varied as the many countries in this vast region, which in political terms have moved back and forward between authoritarian and more liberal regimes, with many seeing both civil and international conflict. In China, a few scatterings of seeds in the 1990s has led to the blooming of a thousand clinical flowers (to paraphrase Mao's famous call to arms),[46] again with money from the Ford Foundation. However, it is difficult to discern any political or educational impetus, as opposed

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Journal of Clinical Legal Education.

[39] See Edward Santow and George Mukundi Wachira, 'The Global Alliance for Justice Education' in Bloch (n 14).

[40] See Wilson (n 1) ch 7; Mariana Berbec-Rostas, Arkady Gutnikov and Barbara Namyslowska-Gabrysiak, 'Clinical Legal Education in Central and Eastern Europe: Selected Case Studies' in Bloch (n 14).

[41] Wilson (n 1) ch 6; Erika Castro-Buitrago et al., 'Clinical Legal Education in Latin America: Toward Public Interest' in Bloch (n 14).

[42] See Beca (n 27).

[43] Wilson (n 1) 9.

[44] Wilson (n 1) 245-7; Shigeo Miyagawa et al., 'Japan's New Clinical Programs: A Study of Light and Shadow' in Bloch (n 14).

[45] Wilson (n 1) 247-9.

[46] As quoted by Cai Yanmin and J.L. Pottenger Jr, 'The "Chinese Characteristics" of Clinical Legal Education' in Bloch (n 14) 93. See also Wilson (n 1) 251ff.

to merely a growing academic interest in CLE, apart from Hong Kong, where universities responded positively to calls for CLE by a national commission and outside consultant. The rapid growth of clinics across Central and South-East Asia,[47] where few had existed before, has been highly significant.[48] Here, many clinics adopted what some call a 'two-section' clinic,[49] with one section involving advice and (where legally allowed), representation, and the other providing PLE.

Completing the global picture (in both senses of the phrase) of clinic development, while clinics have reached as far as the very small islands of Oceania (spearheaded by one of the authors),[50] there are places which have noticeably lagged behind. One is the Middle East, which, even if North Africa is included, has been described as the most recent and least developed.[51] Here clinics only took off in the current century, most prominently in Egypt, Israel, Palestine and Turkiye, but also in Jordan, Iraq, Iran Kuwait, Lebanon, Qatar and Morocco - once again predominantly with the help of Western money (and in some cases influenced by the 2011 Arab Spring). Also influential was GAJE which might explain the less 'US-centric'[52] orientation in this region. Rather surprisingly, given (or perhaps because of) its stable political conditions and the long history of university legal education, the area which until recently represented the 'last holdout'[53] of clinical development was Western Europe which, despite having seen some of the earliest known law clinics, had (with the exception of the UK) few clinics even as late as the last decade. However, whether sparked or merely supported by the establishment of the European Network of Clinical Legal Education (ENCLE) in 2011, clinics are now well-established in France, Germany, Italy, Spain as well as Norway, where in fact an innovative mobile law clinic (the *Juss Buss*) has operated since 1972, and many more are evidently in the pipeline throughout Western Europe.[54]

3. Lessons from History

While we have seen an increasingly rapid expansion of clinics to most, if not all, parts of the globe, with many countries having clinics in the bulk of their law schools,[55] there is still much work to be done before this is universal. There is also a great deal that those thinking of setting up (as well as rethinking or expanding existing) clinics can learn from history.

One issue is that, while law clinics have often followed in the wake of political events (such as the fall of the Berlin Wall or the Arab Spring) or as a response to social injustice (such as in apartheid South Africa),[56] they are always susceptible to the negative impact of political and other external events, such as in some African and many Latin American countries.[57] More recently, the nascent Turkish law clinic movement suffered a setback when many of its leading

[47] See Wilson (n 1) chs 9 and 10.
[48] But see at nn 23 and 27.
[49] See Lasky and Prasad (n 27) 3, 41.
[50] See Richard Grimes, 'Culture, Custom and the Clinic – A Model for Legal Education in the South Pacific' (1998) 24 *Monash University Law Review* 38.
[51] Wilson (n 1) 287.
[52] Ibid. 290.
[53] Richard J Wilson, 'Western Europe: The Last Holdout in the Worldwide Acceptance of Clinical Legal Education' (2009) 10 *German Law Journal* 823. See further Wilson (n 1) ch 12.
[54] Wilson (n 1) 316.
[55] In addition to already cited examples of the US, Japan and South Korea, see e.g. James Sandbach and Richard Grimes, 'Law School Pro Bono and Clinic Report 2020' (LexisNexis 2020) regarding the UK; McQuoid-Mason, Wachira, and Ojukwu (n 29) 25.
[56] C.f. Giddings (n 1), 117 who argues that clinics tend to flourish at times of and progressive politics as well as prosperity.
[57] McQuoid-Mason, Wachira, and Ojukwu (n 29); Castro-Buitrago (n 41).

lights were suspended from their jobs for being seen to criticise the government.[58] But the susceptibility of clinics to political controversy is also seen in countries with more well-established democratic traditions. For example, an ambitious (indeed, possibly over-ambitious) attempt by Antioch Law School in the US to inculcate social justice values in law students by requiring them, not just to work in the law clinic, but also live with families in deprived communities in order to fully understand the nature of disadvantage, lead to widespread opposition, which along with financial challenges, resulted in its closure.[59] One of the first UK law clinics at the University of Kent was also closed (though later re-opened) when university authorities took exception to its representation of clients against a number of high-profile opponents (including the local council).[60]

An equally - if not more - important external factor affecting clinics is the availability of external funding (i.e. non-university or 'soft' funding) in kickstarting clinical development, as we have seen in regard to the US, China and former Soviet Bloc countries and which has also occurred in Africa.[61] Without in any way belittling the contribution of the Ford Foundation and other benefactors, one possible downside to the heavy reliance on money from donors and supportive countries is that it has tended to lead to the export of an approach to clinics which was forged elsewhere, resulting in a form of possibly unhelpful cultural domination.[62] Nevertheless, one of the aims of this book is to highlight and evaluate the merits and drawbacks of the vast range of ways of setting up and running law clinics by drawing on as many of the different models that have been developed globally as space and our language skills will allow.

Another aim is to provide guidance on how to deal with a failure to attract often much-needed external funding.[63] History shows that money from funding bodies and other donors rarely lasts long and that governments and the legal profession seldom[64] support clinics financially. Usually, university buy-in is required. It also shows that a variety of factors can be important in ensuring clinical sustainability as well as any initial launch: the support of a clinic 'champion' in university leadership, NGOs, the local legal profession or professional bodies; embedding clinical activity into the curriculum so that its relationship to the university and the negative impact of closure is more obvious; vocal support from a critical mass of students; and, locating the clinic physically within the law school.[65] We have also seen that external calls for clinical legal education from professional bodies and others can help persuade universities to act.

More generally, we have seen that the higher and, specifically, legal education landscape can be crucial. Changes to the university education system have been positive in leading to clinics flourishing in Japan, Australia and England, where a wave of new universities

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[58] Wilson (n 1) 298.

[59] See Daniel B. Moskowitz, 'Can a Law School Change Society?' (1978) 10 *Change: The Magazine of Higher Learning*14.

[60] See Gidddings et al (n 26) 6. For other examples, Giddings (n 1) 132-34; Robert R. Kuehn and Peter A. Joy, 'Lawyering in the Academy: The Intersection of Academic Freedom and Professional Responsibility' (2009) 59 *Journal of Legal Education* 97, 108; Peter A. Joy, 'Government Interference with Law School Clinics and Access to Justice: When is There a Legal Remedy?' (2011) 61 *Case Western Reserve Law Review* 1087; Robert R. Kuehn and Bridget M. McCormack, 'Lessons from Forty Years of Interference in Law School Clinics' (2011) 24 *Georgetown Journal of Legal Ethics* 59.

[61] See Wilson (n 1) 92, 186, 194, 325.

[62] See Richard J. Wilson, 'Beyond Legal Imperialism' in Bloch (n 14); Leah Wortham, 'Aiding Clinical Education Abroad: What Can Be Gained and the Learning Curve on How to Do So Effectively' (2006) 12 *Clinical Law Review* 615; Peggy Maisel, 'The Role of U.S. Law Faculty in Developing Countries: Striving for Effective Cross-Cultural Collaboration' (2008) 14 *Clinical Law Review* 465.

[63] See Chapter 7, section 5.3.

[64] But see Giddings (n 1), chs 6-9 passim for some Australian exceptions and see at n 72 regarding Canada.

[65] These lessons are particularly well-illustrated by Giddings case-study of four Australian law clinics (ibid).

were enthusiastic adopters of CLE.[66] Similarly, educational reports or initiatives like the Bologna Declaration,[67] which called, amongst other things, for changes to higher education that CLE is well-suited to address,[68] have prompted law schools to establish clinics.[69] Other developments such as the increasing emphasis by universities on research outputs,[70] have, however, been less helpful. In fact, for this and other reasons, clinicians in many jurisdictions have often struggled with establishing an equal status with their academic colleagues.[71]

We have also seen that the formal structure of legal education is pivotal in encouraging clinics to be established in jurisdictions lacking opportunities for students to gain professional skills and values at or after university via professional courses or apprenticeships. Conversely, where such opportunities have existed, clinics have either been slower to develop (as in Western Europe) or have been more focused on community service (as in Australia), or extra-curricular activities (as in the UK), rather than on formal CLE. Also, important here is a jurisdiction's approach to legal education and curricular reform. Where, as in civil law countries, legal formalism dominates and law is taught as if it largely involves the application of principles to cases through deductive reasoning, CLE has made far slower progress than in Anglo-American jurisdictions influenced by pragmatism and realism, seeing law as a far more creative process involving negotiation and persuasion in relation to amorphous facts and law.[72] Reinforcing these differences is the fact that in many civil law jurisdictions academics see themselves as scholars rather than teachers and rarely come to academia via practice, as was the case particularly in the second wave of clinical development in the Anglo-American world. Moreover, many jurisdictions have also been hampered by law curricula which are tightly controlled by state or professional bodies apparently unconcerned with social justice or even skills development.[73]

The role of the state has been crucial in other ways, though not particularly positively. Notable exceptions are South Korea, as we already seen,[74] and Canada, where the clinical movement benefited from government funding for the establishment of law clinics directly, or of community law centres at which law students could be placed.[75] More commonly, the state's willingness to protect professional monopolies by prohibiting the provision of legal services by students and staff or in some cases (as in Turkiye) by prohibiting pro bono legal services, has severely limited clinical activities.

Less directly, governments have affected clinical development via their stances on funding access to justice. While few clinicians would argue against such funding, it is undeniable that its absence, or only limited provision in most, if not all, parts of the world has been a major motivator for law clinic development and possibly also for clinics prioritising community service over student education. Conversely, where legal aid or other forms of ensuring access to justice for the indigent have been well-developed clinical growth has been

[66] Cf Giddings (n 1), 141-42 who notes that, with the exception of the US, clinics tend to develop in new rather than elite universities.
[67] An initiative to standardise education in an 'European Higher Education Area,' currently involving almost 50 state: see Wilson (n 1) ch 12, esp. at 309ff.
[68] But see Lasky and Prasad (n 27) regarding India.
[69] See above regarding Hong Kong. Similar responses occurred in Nigeria and Thailand: see Wilson (n 1) 219-220, 273 respectively.
[70] Giddings (n 1) 262, 271.
[71] See Chapter 7.
[72] As argued by Wilson (n 1) 304-7.
[73] E.g. Turkiye and those in the former Soviet countries: see Wilson (n 1) 307, 298 respectively.
[74] At n 45.
[75] Giddings et al (n 26) 7-8.

slower[76] and has even been reversed, as in the Netherlands when legal aid was introduced.[77] One interesting and, to many clinicians surprising, example of the role played by the state is the failure of early clinics in the Republic of Georgia to attract clients due to its citizens being accustomed to the state provision of essential services and hence unappreciative or even suspicious of non-state providers.[78]

While many of the external factors hindering clinic development are beyond the control of most clinicians, others are more susceptible to remedial steps. No doubt, Georgian clinics have by now proved the value of their services. In addition, clinics can carefully craft communications and robust procedures to assuage the fears of local lawyers or professional associations who might see law clinics as unwanted competition or a danger to professional standards and client-care.[79] For example, most US provision of legal services standards that apply to law school clinics require both that the clinics meet the standards required of members of the bar and that they provide services that would otherwise qualify for free or pro bono services.[80]

There is one final lesson from history which is perhaps the most positive for those wanting to set up a new clinic or modify an existing one. This is the fact that those in a similar position have increasingly been able to draw on the support and resources provided by both the clinic scholarship that started early in the second wave and the clinic networks with their associated conferences and training sessions and, in some cases, journals, which took off at the end of the second wave and which have been so important in the third wave. In addition to the global network of GAJE, there has been a proliferation of both national and regional networks such as the already mentioned ENCLE, as well as the Africa Human Rights Development Initiative, the Arab Network of Law Clinics, and the Latin American Legal Clinic Network.[81] These are increasingly being augmented by national, regional, and global networks for more specific clinic work like PLE[82] and miscarriages of justice.[83] Indeed, many of the insights in this book are drawn from our involvement in these networks, attendance at their conferences and more generally from the highly developed clinical literature which their leading lights and others have produced.

4. The Story to Come: An Outline of the Book.

While we can now confidently speak of an international clinical movement which has penetrated all (habitable!) parts of the globe, by no means have all universities or other legal educational providers set up law clinics. The rest of this book will hopefully take us further towards that objective.

We start in the next chapter by discussing the many possible goals that clinics may pursue and the benefits they may bring. We emphasise the foundational tension between two

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[76] As in the UK (see Paul McKeown and Elaine Hall, 'If We Could Instill Social Justice Values Through Clinical Legal Education, Should We?' (2018) 5 *Journal of International and Comparative Law* 143, 147) though here the requirement for postgraduate skills training also played a role.
[77] Wilson (n 1) 324. An exception is China, though it is doubtful that development there of state legal aid contributed to the simultaneous growth of law clinics: ibid. at 259-260.
[78] See Richard Grimes, 'Experential Learning, Legal Schools, and a Social Justice Mission: Whose Justice, What Justice' in Chris Ashford and Paul McKeown (eds), *Social Justice and Legal Education* (Cambridge Scholars Publishing 2021) 267-68.
[79] On the general role of the legal profession in helping or hindering clinics, see Giddings (n 1), 126-29.
[80] E.g. Rules Regulating the Florida Bar, 11-1.2(f), 11-1.3(g) (2023).
[81] See Wilson (n 1), 220-1, 291 and 178, respectively.
[82] Most notably Street Law Inc (see at n 37, above), but also Bridges Across Borders Southeast Asia (see Lasky and Prasad (n 27), passim; Wilson (n 1) ch 10, passim.
[83] E.g. the Innocence Network in the US: <https://innocenceproject.org/Build/> accessed 29 April 2023.

key objectives of student education and community service. While these two goals are by no means mutually exclusive, we argue that they will inevitably clash at some point and hence we will explore the implications of prioritisation and the value inherent in this perpetual tension, along with other objectives and benefits to clinics in terms of enhancing student recruitment, retention and employability, university reputation and professional diversity.

Chapter Three then moves on to look at the various foundational choices that need to be made in relation to a clinic's overall organisational structure and overall ethos. Here, we examine whether student participation is for academic credit or is extra-curricular, is optional or compulsory, involves actual or simulated activities and occurs in-house or in placements. We also look at whether clinics are run by staff or students (or both) and, finally, at whether they charge fees or provide pro bono services. In looking at these 'organisational variables,' we evaluate the benefits and drawbacks of each of the contrasting options, both on their own terms and how they might enhance or detract from the varying and possibly competing priorities clinics might seek to pursue, while also keeping in mind how one variable might interreact with others.

Chapter Four explores the core issue of what services clinics can deliver to the community. We use the terms 'retail' and 'wholesale' to distinguish two broad service categories. The former involves services provided to individuals or groups with specific legal problems or related needs, most obviously, advice and representation, but also services designed to facilitate client affairs through what are usually called transactional services. By contrast, wholesale services seek to assist or improve the lives of the wider public, through various means, using efficiencies of scale. This may involve impact litigation, law reform campaigns, community building projects and PLE. In addition to exploring the merits and drawbacks of various services, both on their own terms and in terms of the relationships to the goals clinics may pursue, we look at further options, including how these services may be limited, such as by providing discrete ('unbundled') services rather than full representation, specialising in certain areas of law, particular problems or specific client groups, and working with other disciplines or providers to deliver what are often called 'holistic' services.

Chapter Five addresses what we call service delivery models, focusing on the questions of where services are delivered (on campus or in premises located in the community), how they are delivered (face-to-face or online) when (at appointments or drop in sessions, during term-time or all through the year, permanently or as a temporary response to urgent need and emergencies, and by whom (students only or staff and/or professional volunteers as well).

Chapter Six looks at how clinics can go about providing clients with quality legal service and students with a quality legal education. More specifically, it looks at induction training, setting, and delivering educational outcomes, the supervision of students, case management procedures and where relevant assessment regimes.

Chapter Seven covers the issues that need to be addressed to ensure that clinics operate effectively, sustainably and in compliance with any necessary regulatory requirements. We look in detail at institutional status, external relations, human, financial and related resources, insurance implications, local regulations and professional practice rules, as well as various means to enhance clinics such as having an advisory board and a handbook.

Finally, Chapter Eight draws together the lessons for designing law clinics explored in this book by setting out, in the form of a checklist, the stages involved in setting up and running an effective and sustainable law clinic. It then ends by looking at how clinics might cope with the challenges which history shows could be just around the corner, including those which might flow from being a victim of their own success. Of course, for those setting out on their journey, such success will seem a long way off. What follows are our suggestions to ease and speed that passage.