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# TEACHING ABOUT JUSTICE BY TEACHING WITH JUSTICE: GLOBAL PERSPECTIVES ON CLINICAL LEGAL EDUCATION AND REBELLIOUS LAWYERING

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TEACHING ABOUT JUSTICE BY TEACHING WITH JUSTICE:  
GLOBAL PERSPECTIVES ON CLINICAL LEGAL EDUCATION  
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Catherine F. Klein, Richard Roe, Mizanur Rahman,  
Dipika Jain, Abhayraj Naik,  
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Sunday Kenechukwu Agwu, Olinda Moyd,  
Bianca Sukrow, and Christoph König

*There's no such thing as neutral education. Education  
either functions as an instrument to bring about conformity  
or freedom.*

— Paulo Freire, Pedagogy of the Oppressed

INTRODUCTION

Catherine F. Klein\* and Richard Roe\*\*

The inspiration for this Article was the 2021 Conference of the Global Alliance for Justice Education (GAJE),<sup>1</sup> a biannual gathering since 1999 of law educators and others interested in justice education from around the world. Due to the ongoing COVID-19 pandemic, the conference was conducted virtually. During the three-day conference, over 450 participants from 45 countries gathered to participate in the sharing of workshops and presentations, ranging from discussions of papers to five-minute “lightning talks.” In addition, there were virtual spaces for social meetings with new and old friends. The authors attended as many of the sessions as possible in

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1. See [www.gaje.org](http://www.gaje.org).

real time and reviewed many more recorded videos of the sessions they could not. The diversity, depth, and richness of these presentations and exchanges was extraordinary. While a great many of these sessions deserve to qualify for particular mention, we selected five presentations we felt were illustrative of many of the themes of GAJE 2021, consistent with the concepts of transformational justice and “rebellious lawyering”<sup>2</sup> and the qualities of legal education promoting them. We asked the presenters to prepare short papers summarizing their presentations.

The contributions to this Article illuminate many of the current themes and issues in our understanding of the teaching and the practice of transformational justice and rebellious lawyering as observed and lived by a number of law school faculty and their students around the world. For us, two professors of law programs that represent clients (in the case of Professor Klein’s Families and the Law clinic) or educate the public about the law (in the case of Professor Roe’s Street Law program), we not only want to achieve good results but also want to engage our constituents in the process of achieving justice as a form of civic engagement. Rebellious lawyering and law teaching not only provide a service to underserved communities, but also consciously engage our constituents in building the common good. As we discuss progressive clinical teaching, we recognize that many Clinical Legal Education programs have moved toward a more orthodox, less radical approach as we have become more mainstream (i.e., focusing on advocacy skills, resume building, and enabling students to have lucrative careers rather than ones focused on social change and poverty/community lawyering). These contributions pose questions, directly or indirectly, as to how and to what degree clinical teachers and students are willing to embrace systemic—even radical—change and the methodology to achieve it as part of their mission. To what extent are we content being an engaging and effective part of conventional legal education, or are we trying to achieve more?

In this introduction, we focus on two of the components of rebellious lawyering and transformative law teaching that stand out in these contributions:

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2. See GERALD P. LOPEZ, REBELLIOUS LAWYERING: ONE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE (1992); Mizanur Rahman, *Rebellious Lawyering, CLR, and Justice Education: A Bangladeshi Experience*, *infra*.

## I. REBELLIOUS LAWYERING AND JUSTICE EDUCATION THAT IS “ABOUT JUSTICE”

First, the subject matter of these contributions is not simply the law, but specifically how law, the legal system, and legal education, broadly conceived, do and do not provide justice throughout the whole of society. Carved into the front of the United States Supreme Court is a proclamation: “Equal Justice Under Law.”<sup>3</sup> While we may ask if justice can ever be “just” if it in some fundamental way is not equal, ultimately the question is how equality is expressed in and determined (or not) by the law, lawyering, and legal education at all levels. Each of the contributors to this Article describes how various dimensions of legal education and the practice of law in their communities and nations approach equality that is just in terms of the content or substance of the law—both what the law says and how it is implemented. Our co-authors make clear that rebellious lawyering is concerned not only with the black letter law and legal outcomes, but, perhaps more importantly, with the process of the law in all its dimensions. As educators and lawyers, we appreciate that “the process is the product.”

Mizanur Rahman states a theme, common to all the contributions, describing the Bangladesh experience in this way:

Since the mid-1980s, there has been a noticeable movement to transform legal education into justice education. While “legal education” in its traditional connotation refers to teaching and learning the black letter law, mainly for litigation purposes, justice education ventures much further to incorporate ideas of human dignity and empowerment of the poor and the marginalized, including their access to justice . . . .<sup>4</sup>

In India, the Clinical Legal Education movement seeks to become authentically Indian:

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3. *About the Court*, SUP. CT. OF THE U.S., <https://www.supremecourt.gov/about/constitutional.aspx>.

4. See Mizanur Rahman, *Rebellious Lawyering, CLR, and Justice Education: A Bangladeshi Experience*, *infra*.

Legal clinics should “indigenize” pedagogies and practices to create reflective and critical spaces for decolonising work indigenous in nature. In the Indian context, this indigenization should be drawn from Adivasi people’s perspectives and anti-caste politics. These legal clinics should be based on pedagogical approaches that question the state’s colonial framings of law, as well as students’ understandings of justice as something exclusively framed by the (post-)colonial state.<sup>5</sup>

In Brazil, a major focus of legal transformation is “the production of social impacts, by encouraging access to justice.” This was influenced by Paulo Freire, whose theory of education “deeply influenced . . . legal educators” to challenge “an elitist, dogmatic, and extremely conservative legal culture—in which legal thinking was disconnected from the main issues of Brazilian social structure.” Brazil has had its own versions of public service through law students for nearly thirty years. “The multiplicity of critical approaches that enhanced these transformative initiatives in Brazil are connected to the same roots that sustained the emergence of legal clinics in the United States . . . .”<sup>6</sup>

In Nigeria, legal educators employed a virtual exchange program with law faculty and students in the U.S., in which the agenda for the joint meetings was largely student driven and included “opportunities for professional networking, more time to swap law school experiences, and more occasions to gain new perspectives . . . .” Also, the students were able to connect as clinical law students, share common experiential and doctrinal academic experiences, and explore ways in which the criminal legal systems in both countries would compare. Regarding legal outcomes, “the subject matter of the discussions [was] focused on pretrial detention,” which was deemed excessive in both countries.<sup>7</sup>

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5. See Dipika Jain & Abhayraj Naik, *Joint Reflections on Decolonising Experiential Learning and Clinical Legal Education*, *infra*.

6. See Natalia Madtinuzzi Castilho & Taysa Schiocchet, *The Transformative Role of Clinical Legal Education and the Popular Education Approach*, *infra*.

7. See Sunday Kenechukwu Agwu & Olinda Moyd, *Making Global Connections When It Matters the Most: An Exposition of the Virtual Student Exchange Pilot Program Between Nigeria and U.S. Clinical Law Students*, *infra*.

In Germany, law student initiative to provide legal services to unrepresented immigrants became the impetus for Clinical Legal Education. Engaging in “[p]roductive unrest [to create] [r]efugee law clinics as a rebellious movement,” students created systems and original approaches that recognize the rights of all people to survive, regardless of borders, and in the process gained insight into inequities in the rule of law itself. The impact on legal education and access to legal services has been monumental:

[B]eing active in a Refugee Law Clinic for many students turned out to be a way to reclaim some agency over their education. . . . [S]tudents have given legal information and often individualized legal advice to several thousand refugees, and they continue to do so. The clinical students help clients understand their legal position, decode official documents, prepare for asylum procedures, or accompany them when interacting with the authorities. Usually, the clinics not only cooperate with lawyers, but also with local social services and other refugee aid projects.<sup>8</sup>

## II. REBELLIOUS LAWYERING AND JUSTICE EDUCATION THAT IS TAUGHT “WITH JUSTICE”

The methodology of the law, both the learning as well as the practice of it, should be just in and of itself. This is another core theme of the co-authors. In Bangladesh, the implementation of Community Law Reform (CLR) moved learning outside law schools to establish learning by immersion in the community for three-month periods. Students and faculty live the lives and situations of real people to participate in the everyday life of the poor and marginalized who generate or experience “legal” issues or problems, such as poverty, education, human rights, and housing. CLR “teaches students how black letter law relates to real-life situations and experiences.” Researchers in CLR are introduced to socio-legal and anthropological research methods by spending an extended amount of time living with the community members, and through this training they begin

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8. See Bianca Sukrow & Christoph König, *The German Refugee Law Clinic Movement*, *infra*.

challenging the “appropriateness” and “legitimacy” of black letter laws in the context of deprivation, discrimination, and subordination of these marginalized communities.

In India, “decolonizing” law can be accomplished through collective inquiry and, in a much broader and more pervasive sense, it “decolonis[es] ourselves, our minds, universities and classrooms,” which include “indigenous perspectives and resources” and draws from the concept of “swaraj” which “has a dimension of realization, liberation, manifestation, self-reliance, and self-rule all rolled in together.” Furthermore:

The indigenisation of experiential learning and clinical legal education spaces could be carried out through measures including storytelling, collaborative teaching with members from the community, collaborative knowledge production, guidance from student politics that advance new ways of learning the law, open conversations with students about their identities, integrating critical decolonial and indigenous legal theories into programmes, and ensuring that classroom discussions are student-led and self-reflective. . . . [S]elf-reflection is key when implementing indigenous approaches for students to uncover their assumptions and to be able to “resist dominant discourses about the power and purpose of law itself.”

In Brazil, the focus is on “transformational pedagogy” and attention to local/global differences. “[T]he stark reality of unequal access to justice in Brazil pushed law schools to an ‘open-door’ system” to provide legal aid. “At first called ‘escritórios modelos’ (model offices), today’s ‘núcleos de prática jurídica’ (legal practice centers) are no different from client-oriented law clinics termed Clinical Legal Education elsewhere. Brazilian students have had access to this theoretical and practical approach in their curriculum since 1994. Another paradigmatic example is the phenomenon of ‘assessoria jurídica popular’ (popular legal advice) in Brazil.”

In Nigeria, the Nigerian and U.S. legal clinics participating in the collaborative exchange “prioritized developing lawyering theories, knowledge, skills, and professional values so that students have what they need for clinical and future work . . . .” The highlight of the clinical work

for all the students were the client interactions. The students shared how meeting real clients and providing representation to the community, who needed it most, was invigorating and made their legal education come alive.

In Germany, the impetus for changes in legal education has been student-initiated and driven, initially, to meet an unmet legal demand: the tremendous needs of refugees seeking to enter Germany. This involved a change to the German law in 1933 which replaced the unregulated access to legal representation with the imposition of severe restrictions on access to lawyers with the aim of excluding Jewish people from the practice of law. These restrictions persisted until the mid-2000's:

[W]hen so many refugees were left without assistance in a legal system that appeared alien, unpredictable, and often hostile to them, a major shift occurred. Students from numerous universities immediately reacted to the obvious need to provide refugee guidance. Like flowers after a heavy rain, Refugee Law Clinics (RLCs) suddenly appeared everywhere; between 2015 and 2017, the number of clinics tripled, and almost all the new clinical initiatives addressed the needs of migrants and refugees. As migration and asylum law are usually not taught at German law schools, students often organized the trainings they needed themselves.

Subsequently, the students expanded the scope of representation to include traveling to help migrants detained in Greek islands and in Balkan camps. Because the refugees could not get to the law students, the law students began to travel to them.

The contributions to this Article are all developed by faculty who are involved in an ongoing critique of legal education and the theories that drive it. They are not necessarily providing answers, but they are sharing illustrations of some experiments and articulating some of the important and fundamental questions about how best to teach about justice by teaching with justice and the legal impact this teaching leads to. These contributions emphasize the dynamic, ongoing reflection and experimentation needed to truly embrace being a rebellious lawyer (or rebellious or transformative law teacher).



The contributions in this Article demonstrate the vitality and diversity of legal education and legal practice in their many forms and forums, situated both in local/community settings and under the global umbrella of Clinical Legal Education. This has been particularly true in response to the COVID-19 pandemic, where Clinical Legal Education programs had to adapt methods and invent new approaches to achieve effective teaching and learning, advocacy, and client inclusion. Clinical Legal Education constantly reinvents itself, often driven by student initiative and directed towards the inclusion of all society and in particular marginalized or indigenous populations. These adaptations were reflected in the wide variety of interactive and engaging methods employed by the presenters themselves in the online GAJE conference. The learner-focused methodology of Clinical Legal Education mirrors the client-centered practice it aspires to sustain. Clinical Legal Education aims to provide, through experiential learning and lawyering, authentic voices and senses of self to law students, legal practitioners, law teachers, legal institutions, and the full range of communities and people served by the law. We hope that this snapshot of a segment of the GAJE conference shines a light on the diverse pathways to teach “about justice” and “with justice” in ways that result in increased realization of justice in the world.

REBELLIOUS LAWYERING, CLR, AND JUSTICE EDUCATION:  
A BANGLADESHI EXPERIENCE

Mizanur Rahman\*

Since the mid-1980s, there has been a noticeable movement to transform legal education into justice education. While “legal education” in its traditional connotation refers to teaching and learning the black letter law, mainly for litigation purposes, justice education ventures much further to incorporate ideas of human dignity and empowerment of the poor and the marginalized, including their access to justice, to make the education socially relevant. This Essay discusses a particular component of justice education in Bangladesh: the Community Law Reform Program, popularly known as CLR, which has been experimented with and practiced for almost two decades.

The prevailing legal education and training in our part of the globe is devoid of any serious concern for “real peoples with real problems.”<sup>9</sup> Our legal education has generally avoided confronting the fundamental question of the relationship between law and politics. Our educators have prohibited the entry of politics into the classrooms, making legal education not too different from theological instruction. Austin and Bentham are worshipped as undisputed, unchallenged gods, but the political economy of law is made the pariah.

Our legal education converts law students into expressions of “technique,” causing their human side to atrophy and leaving many of them unprepared to face the moral chaos and distortions inherent in law practice. “Thus prepared,” I wrote a long time back.<sup>10</sup> Our students are familiar with Donoghues and Stevensons, Marburys and Madisons, Liversidges and Andersons, but they fail to feel the sense of deprivation endured by the millions of Rams and Rahims living today in an unimaginable situation of

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9. Mizanur Rahman, *Socially Relevant Legal Education: Role of Law Schools and 'Rebellious Lawyering'*, 30 J. OF L. & DEV. 31 (2009) .

10. *Id.* at 33.

“human indignity.” For these students, lawyering becomes a highly rewarding profession in financial terms, a vocation blessed with the three Ps—privilege, power, and position. However, the object of their activities, the central figure of all activities of a lawyer—the human client—remains in oblivion—ignored, overlooked, and bypassed.

Rebellious lawyering seeks to empower subordinated clients and questions whether legal intervention is good for the clients’ material existence. We prepared our rebellious lawyering platform based on a few assumptions:

- ◆ Law is always an equal yardstick applied to unequals in society.
- ◆ Essentially, the law is the will of the economically dominant class in society.
- ◆ Prevailing legal education must give way to anti-generic learning in the same way traditional lawyering must be replaced by a new form of pro-poor (people) lawyering.
- ◆ Communities must be organized to push for pro-poor laws.

We desperately need a new type of lawyer and lawyering: an advocate who is ready to sacrifice the comforts of everyday life to guarantee the dignity of millions of poor compatriots and prepared to work with the poor to organize the community, train community leaders, and provide them with skills to confront their adversaries. Only such an approach will spearhead the change in the profession we are aspiring for. It is only with these new lawyers, who have decided to make a departure from past traditions, that the law will cease to be a mere social science and will become a “humanizing discipline” where lawyers will better resemble real human beings with a heart and a soul. Initiatives taken by Empowerment through Law of the Common People (ELCOP), a human rights organization managed by teachers and students in Bangladesh, are directed at creating and training this new group of lawyers whom we fondly call “rebellious lawyers” since they have decisively revolted against the inherent injustices of law and traditional lawyering.

Community Law Reform (CLR) teaches students how black letter law relates to real-life situations and experiences. Student researchers in CLR

are introduced to socio-legal and anthropological research methods by spending an extended amount of time living with community members. Thus, through this training, they begin challenging the appropriateness and legitimacy of black letter laws in the context of the deprivation, discrimination, and subordination of these marginalized communities. A research-oriented program coupled with a training component, CLR is conducted by a group of student researchers to observe the life of marginalized people from a human rights perspective. CLR has been the first step towards implementing a unique methodology of research which we opted to call “anti-generic research.” It involves an empathetic approach to analyzing the problems of the poor and marginalized.

Accompanied by two teachers/supervisors, a group of twelve student researchers leaves their university and travels to the site where the community resides. They stay at the site for the next three months (with interruptions as and when deemed necessary), living alongside the community, with the community, close to the ground. This immersion enables the students to “understand” the life of the community and not only “see” but also “feel” their suffering, pain, and deprivation. These students dissect the lives of the community members as “insiders” and not as “onlookers from a distance,” i.e., outsiders. This constitutes a unique feature of CLR research—very close interaction with the stakeholders, allowing them to share the thoughts and concerns of the community members. This is what we call “looking beyond what you see!”<sup>11</sup>

Once potential community leaders are identified, talked to, and taken into confidence, the student-researchers begin training them with skills and minimum knowledge, legal and non-legal. The main objective of this training is to mold the vision and worldview of these potential community leaders in a manner that allows them to effectively protect their rights, either on their own or by forming larger coalitions with pro-poor institutions, organizations, and individuals beyond their community configuration.

While it has long been established in theory that effective empowerment of a community requires the struggle for empowerment to be led by the community leaders themselves, CLR was the first time in legal education where law students took up the responsibility as part of their professional

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11. Arpeeta Shams Mizan & Muhammad Rezaur Rahman, *Quest for Anti-Generic Research: Introducing Community Law Reform* 3–4 (unpublished Working Paper, 2018).

obligation to train community members to take up a leadership role. This is the single most significant contribution of CLR research methodology, giving it an edge over other socio-legal or anthropological methodologies.

The CLR methodology stands unique with its inherent revolutionizing strength. Not only does CLR question the inadequacies of traditional legal education and generic lawyering, but it produces efficient community organizers who can affect deep changes, albeit in a quiet manner, from within the existing structure. What CLR offers is a means of dismantling subordination of all kinds and replacing it with empowerment tools for the common people.

In present-day Bangladesh, communities which had historically been pushed to surrender to “destiny” are now being organized to the extent they believe they can and must be the makers of their own destiny. It may be true of Bangladesh to say “lawyering with the poor is lawyering for justice,”<sup>12</sup> because in most law classrooms in this country today, the majority of students actually come from these poor communities.

It is time we ensured that the four-year legal education stops detaching these students from their roots, so that after graduation they aspire to go back to their communities. It is through CLR that they can imbibe the belief and confidence to assume the leadership role in their community’s struggle for empowerment and self-determination, as CLR has already demonstrated.

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12. See generally *Empowerment Through Law of The Common People (ELCOP)*, <https://www.elcop.org/> (last visited Mar. 6, 2022).

## JOINT REFLECTIONS ON DECOLONISING EXPERIENTIAL LEARNING AND CLINICAL LEGAL EDUCATION

Dipika Jain\* and Abhayraj Naik\*\*

Learning through collective inquiry was the primary motivation for both of us in crafting a session titled *Decolonising Experiential Learning and Clinical Legal Education* at the 2021 GAJE conference. We hoped the conference session would enable us to reflect on our own methods and practices and perhaps even allow us to locate ourselves in the larger landscape of colonialism, coloniality, colonisation, etc. We were curious about exploring the connections between our de/colonial locations on one hand, and justice and clinical legal education on the other. We also hoped our session might serve as a space where we and other participants could be mindful about our individual historical and epistemic locations and could set intentions about going forward with an appropriate decolonising perspective. In this Essay, we share some of our provocations and inspirations for the session design along with some insights that came up during the session itself. This Essay is the result of the collective intelligence that emerged through the presence and involvement of both the facilitators and the participants at the session.

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\*\* Visiting Faculty, Azim Premji University and National Law School of India University, and Co-founder, Initiative for Climate Action, Bangalore, India | Email: abhayraj.naik@apu.edu.in. We would like to express our deepest gratitude to all the participants of the GAJE Conference 2021 for their enthusiastic engagement with our presentation, feedback, and time. We would also like to thank Joshika Saraf and Aiswarya Murali for their assistance with the presentation. Our gratitude to the *Journal* editors, Christina Schrantz and Rae Ensor, for inviting us to be a part of this incredible collaboration and for their meticulous editorial assistance.

I. WHAT IS DECOLONISATION?  
WHY DOES THIS MATTER FOR LEGAL EDUCATION?

University curricula for legal education in the Global South often completely miss out on Asian and African contributions to “knowledge on evaluation of right and wrong, of justice and fairness, of poverty and development, etc.”<sup>13</sup> When we initiated our session by asking participants to share what decolonisation meant for them, the responses were thought-provoking and wide-ranging: “sovereign decision making”; “moving beyond colonization, recognising indigenous work”; “social justice and equity in education”; “a centering of indigenous land, sovereignty, and indigenous ways of thinking”; “eye level, connection and respect”; “reverses ongoing imperial domination”; “healing relationship to earth”; “authentic, responsive to local needs”; “taking back what is ours; recognising our own identities”; “freedom and vernacular justice”; “valorizing global south knowledge and local knowledge as well”; “change the local/global dynamic”; “localise clinical contexts”; and several others.

As a broad conceptual framework for the session, we shared our initial thoughts on a few key resources we had found useful in approaching the idea of decolonisation. Franz Fanon represents a particularly strong sense of decolonisation we found deeply resonant.<sup>14</sup> For Fanon, decolonisation is a messy and deeply historic process which cannot be the same everywhere in the world.<sup>15</sup> It is a process that speaks very much to the history of the place, as well as its geographic history (which considers the influence of the past in shaping present and future geographies),<sup>16</sup> and indicates that we should very much be prepared for trouble when we are proceeding with decolonising ourselves, our minds, universities, and classrooms.

Tuck and Yang’s influential essay *Decolonization is Not a Metaphor*, published in 2012, is an important resource when thinking about

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13. Srinivasan Ramani, *Decolonising Knowledge Systems*, 46 *ECON. & POL. WKLY.* 17, 17–19 (2011).

14. FRANZ FANON, *THE WRETCHED OF THE EARTH* (1961) (available at <http://www.openanthropology.org/fanonviolence.htm> [<https://perma.cc/ZHH6-4GKS>]).

15. *Id.*

16. Mike Heffernan, *Historical Geography, MAKING HISTORY* [[https://archives.history.ac.uk/makinghistory/resources/articles/historical\\_geography.html#:~:text=Historical%20geography%20is%20a%20sub,the%20present%20and%20the%20future](https://archives.history.ac.uk/makinghistory/resources/articles/historical_geography.html#:~:text=Historical%20geography%20is%20a%20sub,the%20present%20and%20the%20future)].

decolonisation in terms of pedagogical practices amid a larger set of educational practices. Tuck and Yang argue that it is important for us to ask what decolonisation is and what the goals of this project of decolonisation are.<sup>17</sup> They offer an important understanding of decolonisation as distinct from civil rights and human rights justice projects.<sup>18</sup> For example, Tuck and Yang critically look at the idea of solidarity, which many of us invoke during our clinical legal education projects, when they say: “Solidarity is an uneasy, reserved, and unsettled matter that neither reconciles present grievances nor forecloses future conflict.”<sup>19</sup>

A number of important questions come to the fore once we recognise the distinctness of decolonisation: Is anti-colonial critique the same thing as decolonising? Can we homogenize oppression and oppressive experiences as the subjects or targets of decolonisation projects? How do we think through decolonisation as a project that is different from human rights/civil rights projects? Another interlocutor, Walter D. Mignolo, differentiates decoloniality from decolonisation.<sup>20</sup> For Mignolo, decoloniality encompasses the response to both colonialism and modernity, which rest on the presupposition that there is one continuous, linear path towards progress, growth, and justice.<sup>21</sup> Decoloniality invites us to think like a shaman would, to be like a shapeshifter or marks in the sand, implying there is not necessarily a single truth about ideas of growth, progress, justice, etc.<sup>22</sup>

With an idea such as decoloniality, there is certainly no easy resolution, and the full journey requires nothing less than challenging some ideas that so far have been too dear for many of us to confront. Through extensive indigenous knowledge, we see the idea of braiding together as one method of reaching towards decoloniality. This is not the same as resolving differences to reach one mindset, but rather it emphasizes retaining differences while creating a tapestry of possibilities and alternatives. How might we think of our work as law teachers, clinical educators, or program

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17. Eve Tuck & K. Wayne Yang, *Decolonization is Not a Metaphor*, 1 DECOLONIZATION: INDIGENEITY, EDUC. & SOC’Y 1 (2012).

18. *Id.*

19. *Id.* at 3.

20. E-International Relations, *Interview – Walter Mignolo/Part 2: Key Concepts*, E-INTERNATIONAL RELATIONS (Jan. 21, 2017), <https://www.e-ir.info/2017/01/21/interview-walter-mignolopart-2-key-concepts/> [<https://perma.cc/FMC5-8J2N>].

21. *Id.*

22. *Id.*



designers in ways that acknowledge the possibilities of “a world in which many worlds fit?”<sup>23</sup> Historical exclusion of marginalised communities, Dalits, and Adivasis from the formal education system in India led to leaders like Dr. Bhimrao Ambedkar calling for reservations and subsidies to facilitate inclusion of oppressed castes in educational institutions.<sup>24</sup> However, the inclusion of indigenous perspectives and resources within education remains sparse at best. The Indian philosopher KC Bhattacharya, for example, speaks of “*swaraj* in ideas.”<sup>25</sup> In many ways, this echoes Gandhi’s thinking and offers a rich conceptual vocabulary to think through ideas of decolonisation. The meaning of “*swaraj*,” is not fully captured by the English word “freedom.” *Swaraj* has a dimension of realization, liberation, manifestation, self-reliance, and self-rule all rolled in together, which is expressed only in the vernacular usage of the word. Perhaps vernacularity in ideas is decolonisation?

Decolonial approaches and engagement with processes of indigenization in both the academic and practical aspects of clinical law programs can intervene in normative legal education and challenge the colonial hegemony underpinning legal systems.<sup>26</sup> The decolonisation of clinical legal education includes a paradigm shift where self-reflection among students is encouraged, indigenous methods of education are integrated into largely western pedagogies, internalised biases and challenges are recognized, and interruption of dominant discourses around law and justice are encouraged. Decolonisation through such indigenization must be pluralistic, must disrupt hegemonic caste narratives, and must reflect perspectives on gender, sexuality, and disability rights. The centering of clinical legal education around Dalit and Adivasi perspectives must be self-reflective in nature.

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23. Levi Gahman, *Buiding ‘a world where many worlds fit’*, in *SUSTAINABLE FOOD FUTURES* (Jessica Duncan & Megan Bailey eds., 2017).

24. Meenakshi Meena, *Ambedkar: An Educationist of the Marginalized*, FORWARD PRESS (Oct. 21, 2017), <https://www.forwardpress.in/2017/10/ambedkars-thoughts-on-education-an-overview/> [<https://perma.cc/YCH4-52WR>].

25. Krishna Chandra Bhattacharya, *Swaraj in ideas*, SIR ASUTOSH MEMORIAL LECTURE SERIES (Oct. 1931), <https://multiversityindia.org/wp-content/uploads/2009/12/Swaraj-in-Ideas.pdf> [<https://perma.cc/Q8JH-4WRC>].

26. Patricia Barkaskas & Sarah Buhler, *Beyond Reconciliation: Decolonizing Clinical Legal Education*, 26 J.L. & SOC. POL’Y 1 (2017).

## II. HOW MIGHT WE DECOLONISE EXPERIENTIAL LEARNING AND CLINICAL LEGAL EDUCATION?

How do we think about decolonisation as more than just curriculum reform, pedagogical practices, or collaborating in a bottom-up approach? In the Indian legal education context, how will we discuss Adivasi norms? For example, Professor Virginius Xaxa recently argued that the so-called modernisation of education for Adivasi communities in Odisha through an official “integration” policy actually concealed an “assimilation” policy that “ashramises”<sup>27</sup> tribal education.<sup>28</sup> The imposition of dominant regional languages, as well as implementation of residential schools to distance students from their communities, serves to eliminate Adivasi identity from education under the garb of “modernisation.”<sup>29</sup>

Our speculative suggestion is that a capacity for embodied sensing and responding might be what we need to bring into our curriculum, pedagogy, learning communities and contexts, and ourselves. Another suggestion is centering community: learning *with* community rather than for community might be the correct direction to take in our programs, projects, and policies that relate to experiential learning and clinical legal education. We believe it would be particularly useful to engage with the notion of “power with”<sup>30</sup> and examine how healthy power shows up in our work and relations, design, feedback and communications, and assessments and evaluations.

Legal clinics should “indigenize” pedagogies and practices to create reflective and critical spaces for decolonising work indigenous in nature. In the Indian context, this indigenization should be drawn from Adivasi people’s perspectives and anti-caste politics. These legal clinics should be

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27. This phrase refers to the covert transformation of ashram schools into Hindu nationalist institutions, which follow practices set by Christian mission schools that aim to assimilate Adivasi identities into Hinduism under an official policy of ‘integration.’

28. See Malvika Gupta & Felix Padel, *Are Mega Residential Schools Wiping Out India’s Adivasi Culture?*, THE HINDU (Feb. 13, 2021), <https://www.thehindu.com/society/children-from-tribal-communities-are-being-corralled-into-mass-schools-that-are-wiping-out-cultures/article33818793.ece> [<https://perma.cc/ET8A-ZSQ3>].

29. *Id.*

30. “Power with” refers to finding common ground between varying interests and building collective strength using mutual support, collaboration and solidarity. See Lisa VeneKlasen & Valerie Miller, *A New Weave of Power, People & Politics*, POWERCUBE, <https://www.powercube.net/other-forms-of-power/expressions-of-power/> [<https://perma.cc/QHN2-XV98>].

based on pedagogical approaches that question the state's colonial framings of law, as well as students' understandings of justice as something exclusively framed by the (post)colonial state.<sup>31</sup> The indigenization of experiential learning and clinical legal education spaces could be carried out through measures including storytelling, collaborative teaching with members from the community, collaborative knowledge production, guidance from student politics that advance new ways of learning the law, open conversations with students about their identities, integrating critical decolonial and indigenous legal theories into programmes, and ensuring that classroom discussions are student-led and self-reflective.<sup>32</sup> The concept of "situated relatedness," which acts as a reminder to "return to and examine [internal] biases" by situating oneself in terms of identities and relationships, can affect the ways students interact both with one another as well as clients during legal clinics.<sup>33</sup> Further, self-reflection is key when implementing indigenous approaches for students to uncover their assumptions and be able to "resist dominant discourses about the power and purpose of law" itself.<sup>34</sup>

We ended our session by asking ourselves and other session participants to reflect on how our pedagogies could work towards the goals of decolonisation and what might be the tensions, synergies, opportunities, and challenges in our specific context. We end this Essay, without any neat resolution of the issues raised or attempting any complete synthesis, by excerpting below some of the evocative and insightful responses that we received.

- ◆ "Find a balance between social justice, professional development and educational objectives. Valorizing local knowledges, even if they are not named as 'legal clinics.' Sharing opportunities and establishing consensus over the terms of the partnerships involving global north and global south clinics."<sup>35</sup>

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31. See Patricia Barkaskas et al., *Reflecting on Clinical Legal Education at the Indigenous Community Legal Clinic*, 32 J.L. & SOC. POL'Y 138 (2020).

32. See Tuck Yang, *supra* note 18.

33. Barkaskas et al., *supra* note 31.

34. *Id.*

35. Responses on file with authors.

- ◆ “First challenge that comes to mind is: identifying colonisation of Clinical Legal Education and drawing a line between colonisation and best practices borrowed from countries having better Clinical Legal Education practices.”<sup>36</sup>
- ◆ “To me the question pushes reflecting as a teacher on where what one ‘teaches,’ e.g., readings assigned, things to watch, what you say, content of exercises, ‘comes from.’ The source wouldn’t necessarily determine whether this content is bad or good for current use of the source but whether today in this moment for this situation it makes sense to keep ‘teaching’ this.”<sup>37</sup>
- ◆ “Working mostly with *white*, privileged students, it’s a challenge to make people (and often myself) aware of colonialist tendencies and heritage/baggage. I’m looking for ways to open up, to connect, to be more aware of what we are carrying with us. . . . I think we learn most during and through personal encounters.”<sup>38</sup>
- ◆ “When clinics are working on areas of law to which a decolonization critique could be considered, providing the students with a background into those critiques and taking that on board in their research and work (e.g., an international law advice, taking into account TWAIL) . . . . Sensitize students on their own background and privileges, sensitize on power balances that can occur between them and the client . . . .”<sup>39</sup>
- ◆ “The difficulty is that colonialism and colonial approaches exist throughout Canadian law schools, law teaching, and all aspects of the legal system. Taking a decolonized approach requires a jump from what is to a hypothetical other system that would be just that is entirely different.

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36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

Crossing that gap is very difficult and getting students to take it seriously as a possibility is even more challenging. Students often reject the idea of a decolonized future as absurd, returning to a liberal rights-approach that they deem sufficient and far more attainable. The ‘false hope’ of a liberal rights approach draws students away from more imaginative possibilities.”<sup>40</sup>

- ◆ “I am reminded of Chimamanda Ngozi Adichie’s *The Danger of a Single Story* and her emphasis on the importance of where you begin the story. I want to think about where I begin the story in my teaching, where I begin the story of the client and the legal system. Collaborate with the local community. We have former clients on our advisory board to keep us grounded in the community of our clients.”<sup>41</sup>

#### CONCLUSION

There is no single strategy or pedagogy to decolonize legal education, which, in the Global South, implicitly and explicitly reflects colonial hegemonic hierarchies and perspectives. With pedagogies that reflect indigenous and oppressed perspectives, art, and language, experiential learning and clinical legal education can move towards much-needed indigenization and inclusion of diverse identities and experiences. Further, we cannot overstate the importance of unlearning institutionalized ideas of education and the gatekeeping of knowledge through an ongoing reflective process that encourages situational awareness among students. This process of unlearning needs to be complemented by active and ongoing efforts in experiential and clinical legal education programmes to learn from the communities with whom we work.

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40. *Id.*

41. *Id.*

THE TRANSFORMATIVE ROLE OF CLINICAL LEGAL  
EDUCATION AND THE POPULAR EDUCATION APPROACH:  
A POSSIBLE DIALOGUE BETWEEN  
GLOBAL NORTH AND SOUTH?\*

Natalia Martinuzzi Castilho\*\* and Taysa Schiocchet\*\*\*

What is commonly known as the Clinical Legal Education movement has become a very powerful forum for exchanging work methods and building partnerships between projects and people dedicated to innovating and transforming the traditional ways of teaching law and providing legal services to the public. The goal of this Essay is to demonstrate that Brazil (like many other countries) has a long history of providing legal access to the public through law school and community practices. Although these have not always fit the formal definition of Clinical Legal Education, they accomplish similar outcomes and utilize similar methods. Our observation is that these existing local experiences and activities are not recognized as examples of Clinical Legal Education even though they represent a powerful instrument of dialogue and interaction consistent with the Clinical Legal Education global movement. We presented this workshop proposal at the 2021 GAJE/IJCC/ACCLE Worldwide Online Conference<sup>42</sup> with two main goals: (1) to discuss global-local dynamics and the political economy of legal knowledge in the context of the clinical legal education movement;

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\* Natalia Martinuzzi Castilho & Taysa Schiocchet, "Turning Challenges into Opportunities: Justice Education in Time of Crisis," Workshop proposal at the Global Alliance for Justice Education, the International Journal of Clinical Legal Education, and the Association for Canadian Clinical Legal Education at Northumbria University (July 16–18, 2021).

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42. The Global Alliance for Justice Education, the International Journal of Clinical Legal Education, and the Association for Canadian Clinical Legal Education, hosted a worldwide online conference entitled, *Turning Challenges into Opportunities: Justice Education in Time of Crisis*, in June 2021. See *Call For Proposals: Worldwide Online Conference*, HUMAN RIGHTS AT HOME BLOG, [https://lawprofessors.typepad.com/human\\_rights/2021/04/call-for-proposals-worldwide-online-conference-turning-challenges-into-opportunities-justice-educati.html](https://lawprofessors.typepad.com/human_rights/2021/04/call-for-proposals-worldwide-online-conference-turning-challenges-into-opportunities-justice-educati.html) [<https://perma.cc/7Z7G-FDUK>].

and (2) to suggest the use of a common language to guide reciprocity in partnerships between legal access initiatives, especially in a Global North–Global South dialogue, and evaluate how different faculties and participants from around the world perceive and approach this proposition.

To achieve those goals, we divided this Essay into two parts. First, we present the most important Brazilian experiences in this transformative pedagogical area over the past thirty years. These projects and ideas correspond with pedagogical and social elements, brought together as Clinical Legal Education in its worldwide reach. Second, based on Daniel Bonilla’s binomial of Global North–Global South cooperation, we suggest possible standards to build global-local reciprocity between all legal access programs and clinics.

### I. EARLY CLINICAL LEGAL EDUCATION IN BRAZIL

There are many popular legal education approaches and services, not only from Brazil but also from other Latin American countries,<sup>43</sup> that, despite different forms and terminology, show considerable similarity with Clinical Legal Education in its two fundamental bases: (1) the dialogue between theory and practice in legal education; and (2) the production of social impacts by encouraging access to justice. These practices do not represent the mainstream of Brazilian legal education. They can be considered important examples of how we have been trying to create our own resistance to the traditional and dogmatic way of teaching legal knowledge. All of Brazil’s public and private universities must observe, according to our Constitution and federal legislation on the right to education, the same parameters of quality. Higher education curricula in Brazil must develop three elemental areas: (1) teaching, by offering a certain number of classes, the number of which varies for each field of study; (2) researching, through opportunities such as study groups, programs to help students start a research project, etc.; and (3) extension (or attending to the community), when students must dedicate time to developing activities to

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43. The genealogy of the so-called “servicios legales inovadores” (innovative legal service) in Latin America can be seen in very interesting research published by ILSA. Fernando Rojas, *Comparación Entre las Tendencias de los Servicios Legales en Norteamérica, Europa, e América Latina, Primera Parte*, EL OTRO DERECHO, Aug. 1988, at 7–18. We are aware of the different realities involving clinical legal education in countries other than Brazil, which implies various connections and dialogues with the clinical legal education movement.

benefit society in general—dealing with social, juridical, and political issues and providing strategies to try to respond to them.

In Brazil, law schools' social responsibility must be reflected in their students' curriculum, especially through the last element above, "extension." In addition, the stark reality of unequal access to justice in Brazil pushed law schools to an "open-door" system—in essence, to provide legal aid. At first called "escritórios modelos" (model offices), today's "núcleos de prática jurídica" (legal practice centers) are no different from client-oriented law clinics termed Clinical Legal Education elsewhere. Brazilian students have had access to this theoretical and practical approach in their curriculum since 1994.<sup>44</sup> Another paradigmatic example is the phenomenon of "assessoria jurídica popular" (popular legal advice) in Brazil. This refers to a historic method that patched together innovative methods in Brazilian legal education. Theoretically attached to critical thinking branches, these so-called centers of popular legal advice sought to go beyond social and legal aid. They intended to incorporate Paul Freire's *Popular Education* perspectives as guides to legal practice, acknowledging that the full exercise of rights will only be possible through a real process of social awareness.<sup>45</sup>

The impact of Paulo Freire's theory of education, known worldwide,<sup>46</sup> deeply influenced a generation of legal educators in Brazil. Challenging an elitist, dogmatic, and extremely conservative legal culture—in which legal thinking was disconnected from the main issues of Brazilian social structure—these educators developed a robust "street-law" tradition. They

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44. Decreto No. 1886, de 4 de Enero de 1995, Diário Oficial da União [D.O.U.] de 4.1.1195 (Braz.).

45. Evorah Cardoso, *Prérito imperfeito da advocacia pela transformação social / Past Continuous of lawyering for social change*, 10 REVISTA DIREITO E PRÁXIS 543 (2019) (available at <https://www.e-publicacoes.uerj.br/index.php/revistaceaju/article/view/393760>) (last visited Feb. 18, 2022); Felipe da Silva Freitas & Marília Montenegro, *Inspirações de Paulo Freire para pensar o ensino jurídico no Brasil*, 8 INSURGÊNCIA: REVISTA DE DIREITOS E MOVIMENTOS SOCIAIS 305 (2015) (available at <https://doi.org/10.26512/revistainsurgencia.v8i1.40882>); Flávia Carlet, *Advocacia Popular: práticas jurídicas contra-hegemônicas no acesso ao direito e à justiça no Brasil / Advocacia Popular: legal conter-hegemonic practices in access to law and justice in Brazil*, 6 REVISTA DIREITO E PRÁXIS 377 (2015) (available at <https://www.e-publicacoes.uerj.br/index.php/revistaceaju/article/view/15409>) (last visited Feb. 18, 2022).

46. *Pedagogy of the Oppressed*, by Paulo Freire, is the third most-cited publication in the Social Sciences. Elliot Green, *What Are the Most-cited Publications in the Social Sciences (According to Google Scholar)?*, LSE IMPACT BLOG (May 12, 2016), <https://blogs.lse.ac.uk/impactofsocialsciences/2016/05/12/what-are-the-most-cited-publications-in-the-social-sciences-according-to-google-scholar/> [<https://perma.cc/BKH7-TRHS>].



built not only a well-framed theoretical critical background, but also directed a vast number of projects and initiatives that inspired subsequent generations.<sup>47</sup> While these experiences develop social justice and different ways of teaching law, they are still utilized only marginally in Brazil. Universities are privileged spaces which reproduce social and racial privileges. That explains why the aspect of “relating and attending the community” keeps, even today, receiving low funding and attention from public policies in higher education.<sup>48</sup> It also helps us understand why this rich Brazilian “street-law” approach remains so limited and, sometimes, even invisible to our legal professors.

This diversity of pedagogical and transformative methods in Brazilian legal education has a lot to do with clinical legal thinking and its approaches to how we can form lawyers and jurists in the twenty-first century. Moreover, the multiplicity of critical approaches that enhanced these transformative initiatives in Brazil are connected to the same roots that sustained the emergence of legal clinics in the United States (Legal Realism, for example). That is, even though they are not called “clinics,” Brazilians’ practical experiences have more points in common than we imagine with

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47. Roberto Lyra Filho, José Geraldo de Sousa Jr., Luis Alberto Warat, and Antonio Wolkmer are some examples of thinkers who established important conceptual and practical tools about how law schools should not only work for, but with, vulnerable groups of our society. See Antonio Wolkmer & Maria Wolkmer, *The Principle of the ‘Common’, Legal Pluralism and Decolonization in Latin America*, 33 L. & CRITIQUE 1 (2022); LUIS ALBERTO WARAT, MITOS E TEORIAS NA INTERPRETAÇÃO DA LEI (1979); José Geraldo de Sousa Júnior, *O Direito Achado na Rua: condições sociais e fundamentos teóricos*, 10 REVISTA DIREITO E PRÁXIS 2776 (2019) (available at <https://doi.org/10.1590/2179-8966/2019/45688>). A few examples of the new generation of authors and ideas include Thula Pires, *Direitos humanos traduzidos em pretuguês*, in EVANDRO PIZA DUARTE, GABRIELA BARRETTO SÁ & MARCOS QUEIROZ, CULTURA JURÍDICA E ATLÂNTICO NEGRO: HISTÓRIA E MEMÓRIA CONSTITUCIONAL 47–59 (Vol. 1, 2019); RICARDO PRESTES PAZELLO, DIREITO INSURGENTE: PARA UMA CRÍTICA MARXISTA AO DIREITO (2021); and Luiz Otávio Ribas, *Direito insurgente e pluralismo jurídico: assessoria jurídica de movimentos populares em Porto Alegre e no Rio de Janeiro (1960 - 2000)* (2009) (Master’s Dissertation, Universidade Federal de Santa Catarina, Centro de Ciências Jurídicas, Programa de Pós-Graduação em Direito, Florianópolis) (available at <http://repositorio.ufsc.br/xmlui/handle/123456789/93227>); GÓES JUNIOR, José Humberto de. “O que é direito, para que se possa ensiná-lo?": as percepções dos sujeitos sobre o direito, o “ensino jurídico” e os direitos humanos. 2015. xii,441 f., il. Tese (Doutorado em Direito)—Universidade de Brasília, Brasília, 2015..

48. Lígia Maria de Mendonça Chaves Incrocci, *O financiamento da extensão: contribuições para o estudo dos casos da Universidade Federal de São Carlos/Brasil e da Universidade de Lisboa/Portugal* (2019) (Doctoral Thesis, Universidade Federal de São Carlos, Centro de Educação e Ciências Humanas, Programa de Pós-Graduação em Ciência, Tecnologia e Sociedade, São Carlos) (available at <https://repositorio.ufscar.br/handle/ufscar/11521>).

Clinical Legal Education methodologies and strategies of action. In fact, we should be more conscious of the many connections between local and global experiences, considering that they are valuable, innovative, and legitimate to the legal education field. Some obstacles to this fruitful dialogue remain strong and active in our mentality; they are related to what Daniel Bonilla called the political economy of legal knowledge.<sup>49</sup>

## II. GLOBAL-LOCAL RECIPROCITY

As Bonilla's concept of the political economy of legal knowledge discusses,<sup>50</sup> there is a broad framework in which we read, analyze, interpret, and produce knowledge. The impact of legal theories, concepts, analyses, and methodologies in our daily lives as researchers, lawyers, and jurists reflects unequal dynamics that structure occidental civilization. From the periphery, we often categorize what is considered innovative, modern, and transformative with a "cultural lens." Influenced by this logic, we are conditioned to think that the academic and legal production coming from the Global North<sup>51</sup> countries is always more qualified only because it comes from those places.

The crystallization of these aspects may compromise our reality and contribute to the depreciation of preexistent experiences in Brazil and in Latin America regarding legal practice in law schools. The lack of visibility

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49. Daniel Eduardo Bonilla Maldonado, *El formalismo jurídico, la educación jurídica y la práctica profesional del derecho en Latinoamérica*, in DERECHO Y PUEBLO MAPUCHE 259 (Helena Olea ed., 2013) (available at [https://www.academia.edu/26935002/el\\_formalismo\\_jur%C3%8ddico\\_la\\_educaci%C3%93n\\_jur%C3%8ddica\\_y\\_la\\_pr%C3%81ctica\\_profesional\\_del\\_derecho\\_en\\_latinoam%C3%89rica](https://www.academia.edu/26935002/el_formalismo_jur%C3%8ddico_la_educaci%C3%93n_jur%C3%8ddica_y_la_pr%C3%81ctica_profesional_del_derecho_en_latinoam%C3%89rica)); Daniel Bonilla Maldonado, *The Political Economy of Legal Knowledge*, in CONSTITUTIONALISM IN THE AMERICAS 29, 31 (Colin Crawford & Daniel Bonilla Maldonado eds., 2019).

50. Other critical approaches sustain these analyses, such as decolonial thinking and critical perspectives on human rights. See Boaventura de Sousa Santos, *Os Direitos Humanos na Pós-modernidade*, OFICINA CES (June 1989), [http://dhnet.org.br/direitos/militantes/boaventura/boaventura\\_dh\\_na\\_pos\\_modernidade.pdf](http://dhnet.org.br/direitos/militantes/boaventura/boaventura_dh_na_pos_modernidade.pdf) [<https://perma.cc/K5JP-YGYL>]; GAYATRI CHAKRAVORTY SPIVAK, CRÍTICA DE LA RAZÓN POSTCOLONIAL: HACIA UNA HISTORIA DEL PRESENTE EVANESCENTE 7–11 (Marta Malo de Molina trans., Akal S.A., 2010); CATHERINE WALSH, PENSAMIENTO CRÍTICO Y MATRÍZ (DE) COLONIAL, REFLEXIONES LATINOAMERICANAS 13–25 (Abya-Yala ed., 2005); Aníbal Quijano, *Colonialidad del Poder y Clasificación Social*, XI J. OF WORLD-SYSTEMS RSCH. (SPECIAL ISSUE: FESTCHRIFT FOR IMMANUEL WALLERSTEIN) 342, 345–47 (2000).

51. "Global North" does not necessarily express a geographic location; it represents the economic, political, and cultural aspects that guide the production of knowledge, according to Bonilla. Bonilla Maldonado, *The Political Economy of Legal Knowledge*, *supra* note 50, at 31, 33.

and recognition of our previous experiences brings to light some aspects of a bigger challenge: to overcome hierarchies that can bring us apart and fragment crucial innovative approaches and methodologies in its goals to bring together theory and legal practice and improve social justice.

Legal clinics, as opposed to the earlier legal practice centers and “street-law” initiatives, officially arrived in Brazil in the beginning of the twenty-first century and they were officially mentioned in our normative in 2018. Projects calling themselves “legal clinics” were—and mostly still are—human rights clinics<sup>52</sup> focused on promoting horizontal learning, active methodologies, and other pedagogical tools to develop professional skills beyond a technical and pragmatic vision of legal education. In addition, they are intended to provide a connection between civil society and academia to develop the social function of our law schools. Clinical Legal Education in Brazil was immediately marked with a high-quality label, mainly because of its origins. Brazilian legal academia started to look differently at our existing experiences when they were translated to a “Global Northern” approach to legal education. To speak in Clinical Legal Education or street-law strategies, rather than Paulo Freire’s theories, for example, was deemed more suitable, even if they are based on similar assumptions or goals.

In our session, we were able to discuss how reciprocity between legal clinical projects should involve practices and values able to empower peripheral areas, increase the exchange of ideas, and, most importantly, provide mutual learning. Establishing and implementing standards for reciprocity, based on Bonilla’s proposition,<sup>53</sup> is a work-in-progress; they are not finished and fixed. On the contrary, this process provokes thought on what could undermine the wheels of this political economy of legal knowledge. The first standard should be to establish mutual recognition by validating the local knowledge and experiences of both parties. The second standard should be prioritizing social justice objectives when developing

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52. Getúlio Vargas Foundation Law School can be considered an exception in this scenario. Since 2005, their law curriculum offers different types of clinics as a regular part of the student’s graduation. *Clínicas de Prática Jurídica*, FGV DIREITO SP, <https://direitosp.fgv.br/oficinas-e-clinicas> [<https://perma.cc/7YBW-5BQG>].

53. Bonilla proposes three “normative principles” to promoting horizontal relationships between partners in North/South clinical programs: “mutual recognition; consensus in establishing, interpreting and transforming the rules that guide the project; and prioritizing the social justice objective over purposes of professional development and educational growth.” Daniel Bonilla Maldonado, *Legal Clinics in the Global North and South: Between Equality and Subordination*, 16 YALE HUM. RTS. & DEV. L.J. 1, 37 (2016).

projects and activities and to connect them with bigger objectives without losing pedagogical impact. The third standard should be to develop projects and activities based on an equal distribution of benefits. And finally, the last standard should be to provide sound pedagogical impacts for both parties.<sup>54</sup>

The interaction between local and international experiences plays an important role in enhancing the exchange of ideas, practices, and social impacts of Clinical Legal Education. From a Brazilian context, we believe the links between local and global knowledge, at least in the legal education field, are vast. They have a potential to provide interesting analyses about the pedagogical and social impacts of legal clinics. However, these relations can only be possible when we go beyond some aspects of the conventional political economy of legal knowledge. The standards proposed here can be used to elevate this complex discussion and to present some aspects of Brazilians' experience on rethinking legal education beyond its dogmatic paradigm. We are not "late" in the clinical legal education movement that spread over the world. Instead, Brazil has a pluralistic scenario where these social and pedagogical approaches have already been in progress in law schools. Clinical Legal Education has arrived in Brazil to enhance this perspective, presenting how we can work with these innovative methodologies on a global scale, building horizontal cooperation with international partners, and bringing together transformative perspectives to legal education.

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54. *See id.*

MAKING GLOBAL CONNECTIONS  
WHEN IT MATTERS THE MOST:  
AN EXPOSITION OF THE VIRTUAL STUDENT EXCHANGE  
PILOT PROJECT BETWEEN NIGERIA  
AND U.S. CLINICAL LAW STUDENTS

Sunday Kenekwukwu Agwu & Olinda Moyd\*

Neither the frigid East Coast winter weather nor the sweltering West African heat could dampen the spark that was ignited by both the Nigerian and U.S. law students in wanting to connect, share, and explore. They desired to connect as clinical law students, share common experiential and doctrinal academic experiences, and explore ways in which the criminal legal systems in both countries would compare. These clinic students bonded from their shared encounters and exploits. Though there are nearly six thousand miles that separate the capital of the United States, Washington, D.C., from Abuja, the Federal Capital Territory in Nigeria, once the students had the opportunity to connect, they thirsted for more—more opportunities for professional networking, more time to swap law school experiences, and more occasions to gain new perspectives on the practical application of law in order to improve access to justice for disadvantaged populations in both Nigeria and the U.S. As members of the Reform Pretrial Detention in Nigeria (RPDN) Project Advisory Committee, we aimed to acknowledge their requests and secure law school participation

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to meet their demands. This virtual exchange served to increase global awareness of social justice issues through experiential learning.

## INTRODUCTION

While every academic institution closed their physical doors, struggled to abruptly design distanced-learning curricula, and faced unprecedented educational challenges, a virtual exchange pilot project provided connections between students who were living many miles apart during the coronavirus pandemic. The students commonly shared being confronted with sudden and unexpected isolation. From Fall 2020 through Spring 2021, student exchanges took place each month involving clinical law professors and law students from the U.S. and several law schools in Nigeria. Participating law schools included Howard University School of Law, University of Abuja, Nile University, Baze University in the Federal Capital Territory of Nigeria, and Nasararwa State University in Keffi, Nasarawa State.

This exposition is a comprehensive description and explanation of the theory behind developing this exchange and an assessment of the benefits of the connections made by the clinic students during a time when fostering such connections would take on a whole new meaning. In this Essay, we will discuss the concept of this student-driven exchange, the objectives and design of the facilitated discussions, the subject matter focus of the discussions, and the benefits and challenges of the partnership. Despite the global pandemic wreaking havoc in both nations during this time, the exchanges were deeply meaningful and educational engagements for both the Nigerian and U.S. law students alike.

### I. STUDENT-DRIVEN CONCEPT

The conceptualization of establishing the student exchange was born directly from interactions between the students during RPDN in-person visits in both countries, a project led by PartnersGlobal, New-Rule, and Network of University Legal Aid Institutions in Nigeria (NULAI).<sup>55</sup> The

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55. See *Reforming Pre-Trial Detention in Nigeria (RPDN) (2018-2022)*, PARTNERSGLOBAL, <https://www.partnersglobal.org/reforming-pre-trial-detention-in-nigeria-rpdn-2018-2022/> [https://perma.cc/3TXR-SZHF].

first in-person visit occurred in February 2019 when Nigerian partners visited the U.S. Upon touring clinical law centers at Georgetown University and the University of Maryland, the Nigerian students were able to observe that the clinic operations and teaching methods at both universities were comparable to their own institutions back home. In May 2019, when the U.S. delegation visited Nigeria, the American student fellows who were included in the travel team were equally impressed with the similarities in clinic education and experiential learning. All the clinics prioritized developing lawyering theories, knowledge, skills, and professional values so that students have what they need for clinical and future work. The clinic offices and client file maintenance and recording systems mirrored each other. The highlight of the clinical experience for all the students were the client interactions. Each of the students shared how meeting real clients and providing representation to the community, especially those who needed it most, was invigorating and made their legal education come alive. They had the opportunity to share and swap experiences between each other. Many of the Nigerian students had teamed up to visit the Kuje prison and interview detained persons to help them secure legal representation and get their cases heard in court. The U.S. students were representing clients in misdemeanor court proceedings, parole proceedings, and other post-conviction matters. At the close of these in-person visits, the students expressed the desire for more student-to-student connections.

## II. IDENTIFYING THE LEARNING OBJECTIVE

In trying to identify the learning objectives for the exchange, a poll was carried out among the students and their core areas of interest were identified, such as: effective student-to-student connection, inter-clinic collaborative studies and research, projects on areas of divergence, and similarities in the criminal justice systems of both countries. The team subsequently agreed that it was best to conduct virtual exchange sessions as the pandemic would not allow for a physical exchange.<sup>56</sup> The team agreed

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56. Team members for this endeavor included Professor Maryam Idris Abdulkadir, Baze University Law Clinic; Professors Lucius Outlaw and Stephanie Johnson, Howard University Clinical Law Center; Professor Alex Epu, Nasarawa University Law Clinic; Professor Ibrahim Muhamad Mukhtar, Nile University Law Clinic; Professor Nasiru Mukhtar, University of Abuja Law Clinic; and facilitators Kene Agwu, Olinda Moyd, and Jennifer Tsai of New Rule.

the exchange would focus on generating student discussion and comparing criminal justice practices between the two countries.

### III. DESIGNING THE EXCHANGE SESSIONS

Several steps had to be taken in order to make the virtual exchange a reality for the students. The first step was to secure a commitment from the legal institutions, including the clinical professors and law students. Planning sessions were scheduled and included professors, RPDN Project Advisory Committee (PAC) members, and Network of University Legal Aid Institutions in Nigeria (NULAI) staff. Participation in the exchange was not mandatory for any of the students. The number of U.S. students participating was much smaller than the number of students from Nigerian universities, and this was an important factor in designing the cohorts for small group assignments.

The next step was to obtain information regarding the academic calendar at each of the law schools and to schedule the exchange discussions at a time convenient for all participants. In the U.S., the academic calendar begins in August, but at the Nigerian universities, the academic calendar begins in October. Therefore, we decided to use the first meeting in September as a planning session with the clinical professors and the coordinating partners, which included NULAI and New Rule staff.

The exchange logistics (time, place, and frequency) also had to be decided and were discussed at the September planning session. We all agreed the exchange discussions would occur monthly so as not to be too burdensome on the students given their other course and clinic requirements. The first Friday of each month was the most convenient time for all. The first virtual exchange session planned for October 2020, and we would meet monthly continuing through May 2021. Because of the five-hour time difference, we had to select a time that would not interrupt class for the U.S. students and was not too late in the evening for the Nigerian students. Adjustments had to be made during daylight savings time.

The availability and use of technology was a major consideration. In normal times, the universities could rely on the use of their institutions' technology to support the students. However, because this virtual exchange was taking place during a pandemic, none of the law schools were meeting in person. Since the campuses were closed and classes were all being held



on a virtual platform, the students had to rely on their individual devices to gain access to the exchange discussions.

#### IV. SUBJECT-MATTER FOCUS OF THE DISCUSSIONS

Due to the subject of the project (Reforming Pretrial Detention in Nigeria), it became imperative that the subject matter of the discussions be focused on pretrial detention. Alarming, although the rights to liberty, security, and equal justice under the law are cornerstones of justice systems throughout the Americas, pretrial detention is being employed at rates two to five times greater than the international average, and its use continues to grow unabated.<sup>57</sup> In the U.S. alone, which has the largest pretrial detention population in the world, six out of ten people in jails—nearly a half million individuals on any given day—are awaiting trial. And twenty percent of detainees eventually had their case dismissed or were acquitted.<sup>58</sup> People who have not been found guilty of the charges against them account for ninety-five percent of all jail population growth between 2000-2014.<sup>59</sup>

Currently, Nigerian prisons list 50,734 prisoners as “awaiting trial detainees” out of a total 70,237 inmates (seventy-two percent).<sup>60</sup> These pretrial detainees face adverse consequences compared to convicted prisoners. They are more likely to be tortured and convicted because they do not have the benefit of liberty to prepare for their trial. They suffer loss of income and employment, distortion of family life, destruction or theft of their and their families’ property, denied access to health and education, etc. More often than not, they are not involved in the process of rehabilitation designed for convicted prisoners.<sup>61</sup>

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57. Richard M. Aborn & Ashley D. Cannon, *Prisons: In Jail, But Not Sentenced*, AMERICAS Q. (Jan. 16, 2013), <https://www.americasquarterly.org/aborn-prisons> [<https://perma.cc/AJ58-62PF>].

58. Thomas H. Cohen & Brian A. Reaves, *Pretrial Release of Felony Defendants in State Courts*, U.S. DEP’T OF JUST., BUREAU OF JUST. STAT., (Voc. 2007) <http://bjs.ojp.usdoj.gov/content/pub/pdf/prfdsc.pdf> [<https://perma.cc/G4XY-YD22>].

59. ZHEN ZENG, U.S. DEP’T OF JUST., NCJ 251210, JAIL INMATES IN 2016 4, 9 (2018), <https://bjs.ojp.gov/content/pub/pdf/ji16.pdf> [<https://perma.cc/P26W-7KP5>].

60. *Summary of Inmate Population By Convict and Awaiting Trial Persons as at 1st November 2021*, NIGERIAN CORRECTIONAL SERV., <https://corrections.gov.ng/statistics> [<https://perma.cc/UGJ3-87SY>].

61. Stanley Ibe, *Arresting Escalating Pre-trial Detention in Nigeria: Some Reform Ideas*, 2 AFRICAN J. OF CLINICAL LEGAL EDUC. AND ACCESS TO JUST. 95, 97–98 (2013).

The students were assigned to one of four cohorts and given a small group project which allowed them to work together and make a collective presentation during the December exchange visit. They were instructed to write a short paper (two to three pages) conducting a comparative analysis between Nigeria and the U.S. on either bail reform, pretrial stages, protections afforded during pretrial detention, causes and consequences of the overuse of pretrial detention, or the End SARS and BLM movements. Their written work products were impressive, and their oral presentations were inspiring. Many indicated that the opportunity to work collaboratively on specific projects with students from other schools was a project highlight.

The trends of these issues and possible solutions were the main focus of the monthly discussions. Also, at the time, the issue of police brutality came up as the Black Lives Matter movement gained popularity in the U.S., while Nigerian Youths protested against police brutality using the tag #ENDSARS. This was brought to the fore in the discussions and led to a robust interaction where key stakeholders in both jurisdictions were invited to interact with the students. These included Angela Davis, Stanley Ibe, and Ogechi Ogu.<sup>62</sup> We also had a discussion led by a Howard law student on whether a person can consent to search by police and entertained a presentation on her advocacy work to eliminate consent searches in the District of Columbia.

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62. In particular, we wish to thank Angela Davis for sending copies of her books to the Nigerian clinics. Professor Davis, Distinguished Professor of Law at American University Washington College of Law, is the author of *Arbitrary Justice: The Power of the American Prosecutor*, published by Oxford University Press in 2007. See Angela J. Davis, AM. UNIV. COLLEGE OF LAW, <https://www.wcl.american.edu/community/faculty/profile/adavis/bio> [<https://perma.cc/S4GK-SQFV>].

## V. SUMMARY OF THE BENEFITS AND CHALLENGES OF THE EXCHANGE PROGRAM

### A. Challenges

1. The limited number of U.S. student involvement
2. Connectivity issues with Nigerian students
3. More time needed for one-on-one dialogue between students

### B. Benefits

1. Comparative view of both countries
2. Opportunity to network with students of other backgrounds
3. Creation of the Justice Challenge (a mini-grant for students to work in groups towards achieving some of the solutions suggested)
4. Successful virtual learning when in-person exchanges were not possible
5. Possibility of peer-reviewed projects
6. Enhanced online presentation skills

## CONCLUSION

Despite the challenges faced during the exchange, it was a very rewarding educational endeavor, and the feedback from the students points to a wish for future collaboration. From our end as teachers and supervisors, many lessons have been learned as well, and it is our desire that there would be improvement in subsequent engagements. We strongly recommend international collaborations as a very effective method of clinical teaching, even in the absence of a global pandemic. The benefits far outweigh the challenges presented.

## THE GERMAN REFUGEE LAW CLINIC MOVEMENT

Bianca Sukrow\* and Christoph König\*\*

*Anwar escaped from Syria. Like many others, he had opposed the Assad regime and was sure that he would be tortured, just like his elder brother, who had been imprisoned and almost beaten to death. Anwar took a route through Turkey, crossed the Mediterranean Sea, and made his way through different European countries. Finally, after eight months of travelling—often afoot, sometimes hidden on the load beds of trucks, once on an over-fraught boat that almost sank—he, together with thousands of other refugees who had made similar journeys, arrived at the main railroad station in Hamburg.*

### I. ANTECEDENTS: MIGRATION MOVEMENT TO GERMANY 2015/2016

In 2015 and 2016, more than one million people sought refuge in Germany.<sup>63</sup> Most of them had fled the war in Syria, the ongoing crisis in Afghanistan, or the turmoil in Iraq. They desperately needed rest and space—room to mourn the loss of their family members and friends, their homes, their careers, and their plans for the future. Regarding the period that would follow, they hoped for some orientation in their new home, culture, and language; the chance to grow into German society; and an opportunity for a new life. However, the German authorities were ill-prepared. Although the migration movement had been at least partially predictable, official

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63. For comparison, in the years preceding 2014, about 100,000 people claimed asylum in Germany per year on average. In 2015, about 476,649 people sought asylum. In 2016, 745,545 refugees applied. Dirk Morlok, *Fakten, Zahlen und Argumente* [Facts, Figures and Argument], PRO ASYL, <https://proasyl.de/thema/fakten-zahlen-argumente/> [https://perma.cc/ZP7F-XGFW].

institutions were overwhelmed by the large number of people who came into the country. In many places not even the basic needs of the refugees could be met.

Fortunately, civil society stepped in. In a wave of solidarity, volunteers collected and distributed clothes, cooked warm meals, provided hygiene products, and perhaps most importantly, lent their ears to the traumatized arrivals as well as they could considering the language barriers. Despite the philanthropy of many helpers, the refugees soon realized that Germany was not the promised land they may have hoped for. Many were hoarded together in barracks and other makeshift shelters for months because communities would not provide proper housing.<sup>64</sup> The refugees were not allowed to work, privacy was scarce, even for families,<sup>65</sup> and in some cases, asylum seekers had to wait up to a year and a half for a decision on whether they would be able to remain in Germany.

In addition, most refugees were unsure about what was expected from them when in contact with authorities. Comprehensible and reliable legal information was hard to come by—not to mention individual legal assistance. Even in large cities, legal aid offices and migration lawyers were overcome by the sheer number of clients. Far too few established organizations existed to help people cope with bureaucracy, assert their rights, and stand for asylum interviews. But just as volunteers in local neighborhoods had initially supplied food and clothing for the arriving immigrants, a new kind of initiative appeared on the scene that tried to provide answers to the legal uncertainty experienced by the refugees: Refugee Law Clinics.

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64. See, e.g., Tim Lüddemann, *#LaGeSo-Krise 18.08.2015* [LaGeSo Crisis Aug. 8, 2015], FLICKR, <https://www.flickr.com/photos/timlueddemann/albums/72157657030061538> [https://perma.cc/WWW5-DC2P]; Tim Lüddemann, *LaGeSo 13.08.2015*, FLICKR, <https://www.flickr.com/photos/timlueddemann/albums/72157657248285455> [https://perma.cc/VCP4-HC8G]; Tim Lüddemann, *Staatliche Krise #LaGeSo* [State Crisis #LaGeSo], FLICKR, <https://www.flickr.com/photos/timlueddemann/albums/72157656517439018> (last visited Nov. 21, 2021).

65. *Ein Leben ohne Privatsphäre? Sammelunterbringung darf nicht zum Dauerzustand werden!* [A Life without privacy? Collective Housing must not become a permanent condition!], PRO ASYL (Oct. 1, 2017), <https://www.proasyl.de/news/ein-leben-ohne-privatsphaere-sammelunterbringung-darf-nicht-zum-dauerzustand-werden/> [https://perma.cc/3J2F-PHYYP].

## II. CLINICAL LEGAL EDUCATION IN GERMANY FROM A HISTORICAL PERSPECTIVE

With a provenance just over ten years—with the honorable and somewhat restive exception of the Legal Clinic Bremen, which has been active since 1977<sup>66</sup>—Germany is still new to Clinical Legal Education. Until 2007, the right to provide legal services was restricted to fully qualified lawyers. This restriction made clinical work by students impossible.

Historically, this restriction is a vestige of National Socialism. Before the 1930s, Germany had a liberal tradition of trade regulation dating back to the mid-nineteen century.<sup>67</sup> Legal services could be offered by anybody: it was the client's responsibility to choose suitable representation. This liberalism also made law one of the first academic professions open to Jewish people. As a result, for decades many lawyers in Germany came from Jewish families. This changed when Jewish people were ousted from society after Hitler gained power in 1933. Nazi Germany tried to find a way to ban Jewish people from the legal profession, preferably without explicitly mentioning them or other unwelcome groups in the respective law. There is ample evidence of opportunism by law associations who took advantage of the new regime's discriminatory ambitions to restrict the legal profession and end the liberal tradition of trade regulation.<sup>68</sup> Jewish people and other undesirables were removed from the Bar. Finally, in December 1935, the *Rechtsberatungsgesetz* (RBerG)<sup>69</sup> (Legal Advice Act) was passed, which forbid anyone who was not a member of the Bar to provide legal services. The law, however, did not mention Jewish people by name and was therefore retained even after Nazi Germany had been defeated. The stain of birth by fascism remained.<sup>70</sup> In 1992, the leading commentary on the RBerG

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66. *Legal Clinic an der Universität Bremen* [Legal Clinic at the University of Bremen], STRAFVOLLZUGARCHIV, <https://strafvollzugsarchiv.de/lehre> [https://perma.cc/UR45-RZLT].

67. Eisenmenger, *Der historische Hintergrund der Gewerbeordnung – von der Entstehung bis zum heutigen Reformbedarf*, LANDMANN/ROHMER GEWERBEORDNUNG, Rn. 55 ff. (2021).

68. SIMONE RÜCKER, *RECHTSBERATUNG 466–70* (2007); THOMAS WEBER, *DIE ORDNUNG DER RECHTSBERATUNG IN DEUTSCHLAND NACH 1945* 3 (2010).

69. *Gesetz zur Verhütung von Mißbräuchen auf dem Gebiete der Rechtsberatung* [Act on Prevention of Abuse in the Field of Legal Advice], Dec. 18, 1935, RGBL I at 1478.

70. See Helmut Kramer, *Die Entstehung des Rechtsberatungsgesetzes im NS-System und sein Fortwirken*, KRITISCHE JUSTIZ, 600–06 (2000).

still opened with a foreword claiming another round of victory over the “effort to brand the law as a product of national socialism.”<sup>71</sup>

The reform that brought liberalization, and thereby legalization, of clinical work only came about in 2007. After two consecutive federal administrations had worked on reform, the new *Rechtsdienstleistungsgesetz* (RDG)<sup>72</sup> (Legal Services Act) made it possible for civil society to provide pro-bono legal services and university students to work with live clients; making pro-bono social justice advocacy possible was a specific goal of the reform.<sup>73</sup> As a prerequisite, lay people, which includes law students, must be supervised by a fully qualified lawyer. They are not permitted to individually represent clients.<sup>74</sup>

As soon as the RDG went into effect, the first clinics made their appearance. Some were founded at the instigation of law professors who wanted to offer their students a new form of legal education, but many began as genuine student initiatives, in a few cases even against the resistance of law faculties and the *Anwaltskammern* (German Bar Associations). The initiators of these latter clinics deeply felt the gap between theory-loaded studies and legal practice, and by engaging in clinical work, they tried to address access limitations they observed in the German legal system.<sup>75</sup> There were clinics specializing in social, labor, and consumer law; human rights projects; and, also in this early stage, refugee and migration law clinics.<sup>76</sup> But until 2015, the number of clinics in Germany only just reached double digits.

Yet, when so many refugees were left without assistance in a legal system that appeared alien, unpredictable, and often hostile to them, a major shift occurred. Students from numerous universities immediately reacted to the obvious need to provide refugee guidance. Like flowers after a heavy rain, Refugee Law Clinics (RLCs) suddenly appeared everywhere; between

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71. Foreword to GÜNTER RENNEN & GABRIEL CALIEBE, RECHTSBERATUNGSGESETZ V (1992).

72. *Gesetz über die außergerichtlichen Rechtsdienstleistungen* [Act Regarding Out-of-court Legal Services], Dec.12, 2007, BGBl. I at 2840.

73. BUNDESMINISTERIUM DER JUSTIZ, QUALITÄT SICHERN – RECHTSBERATUNG ÖFFNEN (Feb. 1, 2007).

74. See: *Gesetz über die außergerichtlichen Rechtsdienstleistungen* [Act Regarding Out-of-court Legal Services], Dec.12, 2007, BGBl. I at 2840.

75. “Es besteht so viel Potential für tolle Projekte, die eine Refugee Law Clinic alleine nicht stemmen kann!,” JUWISSBLOG (Jan. 12, 2017), <https://juwiss.de/3-2017/> [<https://perma.cc/6MLV-VB4D>].

76. See LAMIN KHADAR, REINVENTING LEGAL EDUCATION (Albertan Alemanno ed., 2018).

2015 and 2017, the number of clinics tripled, and almost all the new clinical initiatives addressed the needs of migrants and refugees.<sup>77</sup> As migration and asylum law are usually not taught at German law schools, students often organized the trainings they needed themselves.<sup>78</sup> In this way, being active in a Refugee Law Clinic for many students turned out to be a way to reclaim some agency over their education. In most cases they were supported by local migration lawyers who were glad to pass on their knowledge and provide the necessary supervision. Thus, these lawyers indirectly reached many more clients than they would have been able to take on personally. At the same time, they had a chance to introduce up-and-coming jurists to the important but unpopular fields of law they, as long-term practitioners, were passionate about. Since then, students have given legal information and often individualized legal advice to several thousand refugees, and they continue to do so. The clinical students help clients understand their legal position, decode official documents, prepare for asylum procedures, or accompany them when interacting with the authorities. Usually, the clinics not only cooperate with lawyers, but also with local social services and other refugee aid projects. Today, there are about forty refugee law clinics in Germany—more than the entirety of clinics that operate in all other fields of law. Thirty-six of the those refugee law clinics are organized in a federal umbrella organization.<sup>79</sup> By now, law school faculties, as well as the Bar, approve of the work clinics do.

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77. Matthias Kilian & Lisa Wenzel, *Law Clinics in Deutschland: Zahlen, Typologien und Strukturen*, 10 ANWALTSBLATT 963 (2017).

78. There are some noteworthy exceptions in which academic teachers were willing and able to provide the necessary training in asylum and migration law the students needed and to help organize the clinic. The RLCs in Hamburg, Gießen, or Dortmund are among those. Yet, many RLCs had to rely solely on expertise they found outside their law schools. Still many clinics are registered non-profit societies, not activities integral to the respective law faculty. In some cases a close cooperation between the faculties and the independent clinics has developed.

79. The umbrella organization was founded in 2016. See REFUGEE LAW CLINICS DEUTSCHLAND, <https://rlc-deutschland.de/> [<https://perma.cc/PHH4-W2P8>].



### III. PRODUCTIVE UNREST: REFUGEE LAW CLINICS AS A REBELLIOUS MOVEMENT

Most students who came together to form Refugee Law Clinics in 2015 did so because they perceived an obvious, pressing demand. In Germany, there is no right to legal aid for asylum seekers, and many of the arrivals neither knew their rights nor their duties. Yet, refugees had the obligation to make their case within a system that was designed to judge whether they were worthy of protection or not. The students responded with a charitable gesture: while there were many indigent people unfamiliar with German jurisdiction and administration, they, the students, had legal knowledge and were willing to share it. Similar to the *Fridays for Future/School Strike for Climate* movement that stirred up a heedless society and hammered the importance of climate protection to parents, politicians, and economists, very young students *acted* to make sure refugees got adequate access to the legal system, while large parts of society, including politics, administrative bodies, and many academic institutions, were still unsure of how to assess the refugee situation. Simply by offering assistance to individuals in need, the students taught society a lesson in hospitality, agency, and respect. They spent time listening to their clients' stories, acknowledged the pain people had gone through, empowered them to make well informed decisions about their asylum procedure, and, by encountering them as unique human beings and not as consecutive numbers, preserved their dignity. At the same time, the students themselves grew personally and, sometimes for the first time, were confronted with the barriers that birth privileges establish and maintain.

While considering barriers faced by individuals, it is imperative to recognize structural problems as well. After a while, patterns of rejection and unjust treatment became visible, and students' initial motivation of charity amalgamated with a feeling of discontent with the asylum procedure and the way refugees were treated generally. Students witnessed that the procedure used by the Federal Office of Migration and Refugees was based on mistrust towards asylum seekers. In other words, it is a system of *Gefahrenabwehrrecht* (hazard prevention) that treats its subjects primarily as potential threats to public safety and order. Through accompanying clients and listening to their stories, it became clear to students that case

handlers would rather view it as their politically-assigned task to find contradictions and gaps in the narrations of the anxious and often deeply traumatized people they were interviewing than create an atmosphere of trust and reliability in which refugees were safe to open up and disclose their personal experiences. More and more often, students and their supervisors found it was not enough to explain the procedure and provide guidance through the jungle of regulations. Instead, they had to prepare clients for trick questions; the carelessness and tactlessness of wary and often only hastily trained interviewers; re-traumatizing interrogations; inexperienced, mismatched, or biased translators; extended months of uneasy anticipation; and unpredictable outcomes.

Students had been taught about the dependability of the German *Rechtsstaat* (rule of law), but the discrepancy between the law as promised and the law as practiced was and still is hard to miss. Working with refugees on their cases allowed students to perceive the system as it was actually operated on a daily basis. This insight brought a sense of responsibility for the legal system they were meant to apply in the future to many of the students working with the Refugee Law Clinics. It was *their* rule of law that was threatened by arbitrariness and a growing authoritarian habitus. Increasingly, clinics become not only a place where individual clients find help, but also a forum of criticism of the legal system overall.

#### IV. PROSPECTS AHEAD

The Refugee Law Clinics form a community that is becoming more and more diverse. Law students and students of other disciplines work on cases together, gender equality is maintained in the boards of clinical societies, and increasingly more participants in the clinics come from migrant families or have migrated themselves. Some of the students are also active in political movements, human rights initiatives, and other activist groups. The Refugee Law Clinic movement has grown from a loose alliance of like-minded, local grassroots initiatives to a network that is able to start and maintain nationwide and even cross-border aid initiatives. “Fortress Europe” means the closing of borders—both legally and physically—to the clients of the Refugee Law Clinics. In 2015 and 2016, it became clear that the existing immigration system in Europe was insufficient to prevent the death and suffering of thousands on perilous routes. In the five years since,

Europe could have been expected to establish safe, transparent entry procedures and find a solution to relocate people to welcoming countries. Instead, many European countries have tried to bar their doors. Refugees are stuck in inhumane camps on Greek islands, waiting to be shipped back to Turkey, and others find themselves standing behind barbed-wire fences across the Balkans.<sup>80</sup> With clients being increasingly less able to physically seek refuge in Germany, some clinicians from the network decided to go to them. A first project started on the island of Chios, near Athens,<sup>81</sup> and a second project followed on Samos, close to Thessaloniki.<sup>82</sup> Under the name Refugee Rights Access (RRA), the Refugee Law Clinics seek to build a network providing legal services across the Balkans.<sup>83</sup>

Though there remains a lot to do—some of the transregional projects are not yet stabilized, and some of the local clinics are still struggling to become firmly established with a faculty—it has become hard to imagine the German legal education system without these clinics. We hope that the (Refugee) Law Clinics will become typical in the national, European, and global legal justice movement. We are sure of one thing: to truly change the system we are so uneasy with, we must change the way its primary actors are socialized and work to empower clients. The clinics have been developing into a forum in which clients and student advisers meet as allies and a forum in which future lawyers and judges, policy makers, and societal change-makers forge their view on our political and legal system and build networks. So, change may be on the way!

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80. See, e.g., *Report for the Special Rapporteur on pushback practices and their impact on the human rights of migrants at European land borders*, EUROPEAN CTR. FOR CONST. AND HUMAN RIGHTS, [https://www.ecchr.eu/fileadmin/Juristische\\_Dokumente/ECCHR\\_REPORT\\_UN\\_SR\\_PUSHBACKS.pdf](https://www.ecchr.eu/fileadmin/Juristische_Dokumente/ECCHR_REPORT_UN_SR_PUSHBACKS.pdf) [<https://perma.cc/RK2H-6XGX>]; Helena Smith, *Refugees Forced to Claim Asylum in 'Jail-like' Camps as Greece Tightens System*, THE GUARDIAN (Dec. 21, 2021), <https://www.theguardian.com/global-development/2021/dec/01/refugees-forced-to-claim-asylum-in-jail-like-camps-as-greece-tightens-system> [<https://perma.cc/JZ2Z-W7P7>].

81. See *Legal Support for Refugees*, EQUAL RIGHTS BEYOND BORDERS, <https://equal-rights.org/> [<https://perma.cc/6XDS-UBSD>].

82. See I HAVE RIGHTS, <https://ihaverights.eu/> [<https://perma.cc/6U6D-5J9H>].

83. *Refugee Rights Access Project*, REFUGEE LAW CLINICS DEUTSCHLAND, <https://rlc-deutschland.de/rra/> [<https://perma.cc/963Q-EJ23>].