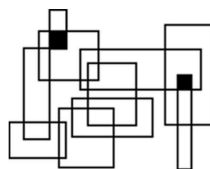


*Legal clinics in Europe:
for a commitment of higher education
in social justice*

Clelia Bartoli

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FOREWORD

Cécile Kashetu Kyenge*

I strongly wanted and supported this research, as I believe legal clinics to be a best practice in the context of both social justice and higher education.

To understand the value of *clinical legal education* I think it is worthwhile pausing to reflect on what a “best practice” is.

It is not simply a good idea that, translated into practice, gives constructive results. An action, to be defined as such, must have at least three characteristics:

- i. It must be the result of a creative re-interpretation of roles and institutions;
- ii. It must produce virtuous circles;
- iii. It must show to others that it is possible to do better.

The institutions and roles are often experienced as something rigid that is imposed on people, limiting them in their self-expression. A good practice however is the ability to rethink roles and institutions expanding their meanings and conferring to the subjects a greater capacity to take action. Therefore legal clinics have to be considered a best practice, because they expand the functions and meanings of Academia and the scholar profession in new ways: high culture comes down from its pedestal, opens its doors and arises in communication and in service to society.

A good practice, furthermore, is capable of triggering a social mechanism that produces positive effects that mutually implement, in accordance with a win-win dynamic. People often think that giving aid implies a sacrifice, that is by denying themselves something to offer it to someone else. However it is possible “to receive by giving”, “to help ourselves helping others”. For example in the case of legal clinics, the students develop better skills for their future job and life, just as they offer a valuable consultancy service or legal education to weaker sectors of society. Furthermore, the advantage is not just for students and clients. The whole community will benefit if we come to form a new generation of competent lawyers, with a heightened ethical sensitivity and a capacity for intercultural and interdisciplinary communication. These young people are in fact destined to occupy the key functions of the rule of law, such as the legal profession, the judiciary, the politics and public administration.

Finally a best practice is not only effective within the specific area in which they apply, but is an inspiration for a wide audience of contexts. Therefore, they are not to be emulated, not be copied with meticulous precision; they act as a driving force to avoid surrendering to the state of things, proof that you can do things differently and in a better way.

* Previously the Minister of Integration in Italy, Cécile Kyenge has been a Member of the European Parliament, representing Italy in S&D group, since 2014. In the European Parliament, she is a member of the Committee on Civil Liberties, Justice and Home Affairs and of the Committee on Culture and Education. She is also a Vice-Chair of the ACP-EU Joint Parliamentary Assembly, Co-Rapporteur of the European Parliament strategic initiative report on “The Situation in the Mediterranean and the need for a holistic EU approach to migration”; Co-Chair of ARDI’s Institutional racism Working Group and Chair of ARDI’s Afrophobia Working Group.

But it is up to each group and context, to develop the strategy that best enhances the intrinsic potential in their area. With this in mind, the experience of the legal clinics can be an inspiration not only for the law schools, but for different university faculties. Each disciplinary sector can in fact imagine ways through an innovative educational practice that could coincide with a service to the community.

What is also particularly interesting is that the clinical legal education in the European Union is in a period of great turmoil. It remains, in fact a movement born of highly interconnected and socially engaged students and European scholars.

I therefore feel that the European institutions should pay great attention to this phenomenon, encouraging and supporting it, as it converges extraordinarily with many of its most important objectives.

This investigation is therefore useful and necessary. The data collected by Clelia Bartoli are both quantitative and qualitative. In this way we have a detailed and three-dimensional image of this phenomenon, now widespread in every European country.

But in addition to making a framework of this, research shows the many potentials of clinical legal education. Legal clinics, in fact, can make a significant contribution for some of the key objectives set out in European legislation: firstly the aims of the Bologna Process and the democratization of access to justice. But there are a number of other specific targets to which the clinics are already working, such as combating racism and all forms of discrimination, the enforcement of the right of asylum, the protection of victims of crime, environmental defence, etc. Finally the academic highlights certain problems that may be smoothed out, freeing the potential of this good practice, thanks to the recognition and support of national and community institutions.

We are living in a climate of fear and anger, where we run the great danger of forfeiting important achievements accomplished with great sacrifice, by our predecessors. In order to avoid that Europe becomes only a fortress and to prevent from taking the road of violent identities, to ward off the risk of a hostile and conflicted fragmentation of society, we have a huge need for educational programs for new generations such as clinical legal training.

We must note that any theoretical discourse, although driven by good intentions and with reasonable arguments, is easily overwhelmed by the recall of those who speak evoking the most obscure and destructive instincts, like those that drive populists, racists and terrorists.

It is quite necessary to “gain experience”. Only the active and personal involvement can contrast powerfully the speeches made from the gut.

For example, when a group of university students meet peers who have crossed the desert and sea to seek asylum in Europe and together they try to give substance to the principles enshrined in the European Charter of Fundamental Rights, this is definitely the most efficient way to overcome prejudice and gain the extraordinary taste of being actors of a social change based on solidarity and on the enhancement of the everyone’s capacities.

INTRODUCTION

Ulrich Stege*

In the book “The Global Clinical Movement”, Frank Bloch asks the question whether there is something particularly meaningful in talking (or writing a book) about the *global* movement of Clinical Legal Education (CLE) given the fact that one important and inherent feature of clinical teaching is its local (and not global) dimension. Through powerful testimonies from different parts of the world, he illustrates the global reach, shared social justice mission and emergence of CLE as worldwide movement and, hence, demonstrates that the case of global CLE needs to be taken seriously.

Yet, one could wonder if there is anything meaningful in studying the European CLE movement, as, although some strong regional developments take place since years, some parts of Europe (mainly Western continental Europe) has been until recently described – by borrowing the words of Richard J. Wilson – as being the “last holdout in worldwide acceptance of clinical legal education”.

The study by Clelia Bartoli is a good testimony to the fact that it makes perfectly sense to consider the case of the CLE in Europe. As shown by Bartoli’s investigation, the European CLE movement has reached a new level of dynamism in recent years. We can indeed observe that many European law schools are now running CLE programs or are discussing opening one. This is not entirely new. In some European regions, this has been already the case since many years (like the UK since the 1970th or in Eastern Europe since the 1990th). The new quality of the European CLE movement lies in the fact that CLE programs can now be found in almost all European regions. Especially the relatively recent developments of CLE programs in countries like Germany, France, Italy or Spain are important elements of this dynamic. These countries represent the “historical” block of continental law countries, which have been and still are very influential in many ways for a number of countries in and outside Europe. This is true not only for the legal system, but also applies for legal education. Having now also CLE programs developing in continental law countries is an important milestone for the general development of CLE in Europe.

Another strong indication of this new dynamic is the fact that more and more European clinicians take an active part in CLE conferences organised at European or global level (like the bi-annual conference of the Global Alliance of Justice Education – GAJE, or the annual conference of the International Journal of Clinical Legal Education – IJCLE). GAJE’s strategy to organise some of their bi-annual conferences in Europe (2004 in Poland, 2011 in Spain, 2015 in Turkey) certainly had an enormous influence on that development.

* Ulrich Stege is the Director of the Clinical Program of the International University College of Turin (IUC) and the Executive Secretary of the European Network for Clinical Legal Education (ENCLE). Member of the ASGI (Associazione per gli Studi Giuridici sull’Immigrazione), GAJE (Global Alliance for Justice Education) and the Migration Law Network (Germany).

It is not by chance that the establishment of the European Network for Clinical Legal Education (ENCLE) in 2012/2013 started with initial contacts and discussions amongst European clinicians at the GAJE/IJCLE conference organised in Valencia (Spain) in 2011. The growing number of members affiliated to ENCLE (more than 130 from more than 30 European and non-European countries – as of April 2016) and the successful organisation of different annual activities (annual ENCLE conferences on CLE, training of trainers workshops, advocating events at European level, etc.) are testimonies of the liveliness and gradual strengthening of the CLE community. The 3rd ENCLE Conference organised in October 2015 in Budapest (Hungary) brought together almost 80 clinicians from more than 20 European and non-European countries. The desire to meet, share and discuss innovation in the field of legal education as well as to exchange experiences amongst clinicians and law clinics in Europe is huge and the ENCLE conference became over the years the annual meeting point for European clinicians. In addition, ENCLE is more and more recognized as a valuable peer network and place to get access to training/input/advice/ideas/support from other clinicians when starting or expanding a clinical project.

But what are the reasons for this recent boom of CLE programs in Europe? Interestingly, this new dynamic has not been driven mainly by US donor organisations, contrary to what happened in the past in Eastern Europe. Some argue, that the Bologna process, which seeks to bring higher education systems in Europe closer together, has been a major source of inspiration. Others speculate that it may be due to a gradual recognition of the merits of a more practical approach of legal education based on the CLE method – the experience and support from clinicians and well established CLE programs (for example from the US or South-Africa, but also from the UK, Poland, Czech Republic, etc.) being instrumental in that regard.

This new dynamic is certainly also fuelled by the fact that the traditional legal education model is more and more questioned in Europe. Law students, but also a new generation of law teachers, are unsatisfied with the way law is taught traditionally. A student who grows-up in today's experiential and interactive multi-social-media world will have great difficulties following a classical front lecture together with 500 other fellow students on an abstract legal issue. CLE is perceived as an interesting and innovative alternative, which has the potential to bridge the gap between the law in the books and the law in action, to get students engaged and involved and to make thus law and law schools more appealing and meaningful.

Attractiveness is also a growing, albeit relatively new, concern for law schools. For the first time ever, Europe is facing private competition in higher (and legal) education, which was until recently exclusively in public hands in most of Europe. In addition, through the development of excellence clusters (which determine in part the level of public funding), public universities themselves need to be more competitive. As a consequence, more and more attention is paid to the needs of students and communities – which makes the case for a more practical approach to legal education.

Another possible explanation for the recent dynamic of CLE in Europe is the fact that Europe is experiencing strong social and economic challenges which bring with them deep changes in many areas. In this context, many students and law teachers started to question the ability of the current legal systems to provide suitable answers to the changes and crisis. As a result of that reflection, a number of law clinics have been initiated, in a spirit of social activism, distancing themselves from traditional forms of legal education and affirming themselves as tools of systematic social change.

While the description of the underlying reasons for the recent boom of CLE in Europe is more based on personal perceptions than on data analysis, it is enough justification to claim that the European CLE movement, in its current stage of development, is more than worth an in-depth investigation.

The interest of such a research on European CLE also lies in the specificity of the political and legal system of the European Union. Contrary to other regions of the world, Europe has established a highly developed supranational legal system, which is applicable in all EU Member States. Such a comprehensive system goes far beyond transnational rules related to economic activities (competition law, international trade, etc.) that may exist between states elsewhere. The EU legal system is highly complex, in constant evolution and of growing importance as it directly impacts domestic law in each Member States. Moreover, the competences of the EU legislator have been expanded over time, leading to the adoption of legal provisions in areas such as fundamental rights, anti-discrimination law, family law or migration and asylum law.

Despite the importance of EU law for the national legal orders and broadly European societies, many regret that teaching EU law is given relatively low priority in national education systems and remain an overly theoretical, doctrinal and text-book based as well as very fragmented (by country) field of education. Many European actors (e.g. European Commission, CCBE, etc.) therefore make the case for a genuine European legal education, where more space and importance would be given to EU law teaching. This goes hand in hand with calls for a more practical approach to legal education, which would nurture future generations of legal professionals with not only knowledge but also practical skills to deal with the complexity of EU law and EU core values, such as justice, equality, participatory democracy, social responsibility, sustainability, etc.

In response to such a call, CLE is certainly able to offer the right tools for a more practical and social justice oriented legal education in Europe. Furthermore, contrary to classical legal education modules, CLE is able to tackle additional aspects, such as providing access to justice to vulnerable or excluded communities (through the pro bono legal support offered by students) but also promoting reflection on EU law practice, in order to pin-point discrepancies in the practical implementation of rules and to propose alternatives. However promising, CLE in the context of the EU law is today only in its very early stages of development.

The study by Clelia Bartoli on legal clinics in Europe is a precious and important contribution to our understanding of what is CLE and of the main features of the European CLE movement. It also helps to clarify how Europe and the CLE movement can mutually profit from each other.

In particular, it represents an interesting reflection on the definition of CLE and its philosophical underpinning (chapter I), accompanied by a useful overview of the history of legal clinics in the US, Europe and globally by Maria Romano (appendix 1).

The inquiry (chapter II) is the first attempt to gather a more comprehensive view about the CLE movement in Europe. Although, it was not possible to get responses from all CLE programmes active in Europe, it provides important information about the fields of action, the activities offered by clinics and items such as the structure or the financial profiles of a however significant number of individual clinical programmes. Even if more research would be necessary, to be exhaustive, the results of the inquiry (which are complemented by a series of qualitative interviews with some key players of CLE in Europe – appendix II) project a fair picture of the CLE community and movement in Europe.

The last part of the paper (chapter III) is discussing the relationship between Europe and the CLE movement. Especially the reflection about the contribution of CLE for the implementation of EU objectives will be very useful for further discussions on the support the EU might be willing and able to provide to the development of CLE in Europe.

There are many reasons for being optimistic with regards to the future of CLE in Europe. The work provided by Clelia Bartoli is certainly a strong indicator of it.

ACKNOWLEDGEMENTS

Clelia Bartoli*

Towards the end of 2014 I spoke with MEP Cécile Kyenge of the project to open a legal clinic at the University of Palermo, the idea immediately intrigued her and, realizing the value of this good practice and its European and international dimension, she proposed I develop research on the subject. Thus we thought to produce a detailed mapping of clinical legal education in Europe, which highlights critical issues and potentials. Thanks to Cécile for pushing me to deepen the study of this topic by supporting me in this research.

I must point out that this work would not have been possible without the support of ENCLE, the European network for clinical legal education. In particular I am extremely grateful to Ulrich Stege, one of the main founders of ENCLE and a key figure of the international clinical movement. Ulrich has accompanied me from the beginning to the end of this project. Together, we have defined the questionnaire and the objectives of the investigation, to him I owe a great part of the contacts and above all, of the insights.

During the time that I began to explore the world of legal clinics, an Italian network was being constituted. Meetings and the comparisons with other “clinicians” did not simply help me to clarify with which approach to study the phenomenon, but have been inspiring from both an intellectual and human point of view. I especially thank Marzia Barbera (University of Brescia) and Emilio Santoro (University of Florence, Altro Diritto), pioneers of clinical legal education in Italy, to whom I am indebted for helping me understand the nature of this experience, the obstacles it encounters and its extraordinary potentialities. I also thank Anthony Valke (University of Kent in Brussels), Stijn Smet (Ghent University) and Costanza Hermanin (Open Society) for the nice conversations on their activities and on their vision.

I would particularly like to thank all the people who engage in CLEDU (the Legal Clinic for Human Rights of the University of Palermo), with them I was able to experience what it means to accompany the youth toward a social commitment, so that legality becomes ever closer to justice. In particular: Laura Bondi, Elena Consiglio, Cristina Musumeci, Maria Romano, Serena Romano, Letizia Palumbo, Daniele Papa, Alessandra Sciarba and ultimately for alphabetic reasons, but in first place for his skillful dedication: Fulvio Vassallo Paleologo. Thank you Lisa Welter, for not simply translating the words from one language to another, but for entering into the spirit of this project. Finally, thank you Aldo Schiavello, director of the Law department of Palermo and the editorial staff of «Diritto & Questioni Pubbliche» for welcoming the idea of publishing this research as a special issue.

* Clelia Bartoli, PhD in “Human Rights” and professor of “Human Rights” since 2006 at the University of Palermo. She served as expert for the Ministry of Integration in Italy. She is a co-founder of the CLEDU – the legal clinic for Human Rights in Palermo specialized in migration law, asylum and antidiscrimination protection. Among her books: *Sull’universalità dei diritti umani* (2003); *Esilio/Asilo. Donne migranti e richiedenti asilo in Sicilia* (2010); *La teoria della subalternità e il caso dei dalit in India* (2008); *Razzisti per legge. L’Italia che discrimina* (2012). [cleliabartoli@libero.it]

SUMMARY

Legal clinics

Legal clinics are born within the law school. They are an innovative form of teaching and a way in which the academy is placed in service to society, implementing the substantive equality and the access to justice.

Students – under the guidance of professors and experts, sometimes in partnership with NGOs and non-profit institutions – are involved in various activities such as: *pro-bono* offering advice to poor or marginalized people, divulging legal knowledge needed to exercise the rights of victims of discrimination groups, participate in solving cases with a high impact on public interest, as trials related with environment and collective health protection. Therefore legal clinics have a dual nature (educational and pro-social) and a dual beneficiary (students and clients).

Students of the Faculty of Law, participating in clinic work, have a way of “learning by doing” to prepare themselves for their profession, also developing an ethical understanding. And contemporarily, the weakest sectors of society have the opportunity to access free legal aid that is qualitative and authoritative. The expert guidance of professors and lawyers, in fact, makes this internship a protected experience for students, and ensures a good standard of legal service for users.

Legal clinics in Europe

Clinical legal education was born in the early twentieth century in the United States during a serious rethink of teaching and curricula of the Law schools. Since the early 1960s and 1970s it has spread to many other countries and continents. Today, there is a “global clinical movement” confirming the success of a legal education methodology. Nevertheless in Europe, with the exception of a few

countries, it is a new trend that is worth knowing just in this phase, so rich with potentialities.

In this inquiry over a hundred clinical legal programs, spread in all the Union territories, are fully examined. Though it is far from a complete census of all clinics active today, the number is relevant and allows you to get an idea of the variety and articulation of this reality in Europe.

As is said, this is a substantially recent phenomenon, the vast percentage of clinics who answered the survey are not more than 15 years old and a good part have been operating for no more than 5 years.

Viewing the educational aspect of legal clinics emerges that almost all European programs train youth using innovative, pro-active and participative learning.

They propose role-play, brainstorming, case by case, but moreover, the involvement of students in the resolution of real cases and the meeting with live people and community who need a legal support.

Most of the clinics recognize the commitment of the students through the granting of credits. The 70% of interviewed clinicians believe students acquire both more skills in the professional field and a richer human development.

Looking at this experience on the side of social commitment, we observe that the areas of intervention of the European clinical programs are mainly human rights, asylum and immigration, anti-discrimination and labour. There are a considerable number of clinics committed also with the gender issues, environment and prisoners' condition.

Half of the respondents perform as assets free of court advice, only a quarter of clinics follow the clients also in the trial stage. About 40% is street law activity, ie the disclosure of legal knowledge. A substantial number is engaged in monitoring activities to report any

violations of human rights and also in the production of draft laws.

Given that the ability to act of the clinic relies heavily on network building, this aspect was taken into consideration. It turned out that almost all the clinics work with lawyers, NGOs, local authorities and certainly with other clinics at the national and European levels, and a quarter of them also outside the old continent. But the data that is striking is that legal clinics, even in face of the great social and educational value they produce, are projects that work within an extremely low budget. 90% of analysed clinical programs operate with less 20.000 € per year. This is partly due to the difficulty in raising funds, and in part due to the fact that emerging within the University, they have a location and personnel, they therefore do not require especially onerous investments to get fully operational. We also discovered a big difficulty among clinics to accede to European grants.

Since the comprehensive vision of this phenomenon we can conclude that clinical legal education in Europe is a “movement”. The data shows, in fact, that we are not simply in the presence of a proliferation of isolated experience, but that the emergence of a new trend in academia should be conveyed. The scholars involved in this process are formulating a different way of teaching the law, an alternative view of the law itself and a different role of academia and the university professor. The emergence of such a movement could influence the professional culture of European jurists.

Legal clinics for Europe

Chapter III investigates the law clinics’ contribution to achieve some important goals set by European legislation. In particular we analysed the potential remarkable impact of clinical legal education on:

- *Bologna process*. Thanks to the innovation in high education and because it can help to train a new generation of lawyers and more Europeanised and socially committed law enforcement authorities.
- *Access to justice*. Integrating the public legal aid and implementing EU rights awareness.

- *Egalitarian policies, in contrast to all forms of discrimination and in the protection of specific rights and the empowerment of particularly vulnerable groups* (such as victims of crime; asylum seekers and refugees; victims of human trafficking and labour exploitation). Many clinics are specialized in giving legal aid to members of minorities, migrants and refugees. At the same time it is an experience for students that help them to overcome bias and prejudice, now and when they will serve in crucial charges for state of law.
- *The advancement of legislation and jurisprudence on human rights*: Some clinics offer the opportunity not only to try act as a lawyer but as a legislative office too. Thanks to the research capacity and scientific authority of the universities, to produce draft regulations and case law comments on laws and practices.

The statement of the 2007 London conference of Union Ministers for Education puts it this way: «Higher education should play a decisive role in cultivating social cohesion, reducing inequalities and raising the level of knowledge, skills and competences in society». The legal clinical education is a perfect example of this *social accountability of universities*.

Europe for legal clinics

The main challenges to make clinical legal education spread and rooted are: a) the lack of institutional recognition and b) the difficulty to ensure economic sustainability.

To face the first problem they would need to:

- i. obtain a clear status within university courses.
- ii. have a legal personality, so that, for example, clinics can establish a civil party in a process or to take part in European projects autonomously.
- iii. that the activation of clinical programs is a title of respect in the evaluation of universities.
- iv. that clinical work of an academic can be calculated and evaluated, as scientific publications, participation in research projects, etc.

Even if the public recognition is an important goal, the more urgent difficulty is surely economical.

In what way can the Union institutions help ensure sustainability of this good practice?

Legal education is part of higher education. The *law clinics* are not just good practice in the channel of the law school, but for the whole academy. The statement of the 2007 London conference of Union Ministers for Education puts it this way:

«Higher education should play a decisive role in cultivating social cohesion, reducing inequalities and raising the level of knowledge, skills and competences in society».

The legal clinical education is a perfect example of this *social accountability of universities*. They constitute an example of

how universities and societies can mutually enrich interaction.

In the case of the Law Faculty, clinics are the model of how the Culture could be of service to Society, but each different faculty can conceive of programs based on their specific field or can design an interdisciplinary collaboration.

So in order to implement the so called third mission of the University: contributing to social development (in addition to the classical two missions of research and education) it could be important to foresee a priority in the next European programs 2021-2027.

Supporting scholars and universities willing to take this path with funds and recognition, may generate virtuous circles from which all come out as winners.

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I CHAPTER

What are legal clinics?

1.1 *The definition of a legal clinic*

About ten years ago, I found myself in India, in the megacity Mumbai, carrying out research on the Dalits, i.e. the members of the different castes of untouchables; historically marginalized but very active today politically.

While I was on the premises of the Social Science Faculty, waiting to be received by one of the experts of the topic, a Dalit himself; the presence of a small group of older women in the waiting room, obviously very poor, caught my attention. The ladies had laid mats on the floor where they were seated, according to local custom, and chatted amiably with each other, the environment seemingly, was rather familiar to them.

It was certainly an unusual presence in age and census within an academic building, but I really appreciated that the university managed to provide an open space to different groups or classes of citizens. I learned much later that those women were the legal clinic clients, active within the university. They were in fact waiting to be received by a team of students who would listen to their case and devise a solution under the guidance of professors and experienced lawyers, providing them completely free, quality legal advice.

I chose to introduce the subject with an image before attempting a more challenging theoretical definition. What makes it difficult, if not impossible, to uniquely determine what legal clinics are, is their longevity and growing numbers. They were born in the early 1900' and are currently present in many countries, on every continent and, of course, they have differed significantly. On the following pages of this first chapter Maria Romano will outline the historical route and provide an overview of the main types and programs. But in the meantime, to approach the idea, it is useful to start with five attributes which characterize them, as identified by Richard J. Wilson. The professor of the Washington College of Law claims, after thirty years of experience in the international field, to have reached the following summary:

- a. *The legal clinics were born within the law classes and are part of the law faculty curriculum.* They are an educational experience, offering academic credits to students who participate.
- b. *They are a form of apprenticeship.* Students work to resolve specific cases or are involved in projects to the extent the law of the local climate allows.
- c. *They provide a free legal service to vulnerable people.* Clients of the clinics are those who barely have access to legal protection, due to poverty, their social marginalization or the unique and complex nature of their case.
- d. *They ensure a quality service.* The students carry out their service led by academics, under the close supervision of an experienced lawyer permitted to practice in the relevant jurisdiction where they appear.
- e. *They constitute educational experimentation.* Work on real cases is accompanied by a preparatory course that makes extensive use of interactive teaching techniques such as games,

simulations and role-play, in order to develop in students the skills, values and ethics of the legal practice»¹.

Nevertheless, these are the most common five features of legal clinics but we should point out that under this name we could find experiences with partially differing attributes. For example, there are student associations that offer free legal consultation to disadvantaged social groups, however, they provide this service as a form of voluntary work, without an official recognition within their university career.

There are also legal training programs that involve students in resolving actual cases, but regardless of their particular social value. There are even courses that widely use educational alternatives to typical classroom lecture techniques where there is no meeting between the learner and the customer, face to face. As you can imagine, there is an open debate about whether these unorthodox experiences can claim the title of “legal clinic”. But because we are speaking about a kind of human association, its definition is inevitably the outcome of a negotiation process.

The following, then, is an interesting definition adopted by Encle, the European network for clinical legal education, not only for its content but also because of the dialogue process that generated it. It reads as follows:

«Clinical legal education is a legal teaching method based on experiential learning, which fosters the growth of knowledge, personal skills and values as well as promoting social justice at the same time. As a broad term, it encompasses varieties of formal, non-formal and informal educational programs and projects, which use practical-oriented, student-centred, problem-based, interactive learning methods, including, but not limited to, the practical work of students on real cases and social issues supervised by academics and professionals. These educational activities aim to develop professional attitudes and foster the growth of the practical skills of students with regard to the modern understanding of the role of the socially oriented professional in promoting the rule of law, providing access to justice and peaceful conflict resolutions, and solving social problems»².

In contrast to the articulate and sometimes cumbersome definition of ‘Encle’, Emil Winkler, in a study dedicated solely to the concept of the legal clinic, suggests this concise principle: «A legal clinic is the combination of practical legal education and legal aid pro bono»³.

While varying in styles, the different definitions agree that the legal clinic programs have a dual nature (educational and pro-social) and a dual beneficiary (students and clients). Students of the Faculty of Law participating in clinic work have a way of “learning by doing” to prepare themselves for their profession, that appropriately counterbalances the theory excess that often can happen in the academy. The term “clinic” is in fact borrowed from medical training, in which learners alongside their teachers, participate in the treatment of real patients. The expert guidance of professors makes this internship a protected experience for students, and ensures a good standard of legal service for clients.

The most typical contribution of law clinics is the free legal assistance to marginal or destitute persons. But there are other activities that involve young people in training such as monitoring eventual violations of human rights, the dissemination of legal knowledge to make people more aware of their rights, advisory offices within the university buildings, prisons or even travelling, such as the Oslo juss-buss, an old bus transformed into a mobile legal studio⁴.

¹ WILSON 2004.

² ENCLE, *Definition of a legal clinici*, in <http://encle.org/about-encle/definition-of-a-legal-clinic>.

³ WINKLER 2012.

⁴ See <http://foreninger.uio.no/jussbuss/english/>

Sometimes, the client is not an individual, but a community, as in the case of clinics specializing in Environmental Law that handle ecological conflicts, opposing threats to the natural habitat and beauty of an area. It should also be mentioned that the work taking place in clinics is often in partnership with associations, NGOs, organizations and institutions, tending to look at social problems holistically, by providing a cooperative and integrated approach.

1.2 The philosophy of the legal clinic

The clinics were born out of the persuasive separation between theory and practice, abandoning the idea that knowledge should be kept an elitist detachment and extending beyond the university buildings, including externally, and recognizing an inter-connected directive. They are a reality in the making, showing great creativity and adaptability, it is no wonder they face a struggle to comply within tradition or stable and consistent definition.

But to better understand the meaning and mission of legal clinics, it is useful to investigate the philosophical matrix (the cultural, social, or political environment) that gave rise to this legal practice.

Certainly one of the founding-fathers of legal clinical education is Jerome Frank, a prominent advocate of American legal realism, active during the first half of the twentieth century. The Realist movement is characterized by looking at law as a purely human phenomenon, affected by all the vices and virtues that entail. The antagonist is legal formalism which attempts to make a rational system of law and order, in which the only correct and legal solution to a case is always obtainable by applying the proper procedure. Frank criticized the educational system of Law, established on formalism in force at that time, severely, which he accused of dehumanizing law, dismissing it perfunctorily, as an entity devoid of life. He reiterates that the law school had a sterile environment where face-to-face contact was omitted. Still, he recalls:

«Those personal contacts are at the center of a lawyer's practice. Without an understanding of them, legal learning is a bloodless, fleshless skeleton. To put it differently, the legal rules and principles are pallid, devitalized, except in the context of personal relations»⁵.

It was therefore necessary to create an educative experience in which the student, in addition to addressing the study of the books, must face reality. The youth in training must be accompanied in an authentic meeting with human beings who are at the same time actors of the Law and acted by it. This meeting did not, therefore, serve only to acquire the professional skills, having practiced them before qualifying, but above all to gain a broad understanding of the human phenomena with which the law interacts:

«The core of the law school I propose would be a sort of sublimated law office. Those who attended it would learn by "doing," not merely by reading and talking about doing. But such a school would not limit itself to instruction in legal techniques. It would consider "strictly legal problems" in the light supplied by the other social studies (miscalled "social sciences") – history, ethics, economics, politics, psychology and anthropology. Mere pre-legal courses in those fields, unrelated to the live material of human actions with which lawyers must cope, have proved a failure. The integration ought to be achieved inside the law schools»⁶.

This profound need therefore, led a small group of academic jurists to conceive legal clinics, integrating them into law courses.

⁵ FRANK 1951.

⁶ FRANK 1949, 238-39.

But this sociological approach to discipline, typical of the clinical method, has further consequences worth investigating. In a recent speech, Claudio Sarzotti and Cecilia Blengino disclosed the relationship that exists between an educational path that puts the student in touch with the “living law”⁷ and the vocation to social justice:

«The learning-by-doing approach allows, among other things, the emotional involvement of the student who experiences directly how the law is not an ordered system of verbal formulas, but rather a messy world of administrative practices, diverse interpretations of organizations of various natures, of policy decisions etc. with which the ordinary citizen is confronted (and often struggles) daily. The law, in other words, becomes an instrument with which social groups and individuals regulate their relations of power (“The law as a structure of the conflict” – to remember the title of one of the Italian founders of sociology of law, Vincenzo Tomeo).

Introduced here, is another characteristic of the legal clinics: their social vocation and the capacity to be a tool for the implementation of the access to justice. [...] Once we comprehend living law, in fact, we become aware of its distance with respect to formal law, especially with regard to the equality of citizens before the law»⁸.

From the observation of the discrepancy between current legislation and living law, so arises this transformative intent. From this point of view, the pursuit of social justice is not simply a collateral element of clinical legal programs, but the core.

The law is one of the scenarios where social conflict takes place. That’s why the jurist, witness of the unequal distribution of power in which the weak risk succumbing hindered by their inability to access justice, is called upon to intervene: to equalize the playing field and educate new generations to recalibrate the skewed balance that is the actual justice system. The role of the jurist – in this realistic, sociological and committed approach – is not only to apply the laws, but to interpret and comment upon them, reporting any gaps, contradictions or inconsistencies in their application procedures, to correct and rewrite them, proposing new ones.

The teaching of law is often limited, still today, to promoting the rule of law, instilling in students a necessity and desirability to respect the rules, their institutes and institutions. But doing so is likely to train conformist subjects, useful to perpetuate the essentially unchanged status quo, if not downright dangerous individuals, given the numerous “crimes of obedience”⁹.

Education, within the fold of the democratic and liberal culture, pursues the most audacious desire to develop in individuals a critical ability; comparing the law with justice or with the possible variants thereof. Especially higher education, is not content to form biddable lieges and diligent bureaucrats, but citizens with their own independent judgment, who can see existing limits and have the desire to transform things.

In accordance with its philosophical conjectures, the mission of legal clinics therefore, is to show the law as a human construct, historically determined, with limits but able to be refined, the product of time, place and circumstance, but also the key to make the reality different. They therefore offer young people the exciting experience of being agents of social change, aimed at building a more equitable and inclusive society, or at least trying to reduce the impact of an excessively unbalanced distribution of power, resources and rights.

⁷ The authors opt for the definition of the concept developed by Eugen Ehrlich in his text *Grundlegung der Soziologie des Rechts* 1913.

⁸ SARZOTTI, BLENGINO 2015.

⁹ KELMAN, LEE HAMILTON 1989.

1.3 *The legal clinics as good practice*

The legal clinics are certainly a good practice as they create virtuous circles where all involved benefit.

I'll try to give an overview of the advantages for students and clients, on behalf of the immediate recipients but also for the University and for the European Union, in which context the clinics are implemented and operate.

Despite having a long history on American soil, on the continent, legal clinics are a relatively recent phenomenon, which in recent years is undergoing a strong acceleration. We are witnessing the emergence of a vibrant movement of academic legal experts, who are well-connected, with a strong commitment to the promotion of social justice. Such a phenomenon has the possibility to influence the formation of a new generation of jurists, as well as a professional culture of lawyers, judges and administrators. It could be highly beneficial for the EU institutions to seize the stimuli coming from this civic and educational turmoil, by its support and accompanying it into a European and democratic perspective.

What benefits can students get, participating in the work of a legal clinic?

- To acquire professional experience under a qualified guide.
- Through the personal encounters with people and their related social problems to the clinic, to have cognizance of living law and its inconsistency with the academic law.
- To develop greater open-mindedness, train their meta-cognitive skills and intercultural communication, learning cooperative and multidisciplinary work.
- To strengthen ethical principles through a personal commitment to defending human rights, understanding how the law can serve social justice.

What benefits can be derived by “clients” of a legal clinic?

- Access to justice free of charge, since the legal aid guaranteed by the state is often insufficient to cover the whole demand for protection of vulnerable and low-income people.
- Taking advantage of an integrated and quality service as the result of the combined efforts of academics, lawyers and representatives of civil society. This alliance consents to achieve extended, effective and innovative socio-legal solutions.
- Having the support of the numerous and enthusiastic students, precisely because they are in a phase of discovery and experimentation. Professional intervention is guaranteed by the senior supervision.

What benefits can be derived from the universities to introduce clinical legal programs to their curriculum?

- To raise and innovate the quality of university education, offering students an educational experience rich from a professional and human point of view.
- Open the academia to the outside world, building a network of relationships with civil society, institutions and other universities at local and international levels.
- To promote the social responsibility of universities. This gives a strong meaning to the intellectual work since the research and knowledge are of service to fairness, inclusion, social cohesion and they can help the defence of common assets.

What benefits can be derived from an expansion of the European Union and strengthening of the movement for legal clinic education?

The third chapter will detail how such good practice can help to achieve some of the important objectives set by EU legislation. Here I report, very briefly, some of the benefits that the growth of legal clinic programs can bring Europe.

- To promote student mobility and strengthen the relationship between universities and scholars, as indicated by the Bologna Process (infra § 3.1.1).
- To europeanise the faculty of law programs, distribute the knowledge of Community Law, the awareness of rights guaranteed by Europe and the procedures to assert them.
- To form a new generation of jurists, i.e. those who will carry out the key functions in a state of law, characterized by a strong ethical motivation, prepared to protect human rights and with the necessary professional and human capacities.
- To expand access to justice for vulnerable and disadvantaged groups, fighting any form of discrimination and inequality.
- To encourage jurisprudence and European legislation through ever greater attention to fundamental rights.
- To promote active citizenship and democratic participation, especially of young people.

APPENDIX A.

The history of legal clinics in the US, Europe and around the world

Maria Concetta Romano*

Clinical legal education, born in the early twentieth century, only became widespread in the United States and other countries, such as Canada, Australia, Great Britain, India and some southern and eastern regions of Africa, since the early 1960s and 1970s. In other countries of Europe, Asia and Africa, legal clinics developed after the 1990s. Today, there is a “global clinical movement” confirming the success of a legal education methodology that, being based on experiential learning, allows law students to develop professional skills and at the same time provide a useful service to the community. This chapter traces the main stages of the evolution of clinical legal education and thus intends to explore the main driving forces that historically stand behind the global spread of this phenomenon.

The birth of “clinical legal education”: the experience of the US

In the nineteenth century the American legal education system was based on three methods of teaching¹⁰: the “apprenticeship”, which consisted merely of “students learning at the sides of practicing lawyers” who held the role of mentor and teacher¹¹; the model of private or proprietary law school, (of which the Litchfield Law School is the best example), which offered a more analytical and systematic approach to the law, thanks to classroom lessons held by lawyers; and the traditional European model, adopted in the United States, which ensured a theoretical and general training¹². Following criticism of the most widely used approach, that of the apprenticeship, which was considered to be incomplete and restrictive¹³, the first major change in the American education system came in 1870, when the Dean of the Harvard Law School, Christopher Columbus Langdell, introduced the “casuistic” method. This method, integrated with the Socratic dialogue, taught law students to analyse the so called “appellate decisions” and to identify the underlying legal principles¹⁴. It achieved great

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¹⁰ NEW YORK STATE JUDICIAL INSTITUTE 2005, 1.

¹¹ QUIGLEY 1995, 465; VALDEZ CAREY 2002-2003, 510.

¹² NEW YORK STATE JUDICIAL INSTITUTE 2005, 1; BARRY *et al.* 2010.

¹³ QUIGLEY 1995, 465.

¹⁴ GROSSMAN 1974, 163.

success especially for the analytical skills that were allowed to develop¹⁵ and for the use of the Socratic dialogue which taught students “the power of legal reasoning”¹⁶.

As was quickly noticed by some adversaries of the movement of legal realism, however, this method, based chiefly on the study of decisions, was reducing the law to an abstraction and did not take into account the influence of social and psychological forces¹⁷. In this sense, the Langdellian method was insufficient for an adequate education of law students who, although trained to think like lawyers, didn’t question how legal patrons, including judges and lawyers, operate in the legal system, nor the role that they should, or at least could have in the society in which they act.¹⁸

Whilst the casuistic-Socratic method was being challenged, some law schools tried to remedy the inadequacy of the university tuition by looking favourably at clinical legal education, in particular at the initiatives of some law students who, in the late 1890’s and the beginning of 1900, started the so-called “legal aid dispensaries”, namely legal services aimed at the underprivileged¹⁹.

This is how, albeit in an emerging form, legal clinics were born, characterized since their origins by a dual objective: on the one hand enabling students to put into practice the acquired knowledge, on the other hand, pursuing the objectives of social justice²⁰.

The first university formally acknowledging clinical education was the University of Pennsylvania in 1893²¹. In the following years, other universities incorporated legal aid work activities into their programs²² although not all guaranteed academic recognition²³ to the students who worked there.

In 1917, one reporter – William Rowe – published an article in which he considered clinical legal education the best method for creating competent lawyers²⁴. Between 1920 and 1940, Jerome Frank and John Broadway, leading members of the legal realism, promoted and strenuously defended the application of this new way to study which, based on the clinical experience from medical schools, helped law students approach legal practice²⁵.

However, clinical legal education struggled to spread in the first half of the twentieth century. This was probably due to the fact that law universities wanted to stand out from the apprenticeship, did not have the necessary funds to ensure the supervision such programs required, and not all teachers appreciated its value²⁶.

Thus, at the end of the 1950s, the number of legal clinics proved small (only 35 law schools had included some form of “legal aid clinic”) and there was no single definition of clinical legal education²⁷.

From the 1960s onwards, many factors have enabled the spread of legal clinics. Among these: an increasing attention to issues of social justice, students’ requests for a more practical

¹⁵ VALDEZ CAREY 2002-2003, 511.

¹⁶ SPIEGEL 1987, 582.

¹⁷ NEW YORK STATE JUDICIAL INSTITUTE 2005, 16; GROSSMAN 1974, 167.

¹⁸ NEW YORK STATE JUDICIAL INSTITUTE 2005, 16.

¹⁹ QUIGLEY 1995, 2.

²⁰ NEW YORK STATE JUDICIAL INSTITUTE 2005, 9.

²¹ QUIGLEY 1995, 467.

²² The University of Denver in 1904; the University of Harvard in 1913; the University of George Washington in 1914; the University of Yale in 1915; the University of Tennessee in 1916; the Duke University in 1931, see QUIGLEY 1995, 467.

²³ GIDDINGS *et al.* 2011, 4; VALDEZ CAREY 2002-2003, 12.

²⁴ ROWE 1917, 591.

²⁵ NEW YORK STATE JUDICIAL INSTITUTE 2005, 3-4; BRADWAY 1934, 1153; FRANK 1933, 916; FRANK 1947, 1303.

²⁶ NEW YORK STATE JUDICIAL INSTITUTE 2005, 4.

²⁷ Ivi, 5

approach to the law, the essential economical support provided by private foundations, and the development of a strong scientific interest in the methodology of clinical education²⁸. In particular, in the 1960s and 1970s, the Vietnam War, the movement for women's rights and a greater focus on social rights (also underlined at government level, as reflected in the "War on Poverty" declared by President Lyndon Johnson in 1964²⁹) had a strong influence on clinical education programs. This

«leading to a greater student demand and more specific focus on providing legal services in areas such as poverty law, civil rights, women's rights, consumer rights, and environmental protection»³⁰.

An important role was played by the Ford Foundation's decision to establish the Council on Legal Education and Professional Responsibility (CLEPR) that, by funding the initial phase of many clinics and promoting their success, has built the foundations of the clinical legal education in the United States³¹.

Finally, the growth in the number of teachers involved in the clinical method has enabled the development of a scientific discourse about clinical legal education, which from the 1970s – 1980s became characterized by its educational purposes. «Some scholars explained that the clinical legal education's primary objective should be to teach students to learn from experience»³², through the use of a methodology mainly based on self-evaluation, or to recall the expression from Donald Schon, on a process of "reflective practice" or "reflection in action"³³.

Although by the end of the 1980s clinical education had established as a teaching method³⁴, legal clinics have never stopped playing an important role in ensuring access to justice for many poor people³⁵. This is also thanks to the close relationship that has always existed between legal clinics and legal aid, both whom are on the front line in the fight against inequality before the law³⁶.

Over the years legal clinics have guaranteed legal assistance and greater access to justice to a very high number of destitute clients, whilst training law students for the legal profession. As noted by Prof. Philip Schrag and Michael Meltsner, «hundreds of thousands of low-income clients have been well served by clinic students»³⁷. Although the number of people assisted is insignificant when compared to the need for legal representation of disadvantaged persons, the value of the service of legal clinics to clients was "incomparable": students' commitment, in fact, helped avoid homelessness, reduce detention time, obtain disability benefits and gain security against abusive spouses³⁸.

These results became possible thanks to the support of the American Bar Association (ABA), which, in 1969, through the Model Student Practice Rule, allowed «students to represent the client in court under the supervision of a licensed instructor»³⁹. In the following years, particularly in the MacCrate Report of 1992, the ABA formally recognized the benefits

²⁸ Ivi, 8-15.

²⁹ BLOCH, NOONE 2011, 153.

³⁰ GIDDINGS *et al.* 2011, 5.

³¹ *Ibidem.*

³² NEW YORK STATE JUDICIAL INSTITUTE 2005, 14.

³³ *Ibidem.*

³⁴ DINERSTEIN 1992, 511.

³⁵ NEW YORK STATE JUDICIAL INSTITUTE 2005, 12.

³⁶ BLOCH, NOONE 2011, 156-157.

³⁷ SCHRAG, MELTSNER 1998, 13.

³⁸ *Ibidem.*

³⁹ CRUCIANI 2012, 316-318.

stemming from the clinical teaching method and in 1999 pointed to the practical experience of the clinics, in particular the education of ethical and professional values this approach allowed, as an essential requirement for a law school to be accredited⁴⁰.

In the late 1990s, there were in-house clinic programs in 147 American universities⁴¹. Today, in the US, almost every law school includes a legal clinic educational program⁴².

By combining two objectives, that of professional training and of social justice, the American legal clinics have represented a winning formula. They have provided access to justice for many poor people; at the same time, they have trained future generations of lawyers to be more aware of the ethical issues of the legal profession, and therefore more responsive to the challenges that legal systems in general, not only American, poses.

The spread of legal clinics around the world

Parallel to the American experience, clinical legal education programs were appearing in the 1960s and 1970s in other countries such as Canada, Australia, and Great Britain, where unions of students, driven by a strong motivation to give concrete solutions to the needs of social justice, started centers of free legal assistance. Under these circumstances, legal advice centers were born in England by the movements of 1968, and the movement for a “community-based access to justice” took root in Canada in the 1970s⁴³.

Thanks to the financial support of the Ford Foundation, starting in the 1970s, legal clinics spread in many African countries⁴⁴. African clinics were developed prevalently in the form of live-client clinics that offered a legal advice service to real clients, thus overcoming the shortcomings of a limited and often non-existent legal aid system⁴⁵. Legal clinics played a particularly important role in South Africa, where they not only offered free legal advice to victims of apartheid, but also instituted street law programs, a kind of collective legal education programs that, by informing people, especially young people, of their rights and responsibilities, and encouraging a constructive debate, helping to break down racial barriers⁴⁶.

In Latin America, clinical legal education history began in the 1960's, when the US universities and foundations funded various legal programs that, having failed to take into account the characteristics of the political, cultural and social post-colonial context, did not flourish. A second wave occurred in the 1990's, with the birth of a regional network of “public interest law clinics”, namely of clinics focusing on public law issues and human rights, which extended into Argentina, Colombia, Peru and Mexico. Today, despite the educational and social impact of these experiences, the clinical legal education in these countries face many challenges, especially in terms of sustainability and recognition within universities⁴⁷.

«Law schools in Central and Eastern Europe began to introduce clinical legal education into their curriculum»⁴⁸ in the second half of 1990's, after the fall of communism, when there was

⁴⁰ AMERICAN BAR ASSOCIATION – SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR. 1999.

⁴¹ BARRY *et al.* 2010, 20.

⁴² HOVHANNISIAN 2006, 9.

⁴³ GIDDINGS *et al.* 2011, 4.

⁴⁴ In South and East Africa, in countries such as South Africa, Zimbabwe, Tanzania, the first legal clinics were born in the early 1970s. In West Africa, conversely, clinical legal education developed from 2000s, thanks to the support of private foundations, such as Open Society Justice Initiative.

⁴⁵ MCQUOID-MASON *et al.* 2011, 27-34.

⁴⁶ GRIMES, *et al.* 2011, 228.

⁴⁷ CASTRO-BUITRAGO *et al.* 2011, 69-84.

⁴⁸ HOVHANNISIAN 2006, 9.

a great need for change. In Western Europe, conversely, the clinical legal education developed only since the 2000's.

Apart from India, where the first legal clinics spread since the 1970s, also in Asia clinical legal education is a recent phenomenon, which has spread prevalently over the last 25 years⁴⁹. In Southeast Asia, through the first half of the twentieth century, legal education was managed by colonial powers, such as England and the Netherlands⁵⁰. After independence, with the establishment of the first law universities, the way of teaching law remained theoretical and traditional⁵¹. Even today the majority of universities does not promote education oriented toward social justice and puts little emphasis on the ethical responsibility of lawyers to provide free legal advice to people in need. However, in recent years, especially after a regional conference held in Cambodia in 2005, clinical legal education is gradually spreading in many countries, including Cambodia, the Philippines, Malaysia and Indonesia⁵². As already mentioned, in India, the clinical legal education has a long standing tradition. Today, thanks largely to the support of governmental institutions such as the “Bar Council of India”, each university provides clinical programs and there are many successful experiences both in legal and paralegal advice and in legal education addressed to urban and rural communities⁵³. However, because of several characteristics of the legal system that prevent university professors from exercising the profession; other factors such as lack of funding and the absence of an appropriate direction of the programs in Southeast Asia and India, the clinical legal education process (although well underway) is still evolving⁵⁴.

In China, the clinics have developed only since the 2000's⁵⁵ and they have played an important role in shaping a legal education more attentive to social responsibility of future legal professionals⁵⁶.

In Japan, clinical legal education was introduced simultaneously with the reform of the education system, which ten years ago, saw the opening of 68 new universities, strongly influenced by the US model⁵⁷; However, the clinical education methodology, based on a practical approach and on professional values, is still struggling to establish itself⁵⁸.

As showed in this overview of legal clinics around the world, and as confirmed by the European experience, to which the next paragraph is dedicated, the development of clinical education is strongly influenced by the legal and educational systems, as well as the socio-political conditions of the context of reference. The influence that the particular context of reference has on the development of education and the national characterization of legal education in general, have contributed to the development of a wide variety of legal clinics.

While every clinic is different from each other, it seems appropriate to point out that all the experiences of the legal clinics share similar goals, that is: the development of professional skills, the use of an interactive methodology and the will to reform an educational system that is not efficient enough⁵⁹.

Based on these shared goals, in the 1970's – 1980's, when clinical legal education had taken hold in a number of countries, a comparison of different experiences encouraged talk of a

⁴⁹ LASKY, PRASAD, 49.

⁵⁰ Ivi, 37.

⁵¹ *Ibidem*

⁵² Ivi, 37-50.

⁵³ Ivi, 44-48.

⁵⁴ Ivi, 37-50.

⁵⁵ HOVHANNISIAN 2006, 9.

⁵⁶ MIYAGAWA *et al.* 2011, 101.

⁵⁷ Ivi, 105.

⁵⁸ Ivi, 106.

⁵⁹ BLOCH, MENON 2011, 268-272.

“clinical movement,” which was strongly related to a strictly local perspective⁶⁰. During the 1980s and the early 1990s the first forms of transnational exchange and cooperation in matters of common interest began⁶¹. This led to the birth of what Frank Bloch has defined a “global clinical movement”, namely the growth of a network of people in some way involved in the world of legal clinics and who, with the support of national and international organizations, aim to build and strengthen a global clinical legal education⁶².

According to Bloch, global clinical education does not only aspire to train lawyers to be included in an increasingly global labor market, but mainly aims to teach legal professionals of the future “to be global”, that is to think and act “globally”⁶³.

In this sense, the birth of this movement acknowledges the globalization process that inevitably affects also the legal sector, is based on the common commitment to ensure greater access to justice and is characterized by an inclusive approach based on collaboration.

Proof of this collaboration can be found in the long list of transnational and international relations established over the past 25 years among the leaders of this global clinical movement. Among these organizations, at the international level, a crucial role is played by GAJE (Global Alliance for Justice Education), an organization comprising teachers, students and other actors such as lawyers or NGOs, who are united by a common desire to promote justice through education⁶⁴. Founded in 1997, the GAJE facilitates communication and collaboration between the legal clinics around the world. Thanks mainly to the use of the internet and the organization of international conferences⁶⁵, it encourages regular discussions on programs and methodologies of clinical legal education⁶⁶, and promotes a useful exchange of ideas on “education for justice”, namely on how to fight against social injustice through legal education⁶⁷.

At the regional level, particularly at an American level, it seems worth recalling that the *Clinical Legal Education Association* (CLEA) that, together with the *Association of American Law Schools* (AALS) and the *New York University School of Law*, sponsors the «Clinical Law Review», a magazine that has become a key vehicle for establishing the clinical legal education⁶⁸.

African and Asian clinics have developed thanks to the support of American foundations and, respectively, the *Association of University Legal Aid Institutions* (AULAI) and the organization *Bridges Across Borders Southeast Asia Community Legal Education* (BABSEA CLE). In Europe, the reference network is represented by ENCLE (European Network for Clinical Legal Education)⁶⁹ that, in line with the action of GAJE, promotes the spread of the clinical legal education in the European countries where they legal clinics constitute a little-known phenomenon or are less developed.

The legal clinic education in Europe

In Eastern and Central Europe legal clinics first developed in the early 1990’s. In most Western European countries, conversely, clinical legal education is a recent phenomenon,

⁶⁰ Ivi, 267.

⁶¹ *Ibidem*.

⁶² *Ibidem*.

⁶³ BLOCH 2008, 113-114.

⁶⁴ BLOCH 2011b, 4.

⁶⁵ Until today, there have been eight conferences. The last one was held in Turkey in July 2015.

⁶⁶ BLOCH 2011a, 6.

⁶⁷ SANTOW, MUKUNDI WACHIRA 2011, 381-382.

⁶⁸ BARRY *et al.* 2011, 284

⁶⁹ See: <http://encle.org/>

which is still evolving. The spread of clinical legal education in Eastern and Central Europe is linked to the complex political, economic and social changes these countries faced in the 1990s, after the fall of communism⁷⁰. With the transition from an authoritarian regime to a democracy, the legal profession took on a central role to push ahead with reforms in support of a new order based on the rule of law⁷¹. In particular, the need arose to educate a new generation of professionals who could support this process of change⁷². In those years the legal education system, characterized by a theoretical approach to the law, seemed inadequate; additionally, there was a growing demand for legal aid, to which a still poorly structured legal system could not respond⁷³. Because of a strong incentive to accept any form of change⁷⁴, legal clinic education was looked at with interest, especially for its practical approach and attention to the needs of social justice. Thanks to the initiative of the young generations of academics, and the financial support of American foundations⁷⁵ such as the Open Society, the clinical legal education spread quickly and in a well-structured manner in various countries, including the Czech Republic, Poland, and Hungary, where today legal clinics play an important role both socially and educationally. One of the first legal clinics in Central Europe was established in 1996 in the Czech Republic, at the University of Palacky, which today, thanks to a project funded by the European Social Fund, guarantees a wide and renewed variety of courses and activities⁷⁶. In Poland, each Law University includes multidisciplinary clinical legal educational programs, whose subdivisions in sections provide good work organization⁷⁷. Finally, another significant example is represented by Hungary, where the ELTE University provides legal assistance to the Roma population, an ethnic minority which is often victim of discriminatory practices throughout Europe⁷⁸.

In Western Europe, apart from Germany, Norway and the Netherlands, where law students were offering free legal advice to people in need before the 1970s (e.g. consider the case of the *law shop* or *Juss-buss*, a kind of minibus that travels the streets of OSLO)⁷⁹, the first real clinical legal education programs have begun to spread since 2000. In contrast to the countries of Eastern and Central Europe, in fact, there were a well-established legal aid system, and the legal education divided into 5 years of university with the expectation of 2-3 years of legal practice was deemed sufficient to prepare law students for their professional career⁸⁰.

It was only following the adoption of the Bologna Declaration (aimed at the creation of a common European area for higher education), the European integration process and the growing competition between public and private universities⁸¹, that clinical legal education began to take hold in Western Europe. With the Bologna Declaration, a system of credits and easily comparable titles was introduced, allowing greater mobility of students and teachers, and aiming at facilitating the process of European integration and a greater exchange between the positive experiences of the different universities.

The aim of the Bologna process, launched in 1999 and still in progress, is not only to promote greater competitiveness of European universities, but also to “create academic quality” and

⁷⁰ AKSAMOVIC, GENTY, STEGE *in press*, 1.

⁷¹ BERBEC-ROSTAS *et al.* 2011, 53.

⁷² Ivi, 54.

⁷³ Ivi, 55.

⁷⁴ AKSAMOVIC, GENTY, STEGE *in press*, 4.

⁷⁵ *Ibidem*.

⁷⁶ TOMOSZKOVÁ *et al.* 2011, 5.

⁷⁷ BERBEC-ROSTAS *et al.* 2011, 57.

⁷⁸ AKSAMOVIC, GENTY, STEGE *in press*, 18.

⁷⁹ Ivi, 14-16.

⁸⁰ Ivi, 5.

⁸¹ Ivi, 6-7.

develop the social dimension of higher education in order to ensure better employability of graduates⁸².

In this sense, clinical legal education is in absolute continuity with these objectives, as well as with the wider framework of European objectives, aimed at creating an area of freedom, security and justice as provided by the Lisbon Treaty, and resulting from a complex series of regulatory actions, including the Charter of Fundamental Rights of the European Union, numerous directives and other sources of international law, such as the ECHR.

In Spain, the first legal clinic was started at the Rovira i Virgili University in 2002-2003; in the following years several programs have been developed at the universities of Barcelona, Tarragona and Valencia⁸³.

In Germany, the clinical education underwent a strong change after 2008, when legislative reform allowed the students to provide legal advice under the supervision of a lawyer⁸⁴.

In France and Belgium, there are significant examples of clinics that promote social justice through the application of European and international law standards (it is the case of the Leuvan Law Faculty of Brussels and the French University of Paris Science Po)⁸⁵.

In Italy, clinical education is currently expanding, thanks to the creation of a national network that organizes educational events, encourages the exchange of experiences and promotes the creation of new programs⁸⁶.

Both for Eastern and Central and young Western European clinics, today the challenge is not only to consolidate existing programs by focusing on teaching method, structure and specialization, but also to promote sustainability and accreditation through the involvement and support of local, regional and international institutions⁸⁷. To this end, the coordinating role that the ENCLE (European Network for Clinical Legal Education) pursues is critical, especially for the dialogue with the European institutions which could have a strong interest in ensuring the sustainability and development of a phenomenon, that of the legal clinics, strategic for the achievement of European objectives.

The programs of the clinical legal education

Today there is a wide variety of legal clinics that, as mentioned before, reflect an equally varied educational, legal and socio-political context of the countries of reference. In the following sections, a brief description of the principal models of legal clinics will be outlined. Given the complexity of reality and of the forms clinical legal education programs may adopt, it seems appropriate to clarify that the intent is not to provide a predefined classification of models, but rather to offer a useful tool to move within the legal clinical “world” and to decode its lexicon.

This part ends with a reference to the types of actions and the teaching methodology used, which will highlight the dual purpose, both social and educational, that characterizes the clinical legal programs.

⁸² See: *Il Processo di Bologna e lo Spazio Europeo dell'Istruzione Superiore: Breve Presentazione*, available at: <http://www.processodibologna.it/documenti/Doc/Pubblicazioni/Lo%20Spazio%20Europeo%20dellIstruzione%20Superiore>.

⁸³ BLÁZQUEZ-MARTÍN 2011, 126, 131.

⁸⁴ AKSAMOVIC, GENTY, STEGE *in press*, 13.

⁸⁵ Ivi, 18.

⁸⁶ Ivi, 12.

⁸⁷ THE LEGAL CLINICS FOUNDATION 2005, 48-50.

Models of legal clinics

A common distinction in the language of legal clinics is between in-house or live-client clinics, externship clinics and clinics based on simulation. This section identifies the main features of these models, identifying advantages and disadvantages.

- The in-house clinics or live-client clinics are distinguished by their “position within the university structures” and for working on real cases⁸⁸. Professors choose cases based on their educational value⁸⁹ and students are directly accountable to clients. Students carry out interviews, as well as the research and analysis required by the case, write legal acts and, in countries where it is permitted, offer legal advice and represent the client before the judicial authorities⁹⁰. The core aspect is the constant supervision by teachers, who assist students in the preparation and analysis of the work done⁹¹. In this type of clinic, the students personally experience the issues and ethical choices that the resolution of real cases require⁹² and in this sense, this model offers hands-on training on the values of professional responsibility⁹³.
- The externship programs allow students to work with lawyers and judges in professional contexts outside of the university, like law firms, courts, NGOs. In this case the teaching material is represented by the cases and the issues selected among actually followed by the professionals. These programs are characterized by a “three-way relationship”⁹⁴ between student, practitioner and teacher, where students benefit from real experience, driven by the activity of “reflection” conducted by the lawyer and the teacher, who ensures the necessary assistance in dealing with ethical issues, as well as in orienting and optimizing the training experience⁹⁵. This activity of reflection distinguishes legal clinics from traineeships in law firms and /or in the courts⁹⁶, where the lack of this educational element limits the quality and effectiveness of the training experience. Unlike the university-based clinics, this model definitely offers a wider choice of the legal area of intervention. If generally in-house clinics choose a specific area in which they specialize because of costs, skills and opportunities⁹⁷, externship clinics benefit instead from the variety of skills offered by the partners involved. In addition, these programs play an important role in bridging the gap between universities and the professional world⁹⁸. By putting students into contact with professionals already active in the field of social justice, they represent a valuable tool for raising the awareness of young people towards the social mission of the law⁹⁹. In contrast, the activities carried out by students in externship are less predictable and therefore more difficult to manage compared to the clinics established within the universities¹⁰⁰. Moreover, their educational value is strongly influenced by the ethical

⁸⁸ SMORTO (a cura di) 2015, 25.

⁸⁹ DUNCAN, KAY 2011, 190.

⁹⁰ MILSTEIN 2001, 376; SMORTO (a cura di) 2015, 25.

⁹¹ MILSTEIN 2001, 377.

⁹² DUNCAN, KAY 2011, 190.

⁹³ *Ibidem*.

⁹⁴ MILSTEIN 2001, 380.

⁹⁵ RYAN COLE 2011, 324.

⁹⁶ Ivi, 325.

⁹⁷ Ivi, 328.

⁹⁸ Ivi, 329.

⁹⁹ *Ibidem*.

¹⁰⁰ Ivi, 327.

approach of the professional environment¹⁰¹; this is why it is useful to identify standards for the accreditation of external partners¹⁰².

- In simulation-based clinics, students do not interact directly with clients, but work on real or fictitious cases proposed by the teacher¹⁰³.

The advantages are related to the fact that teachers create these programs and there are no “real clients” that might be affected by any errors of students¹⁰⁴. Simulation-based clinics thus represent a safe experience, under the control of teachers who follow the teaching aspect¹⁰⁵. These characteristics, however, mean that students are completely without responsibility, with the limitations involved in terms of education and professional values, and with the risk that the proposed activities do not prove very stimulating or interesting¹⁰⁶.

Types of legal clinic actions

Apart from their location (within or outside the university facilities) and the type of case handled (real or simulated), the clinics can be characterized by different types of intervention (legal advice, education, research, etc.), but also by the type of beneficiaries or the target theme of intervention (individual clinics, community clinics and specialized clinics).

- The “individual clinics”, as suggested by the name used, offer an individual action, often in the form of legal advice and guidance. Having to answer particular requests, the area of intervention of these clinics is generally very broad¹⁰⁷.
- The “community clinics” have a specific focus targeted on the needs of the community of reference to which the legal advice, education or “empowerment” action is addressed. These programs imply a close relationship between students and the community, which results in a “win-win solution”, where students gain awareness of the problems of the most disadvantaged, and the latter receive an assistance which, compared to that one provided institutionally, better represent their perspective and interests.
- The “specialized clinics”, finally, have a well-defined proficiency over certain matters, based (as with the community clinics) on the needs of the community, the type of skills of their members, or the specific legal issues of a national or international nature¹⁰⁸. In this regard, international legal clinics dealing with topics such as the human rights of migrants and refugees, women’s rights and protection from discriminatory practices, or environmental law, are becoming more common and contribute to the emergence of a global clinical movement for social justice¹⁰⁹. This type of clinics, thanks to the degree of expertise that have developed, can address very complex issues¹¹⁰ and, like any other clinical model, can provide different kinds of

¹⁰¹ DUNCAN, KAY 2011, 190.

¹⁰² RYAN COLE 2011, 327.

¹⁰³ SMORTO (a cura di) 2015, 26.

¹⁰⁴ DUNCAN, KAY 2011, 188.

¹⁰⁵ *Ibidem*.

¹⁰⁶ *Ibidem*.

¹⁰⁷ BLOCH, NOONE 2011, 159-160.

¹⁰⁸ Ivi, 160.

¹⁰⁹ BLOCH 2011a, 2.

¹¹⁰ BLOCH, NOONE 2011, 160.

intervention, ranging from legal advice, scientific research activity to lobbying and the production of legislative drafts.

Concerning the modalities of intervention, legal advice is among the most prevalent. Generally, this consists of producing legal opinions that the clinic clients can use to motivate a claim or corroborate a defensive strategy. In countries where it is permitted, and in any case under the supervision and responsibility of teachers or professionals in charge of the case, students can also write judicial documents¹¹¹.

Commonly it is possible to distinguish among first or second instance legal offices, depending on whether the legal opinion is aimed at people directly involved, or their representatives, such as attorneys, associations, institutions.

Alongside the action of legal assistance and (where allowed by the national system) legal representation, legal clinics also offer a socio-legal support, characterized by a holistic and multidisciplinary approach. In addition, based on the rising concern for alternative dispute resolution, there is an increasing number of legal clinics that allow students to develop negotiation, mediation and conciliation skills.

Conciliation has very ancient origins and is rooted in the tradition of many countries, such as in South Africa (“kgotla”, “Justice under the tree”) or India (“lok adalats”, “the court of people”)¹¹². In other countries, like the United States, however, this approach developed more recently¹¹³. No doubt today it represents the main legal practice model in every part of the world¹¹⁴. Although universities already started introducing courses aimed at developing these skills 30 years ago, the spread of legal clinics based on alternative dispute resolution is a fairly recent phenomenon, and probably related to the recognition of the role that this approach has for education to the practice of social justice¹¹⁵.

Among the most effective clinical education programs to promote access to justice are those of street law and legal literacy clinics.

In these programs, students provide legal education to the community, for example, high school students, prisoners or those belonging to other social groups, who are informed about their rights and responsibilities¹¹⁶.

In particular, street law programs can be in the form of presentations, seminars, or actual training¹¹⁷. The legal literacy projects may consist of producing information materials, workshops and awareness campaigns on certain issues¹¹⁸. The content and methods of these programs vary depending on the project objectives and the needs of the target group¹¹⁹, which are defined by a «careful and prior analysis of the territory and of the nature of the social structure»¹²⁰. Regardless of form and content, the objective of these programs is to build a bridge between “education for justice” and social action through programs directed at the community, whose involvement and active participation is crucial¹²¹. A significant role is also played by the partnerships these clinics establish with local and national institutions that legitimize these initiatives, contributing to their development¹²².

¹¹¹ THE LEGAL CLINICS FOUNDATION 2005, 127-129.

¹¹² TOKARZ, NAGARAJ 2011, 252.

¹¹³ Ivi, 255

¹¹⁴ Ivi, 252.

¹¹⁵ Ivi, 255-262.

¹¹⁶ MAISEL 2011, 339.

¹¹⁷ GRIMES, *et al.* 2011, 227.

¹¹⁸ PANDEY, SHUKKUR 2011, 243.

¹¹⁹ Ivi, 229.

¹²⁰ SMORTO (a cura di) 2015, 29.

¹²¹ GRIMES, *et al.* 2011, 227.

¹²² Ivi, 231.

These street law programs were born in the US in the 1960s and 1970s when, along with the spread of social movements proclaiming equality (such as those defending civil rights and women's rights), people acquired awareness of the importance to know their rights¹²³. The law proved distant from the society in which it explicated its effects and these innovative legal education programs helped make more accessible a law which from courtrooms and law offices reached the streets, for the benefit of the community. Another country in which street law took root was England, but the most significant example for the impact had on community is definitely that of South Africa, where, as already mentioned, street law clinics spread in the years of apartheid.

These programs not only informed and educated people about their rights, but they encouraged young black and white students to discuss the social issues of those years, inviting them to think about which legal system they would have wanted for their future¹²⁴. In this sense, street law programs helped break racial barriers and laid the foundations for a new social and constitutional order¹²⁵.

Legal literacy clinics have represented and still represent a valuable model for the implementation of legal education projects in India. Faced with a complex legislative system, (too complicated and inaccessible to most rural people) (which resulted remote from people), these educational projects, with an approach oriented toward beneficiaries and their prerogatives, have partly filled the gap between the "promises of the law" and reality. They offered a particularly effective tool to ensure greater access to justice and fundamental rights, such as the right to education, food, health or social security¹²⁶.

Besides legal advice and education, there are other types of actions, such as activity of research and monitoring, the analysis and comment of laws and policies, the drafting of bills, and generally the participation in larger projects with institutional partners and civil society.

In the clinics oriented toward research practice, students are involved in projects aimed at constructive analysis of the laws in force. In the project promoted by IUC Turin on immigration detention, for example, students interviewed detainees and former detainees, lawyers, NGO members, volunteers and journalists, to verify to what extent national, European and international law for human rights is applicable within the CIE of Turin¹²⁷.

Always at an Italian level, the legal clinic of Roma Tre in collaboration with other universities, including that of Florence, Bari and Turin, has recently started a project aimed at monitoring the decisions of the *giudice di pace* relating to issues having an impact on fundamental rights, with particular attention to the judicial expulsion and detention of foreign nationals¹²⁸.

Such projects confirm the will and commitment of the academic world to put the knowledge and research at the service of the community and show how an activity of practice-oriented research can be challenging and effective. Finally, some legal clinics, by working closely with government institutions or NGOs, allow law students to go beyond analysis, application, explanation or criticism of the law and give them the opportunity to formulate legislative and political proposals for advancing social justice. For example, the French University of Caen, Paris and Nanterre are «involved in reform projects locally, nationally and internationally», through the collaboration with stakeholders of the public and private sectors¹²⁹.

¹²³ Ivi, 226.

¹²⁴ Ivi, 228.

¹²⁵ *Ibidem*.

¹²⁶ PANDEY, SHUKKUR 2011, 241-250.

¹²⁷ STEGE et al. 2012.

¹²⁸ See: <http://giudicedipace.giur.uniro>

¹²⁹ AKSAMOVIC, GENTY, STEGE *in press*, 8.

The education methodology of the legal clinic

Regardless of the model and the type of action, all clinic legal education programs are characterized by the use of an interactive and experiential methodology that, applying the learning by doing method, allows students to develop practical and ethical professional skills. Before the start of a legal clinic, the definition of an educational program identifies the pedagogical objectives and evaluation criteria. The teaching objectives of clinical legal education are aimed at a “complex and qualitatively high” learning model, according to the taxonomies notes of Bloom and Biggs (Structure of Observed Learning Outcome – SOLO taxonomy)¹³⁰. The activities of the clinic, in fact, goes beyond knowledge and understanding and allows students not only to apply and analyze the law but to proceed to a higher level of synthesis and evaluation of the acquired knowledge. For this purpose, clinical legal education uses a teaching methodology based on the so-called learning pyramid, designed by the American educator Edgar Dale, and favors an experiential and participatory approach of the student. This pyramid considers the learning by doing and the practice of teaching as the most effective methods for learning, with percentages of 75 and 90 (consider the success of street law and legal literacy clinics). This in spite of the classroom and reading lectures (upon which the traditional legal education is based) which are assigned the lowest percentages, respectively of 5 and 10 percent¹³¹.

Legal clinics have applied countless interactive teaching methods, such as brainstorming (which stimulates the participants to express a free flow of ideas), debates and group discussions, simulations, role plays and moot courts, the analysis and the use of case studies, as well as field work and meetings with experts¹³².

Using these tools allows students about to enter the working world to develop useful professional competences, such as problem solving, analysis and legal research, communication and other organizational skills.

However, the added value of clinical legal education and its experiential approach goes beyond the training of more competent professionals, and stands for the education of new generations with the professional ethical values necessary for a more equitable and accessible legal system.

In this sense the spread and establishment of legal clinics, on the one hand, bridges the gap between the university and the professional world. On the other hand, it places students in the position to offer a service to the community, and contributes to the training of professionals that are more aware of the role that the law and its professionals can and should play in a truly inclusive, democratic and just society.

¹³⁰ See *Bloom's and Solo Taxonomy* available at: <http://ar.cetl.hku.hk/bloom.htm>.

¹³¹ See *The Learning Pyramid* available at: <http://www.une.edu/studentlife/biddeford/las-1>.

¹³² MCQUOID-MASON, PALMER 2013, 89-103.

II CHAPTER – DATA

The Inquiry on Legal clinical Education in European Territory

2.1 *The methodology*

In order to obtain a detailed picture of the movement for legal clinic education in the territory of the Union, I have prepared a questionnaire, with the invaluable advice of Ulrich Stege and Marzia Barbera, to be sent to clinics in the European Union. The questionnaire is divided into six thematic sections to highlight various aspects:

- a. General description of the legal clinic
- b. Economic profile
- c. The clinic as an educational experience
- d. Areas of intervention and types of clients
- e. The network and partnership
- f. The social impact

This questionnaire mostly consists of multiple-choice questions. In the majority of cases it is possible to give multiple answers to the same question, for example, when asked who are the typical clients of the clinic, it is obvious that there can be multiple categories. Whilst when you ask the relevance of European law on a scale of 1 to 5, you can only make one choice. The discrepancy between the academic systems, the national legal systems within which the clinics operate and the wide variety of programs, due also to a lack of institutionalization and standardization of legal clinical education, have sometimes made it difficult to formulate questions that would provide for all the answers possible. That is why we have prepared, at the end of each question an “other” option and, at the end of each section, a free space for further clarification.

The survey fillable online, was sent to the addresses of Enclé (European Network for Clinical Legal Education) and of Gaje (Global Alliance for Justice Education), further contact research was also carried out. The questionnaire was available in Italian, English and French. Open-ended responses were admissible in languages: English, French, Spanish and Italian.

The research was preceded by a pilot study on the Italian case. Thanks to my presence in the area I was able to perform detailed work by observing almost all clinical programs available¹³³. Obviously this leads to an over-representation of the phenomenon in Italy, that I wanted to downscale the computation of the total posts of the fledgling Italian clinics.

A quantitative research shows only some dimensions of a phenomenon. It reveals essential aspects, but is still insufficient for a richer and extensive understanding. I therefore carried out

¹³³ The results of the survey on Italian legal clinics was published on the International «Journal for Clinical Legal Education»: BARTOLI 2015, 213-229.

qualitative interviews with totally open questions and of a more reflective nature, with the members of the legal clinical movement of several European countries.

2.2 Survey results

The clinical legal programs examined are over a hundred. Respondents of my online survey are 86, but among them there is a Polish consortium that brings together 24 centers, with a staff of about 300 (fig. 1). The vast majority of clinics that I have analysed are in the EU territory, but 7 are placed in potential candidate countries (fig. 1). Though not a complete census of all such programs active today, the number is relevant and allows you to get an idea of the variety and articulation of this reality in Europe. As is known, this is a substantially recent phenomenon, the vast percentage of clinics are not more than 15 years old and a good part have been operating for no more than 5 years. We are therefore in the forefront of the emergence of an innovative power within the law school, a move that has the potential to transform the approach to studying law and therefore to the professional culture of the jurist.

Fig. 1 – UE clinics

Name	age	University department	Staff
Clinics in EU			
BELGIUM			
Human Rights Law Clinic	4	Faculty of Law, University of Ghent	6
EU Rights Clinic	4	University of Kent (UK) in Brussels	3
CROATIA			
Legal-economic clinic	3	Faculty of Law, Osijek University Faculty of Economy, Osijek University	20
CYPRUS			
UNIC Law Clinic	6	Law Department, University of Nicosia	?
CZECH REPUBLIC			
Center for Legal Clinic Education	10	Student Law Office, Olomuc	10
Street Law clinic	7	Charles University, Faculty of Law, Prague	3
ESTONIA			
Estonian Human Rights Centre (EHRC)	5	Tallinn University of Technology/Tallinn Law School	4

FINLAND			
Helsinki Law Clinic (HLC)	1	Faculty of Law, University of Helsinki	3
FRANCE			
NYU/HEC Law Clinic	3	New York University School of Law and Ecole des Hautes Etudes Commerciales de Paris	12
Clinique de l'Ecole de Droit de Sciences Po	3	Sciecens Po – Ecole de Droit, Paris	3
Clinique Juridique des Droits International et des droits de l'homme	0	Faculté de droit d'Aix-Marseille University	15
Clinique Juridique des Droits Fondamentaux	7	Université de Caen Normandie	3
Law School	6	Université Paris Ouest Nanterre	4
GERMANY			
Law clinic	0	Fakultät für Rechtswissenschaften, Hamburg	5
Refugee Law Clinic Berlin	0	Juristische Fakultät, Humboldt-Universität zu Berlin	20
<i>In progress</i>	0	Law department (Natasha Thomson LLB, Hons)	10
Lehrstuhls für Öffentliches Recht und Geschlechterstudien an der Juristischen	6	Fakultät der Humboldt, Universität zu Berlin	4
Praxis projekt migrationsrecht	5	Martin-Luther-Universität, Halle-Wittenberg	2
Refugee law clinic (RLC)	8	Faculty of Law, Recht University	7
Humboldt Consumer Law Clinic	5	Humboldt-Universität zu Berlin Juristische Fakultät	6
Refugee Law Clinic Cologne e.V.	3	Universität zu Köln Institut für Völkerrecht und ausländisches öffentliches Recht	20
Studentische Rechtsberatung der Universität Passau e.V.	3	Universität Passau	35

GREECE			
Athens Law School	4	University of Athens	4
IRELAND			
Clinical Legal Education module	5	Trinity College Dublin	1.5
ITALY			
L'Altro Diritto: Centro di documentazione carcere, devianza e marginalità	19	Dipartimento di Scienze Giuridiche, Firenze	100
Clinica Legale I	5	Dipartimento di Giurisprudenza, Università di Brescia	30
Clinica legale II	5	Dipartimento di Giurisprudenza, Università di Brescia	15
Clinica del diritto dell'immigrazione e della cittadinanza	5	Dipartimento di Giurisprudenza, Università Roma TRE	10
Human Rights and Migration Law Clinic	4	International University College of Turin, DG dell'Università di Torino, Università del Piemonte orientale	15
Clinica legale in diritto dei minori	3	Dipartimento di Giurisprudenza, Univ. Roma TRE	6
Clinica Legale di Diritto del lavoro	3	Università degli studi di Teramo	4
Diritto ambientale	3	Università degli studi di Bergamo	2
Clinica legale penitenziaria	3	Dipartimento di Giurisprudenza, Università di Perugia	15
Law Clinic UNIPG "Salute, Ambiente e Territorio"	3	Università di Perugia, Dipartimento di Giurisprudenza	9
<i>In progress</i>	0	University of Catania, Law Department	10
Clinica legale in diritto dei risparmiatori	2	Dipartimento di Giurisprudenza, Università Roma TRE	2
Salute, ambiente e territorio	2	Dipartimento di Giurisprudenza, Università di Perugia	9
Clinica legale di Verona	2	Dipartimento di Scienze Giuridiche, Università di Verona	8
Carcere e diritti	2	Dipartimento di Giurisprudenza, Università di Torino	6

Persone e famiglia	1	Dipartimento di Giurisprudenza, Università di Torino	1
Accesso alla giustizia	1	Dipartimento di Giurisprudenza dell'Università di Sassari	?
CLEDU – Clinica legale per i diritti umani	1	DIGISPO, Università di Palermo	10
“Spazi violenti” Empowerment and access to justice for disadvantage people	1	Dipartimento di Giurisprudenza, Università di Torino	5
Clinica legale di diritto penale	1	Dipartimento Cesare Beccaria, Scienze penalistiche, Università di Milano	8
<i>In progress</i>	0	Dipartimento Jonico di Studi Giuridici ed Economici, Università di Bari	30
<i>In progress</i>	0	Dipartimento di scienze sociali e politiche, Università di Milano	5
LITHUANIA			
Teises klinika	18	Vilnius University	10
LUXEMBOURG			
Clinique du droit de la consommation, Master en Droit Privé Européen	3	Faculté de Droit d'Economie et de Finance, unité de recherche en droit	7
MALTA			
Legal clinic at Cottonera Resource Centre	2	Civil Law Department and Cottonera Resource Centre	7
POLAND			
Legal Clinic at Gdański	15	Wydział Prawa i Administracji, University of Gdansk	130
Legal Clinic Kozminski University	11	Law School, Kozminski University	500
24 FAI free law advice centres	14	NGO Warsaw, Cracow, Lublin, Łódź, Dąbrowa Górnicza, Częstochowa, Kraśnik and Radom	300
Studencka poradnia prawa	13	Uniwersytet im. Adama Mickiewicza w Poznaniu	24
PORTUGAL			
Gabinete de Responsabilidade Social da FDUL	4	Faculdade de Direito, Universidade de Lisboa	2

ROMANIA			
Law clinic	6	Law School, Romanian-American University	10
SLOVAKIA			
Asylum Law Clinic	14	Law Faculty, Trnava University, Trnava	3
SLOVENIA			
Ljubljana Legal Clinic for Refugees and Foreigners	16	Faculty of Law, University of Ljubljana	15
SPAIN			
Instituto de Derechos Humanos Bartolomé de las Casas	12	Universidad Carlos III de Madrid	6
Clínica Jurídica de la Facultad de Ciencias Sociales y Jurídicas	1	Universidad Carlos III de Madrid	9
Legal Clinic of the School of Law at University of Alcalá	5	Universidad de Alcalá	14
Environmental Law Clinic (ELC)	11	Centre d'Estudi The Tarragona Centre for Environmental Law Studies (CEDAT) – Universitat Rovira i Virgili (URV)	14
Clinica Jurídica per la Justícia Social	12	University of Valencia (School of Law)	5
SWEDEN			
Law of the Welfare State in Practice (Law Clinics)	3	Department of Law, School of Business, Economics and Law, Gothenburg University	10
UNITED KINGDOM			
School of Law's pro bono service	10	Law School, Faculty of arts professional and social studies, Liverpool John Moores University	18
Legal Advice Centre	10	School of Law Queen Mary, University of London	5
Ulster University Law Clinic	3	School of Law, University of Ulster, Northern Ireland	4
Law clinic	13	University of Strathclyde, Scotland	6
Essex Law Clinic	8	School of Law, Essex University	3

York Law Clinic	6	York Law school, University of York	4
Northumbria Law Clinic	26	Northumbria, Master in Law	25
HKC Law Clinic	--	Sheffield Hallam University	5
Pro Bono Unit	11	Law School, Wales	2
Free Legal Advice at Leeds, London, Manchester	10	Bpp University	3
Birmingham FLAG	7	University of Birmingham Law School	3
<i>European clinics in not member states</i>			
BELARUS			
Yuridicheskaya Klinika	14	Brest State University	10
Legal Aid Clinic of BSEU	13	Law Department, Belarus State Economic University (BSEU)	2
Room for Legal Education and Consulting	14	Faculty of Administration and Management, Academy of Public Administration	3
NORWAY			
Oslo free legal aid clinic	45	University of Oslo	33
TURKEY			
Bilgi legal clinic	13	Istanbul Bilgi, University law school	2
UKRAINE			
Pro legal clinic	1	National Academy of Prosecution of Ukraine	15
Ukma Law clinic	16	Law department of National University of "Kyiv-Mohyla academy"	4
Legal aid clinic Pro Bono	16	National University of Ostroh Academy	3

A quantitative research shows only some dimensions of a phenomenon. It reveals essential aspects, but is still insufficient for a richer and extensive understanding. I therefore carried out qualitative interviews with totally open-ended questions and of a more reflective nature, to the members of the legal clinic movement of several European countries.

Fig. 2 – Territorial distribution



2.2.1 Economic profiles

The first data that is striking is that legal clinics, even in face of the great social and educational value they produce, are projects that work within an extremely low budget.

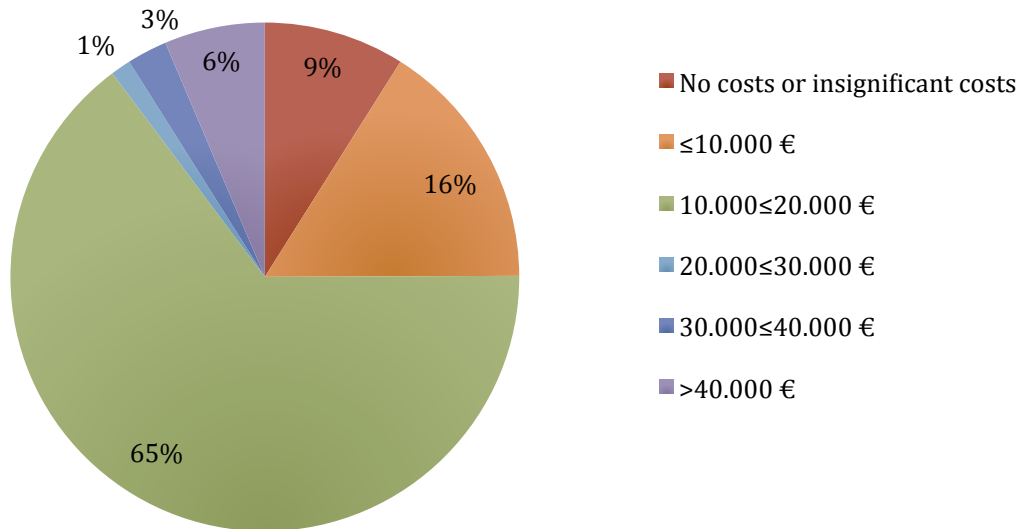
This is partly due to the difficulty in raising funds, but in part due to the fact that emerging within the University, they have place and personnel, therefore do not required especially onerous investments to get fully operational.

Furthermore it is considered that, in contrast to the United States, in most European countries, a teacher in a law clinic does not have a specific professional profile and there is not a balance sheet item of law of the University assigned to clinical programs. In this respect is the convincing advanced explanation by Ulrich Stege: «In contrast with continental Europe, legal clinics in the U.S. system of legal education traditionally play an important role. Clinical methodology is deeply rooted in a teaching philosophy based on “learning by doing.” If we add to that the fact that legal education in U.S. law school lasts for three years and that in this short period of time students have to learn both theory and practice because there is no mandatory apprenticeship during which they prepare for practice, it is quite understandable why clinics play such an important role in the U.S. system of legal education and why they are still marginal in number of continental European countries».¹

The consequence of this is that the promoters of a clinic need to worry about, not only to engage in supervising students and following up cases, but also to procure the funds necessary for its operation. Activities are often not simple and their outcome uncertain. Please also note that the vast majority of the academic staff have a number of additional obligations (teaching, research, administration), therefore work within the clinics is neither valued from the point of view of salary, or in career advancement . We see that only 20% of the interviewed clinics

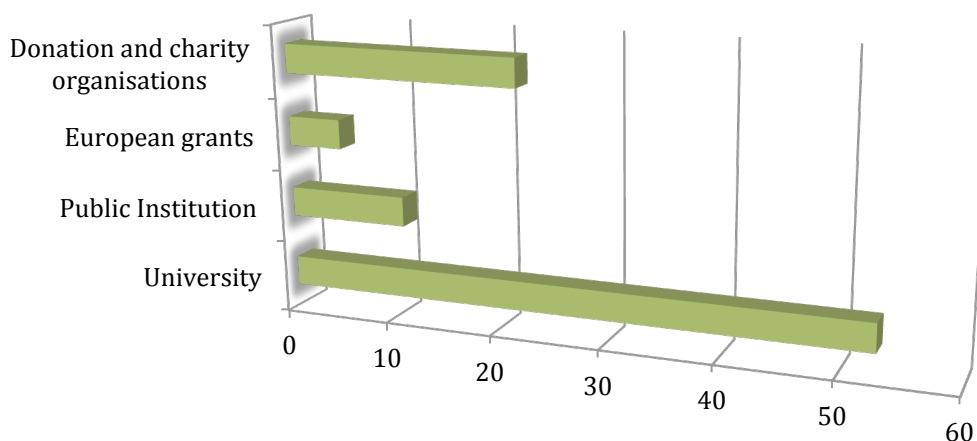
have more than 20,000 Euros per year. And about 50% of clinics work with less than 10,000 per academic year (fig. 3).

Fig. 3 – Budget



Financing the outlines of clinical activities comprise: more than 60% of clinics' budget draws on university funds. 26% is sponsored by foundations and private entities. Only 13% receive funding from local or national government agencies (fig. 4). The type of financial support that clinics receive is not uniform for each nation, even within a single state the type of funds that finance these programs varies. The exception is Poland, which has a more uniform system and is coordinated centrally, in fact the staff of only 3 consortium of polish legal clinics enrolls 730 people.

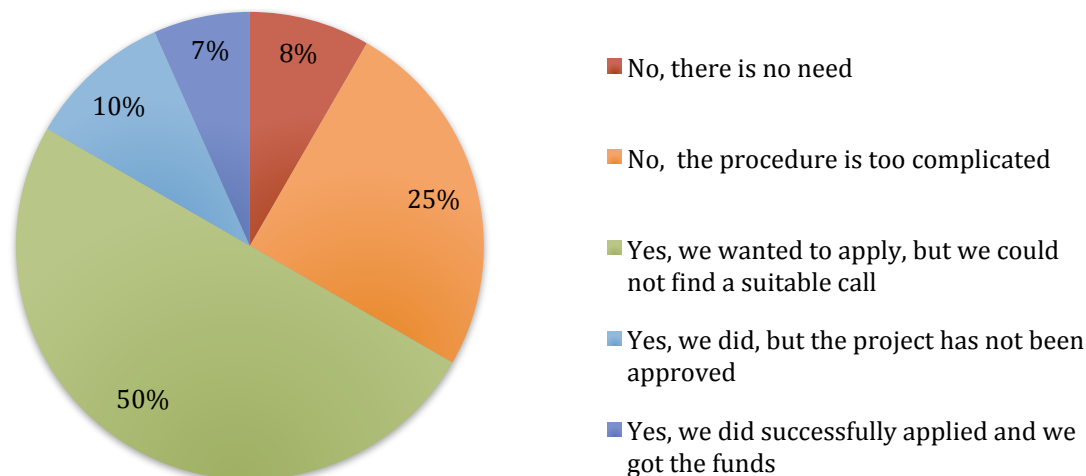
Fig. 4 – Where do the funds come from?



Probably the data that should be reflected more, is that only 6% of clinics benefits from European funds (for this question, data from clinics outside of the European Union has been separated). To follow up the matter, this question was included: «Have you ever thought about participating in a European call for funding, in order to fund the activities of your legal clinic?». It showed that less than 10% of the respondents are not interested in Union grants

because they do not need them. The remainder would like to receive them but 25% have not tried because they believe that applying for European action grants is too complicated, as many as 50% did not fit the right criteria. 10% submitted an application that had not been accepted. While about 7% has applied and received funding (fig. 5).

Fig. 5 – Have you ever thought about participating in a European calls for funding in order to fund the activities of your legal clinic?



Probably it is necessary that the Universities and the clinical teachers improve their ability to design and propose European projects, also as this promotes networking at a Union level. However, this result also reflects how little the public institutions (local, national and Community) have highlighted the strategic importance of these good practices.

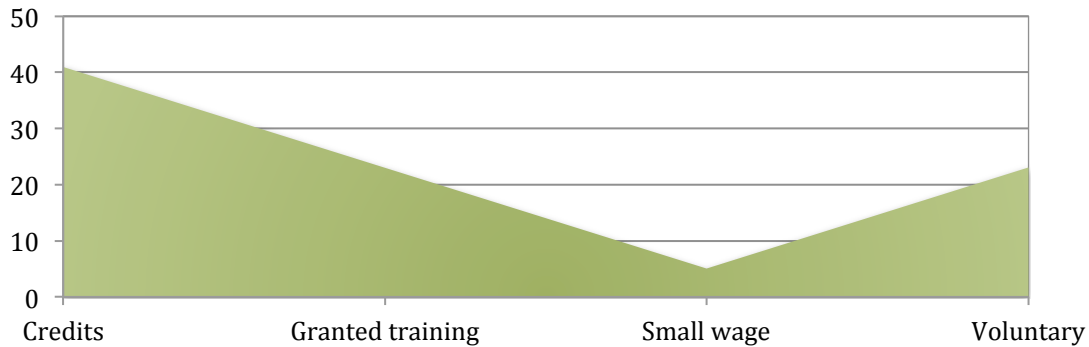
2.2.2 The clinic as an educational experience

In general, clinical programs require a fairly low student/teacher ratio, in fact, to accompany students in practice and avoid the risks of their involvement in resolving specific cases, there is need for careful supervision and this is not possible if the number of young students involved is too high. Therefore we see that only the clinics that have a high number of staff, can afford to follow many students per year. This accounts for most of the clinics (60%) involving fewer than 30 law students per year, 50% enrolls also or exclusively post-doc. It is also significant that half of the clinics include students in other fields, although in smaller numbers, witnessing an interesting interdisciplinary vocation.

The below average institutionalization of clinical activity is the reason why the forms, duration and type of recognition that this takes is extremely varied, not only from country to country, but every single program is configured so profoundly differently.

We see in particular that 47% of the clinics allocates disciplinary credits to the students involved, for 26% this is an officially recognized apprenticeship, 6% grants an economic reimbursement, in 26% of cases these are purely voluntary without any form of disbursement (fig. 6). Some clinics also offer more than one benefit to students, for example, some activities can count as internship, while others form part of a course with credits for the curricular course.

Fig. 6 – Benefit for students enrolled into clinical activities

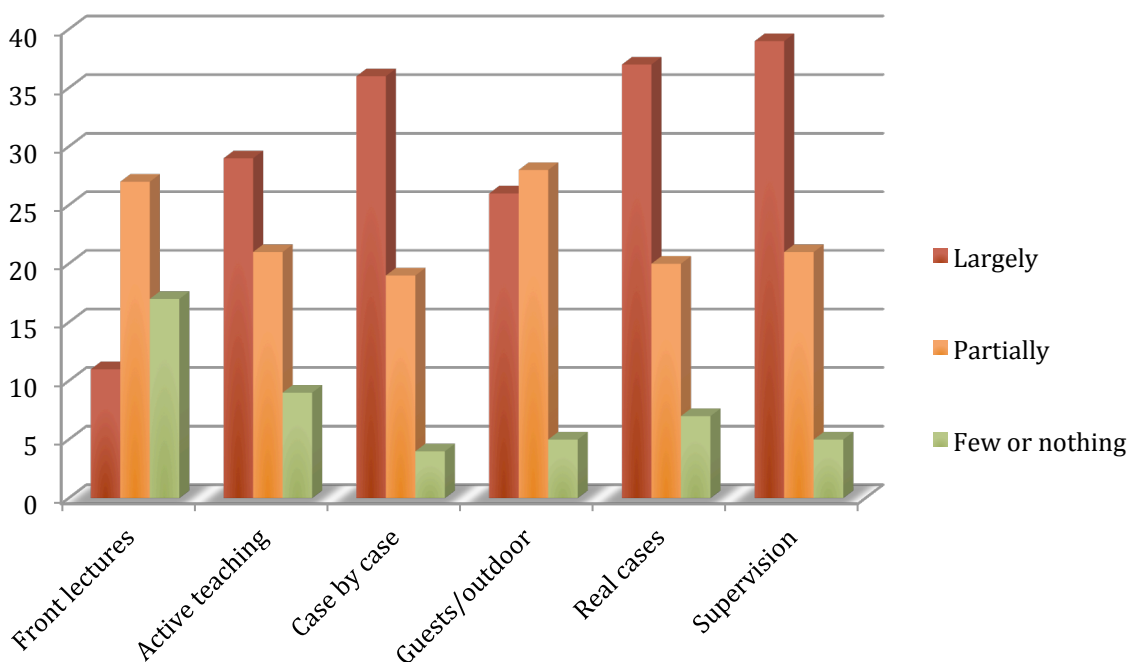


The variety of the legal clinic experiences is manifested in the time required for the course. In some cases this is a seminar of a few hours, in others this is a course of comprehensive studies (master) that can also escalate to 450 hours of study and training.

Many of those who responded, specify in the space for comments that the officially scheduled time is usually less than the actual time it takes in the work clinic. Therefore the credits normally underestimate the commitment of students and teachers. That is why participation in a legal clinic needs a strong motivation and is almost never mandatory.

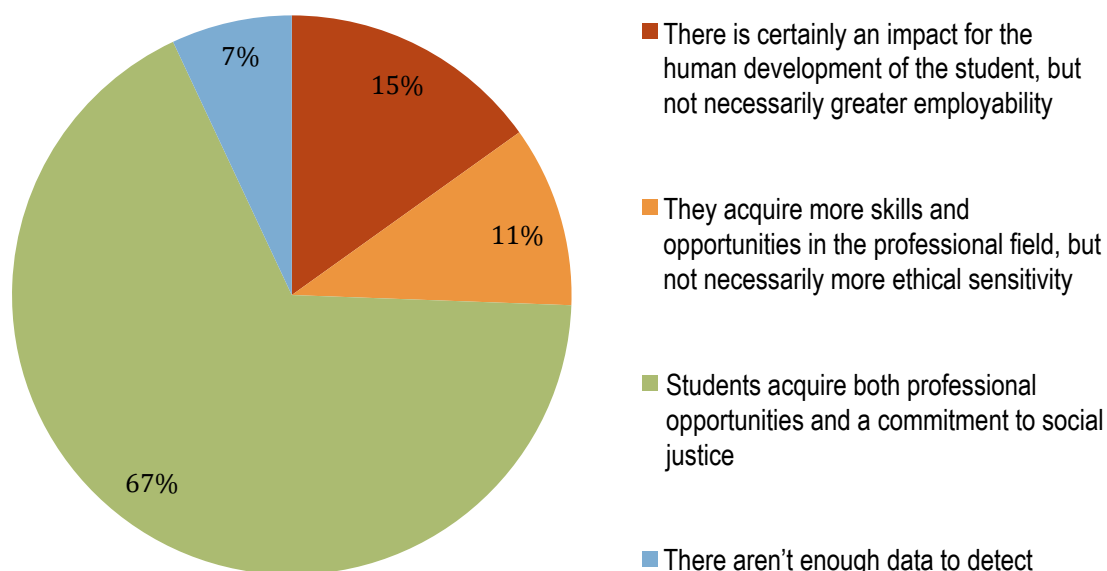
There are a plethora of types of courses, probably due to no clear definition of such experience in terms of the lack of standardization and official recognition. But in the face of this variety, what is common to almost all of the clinics is the teaching methodology. They are in fact explored and designed as innovative and alternative forms of teaching. As can be seen from the chart, it is a preferential interactive education (brainstorming, workshops, role games, etc.), in correlation with the reality and openness outside of the academy. This is in stark contrast with the academic style, a fortiori within a generally conservative faculty such as those of the law, mainly characterized by a theoretical approach (fig. 7).

Fig. 7 – Learning experiences proposed



In this section one last question asked to supervisors of the clinics was, what, according to them, was the impact on growth of the students. Except for a small portion (7%) of those who do not consider to be able to predict the consequences on the lives of the students due to lack of data, most (67%) are convinced that this experience will improve both professional and ethical development. 15% believe that this form of education is certainly enriching on a human level, but that you can not take for granted that professional opportunities increase. Only one clinic out of 10 thinks that participation in clinical programs ensures greater employability, but it does not ensure moral growth (fig. 8).

Fig. 8 – Opinions on the impact of clinical experience for the students



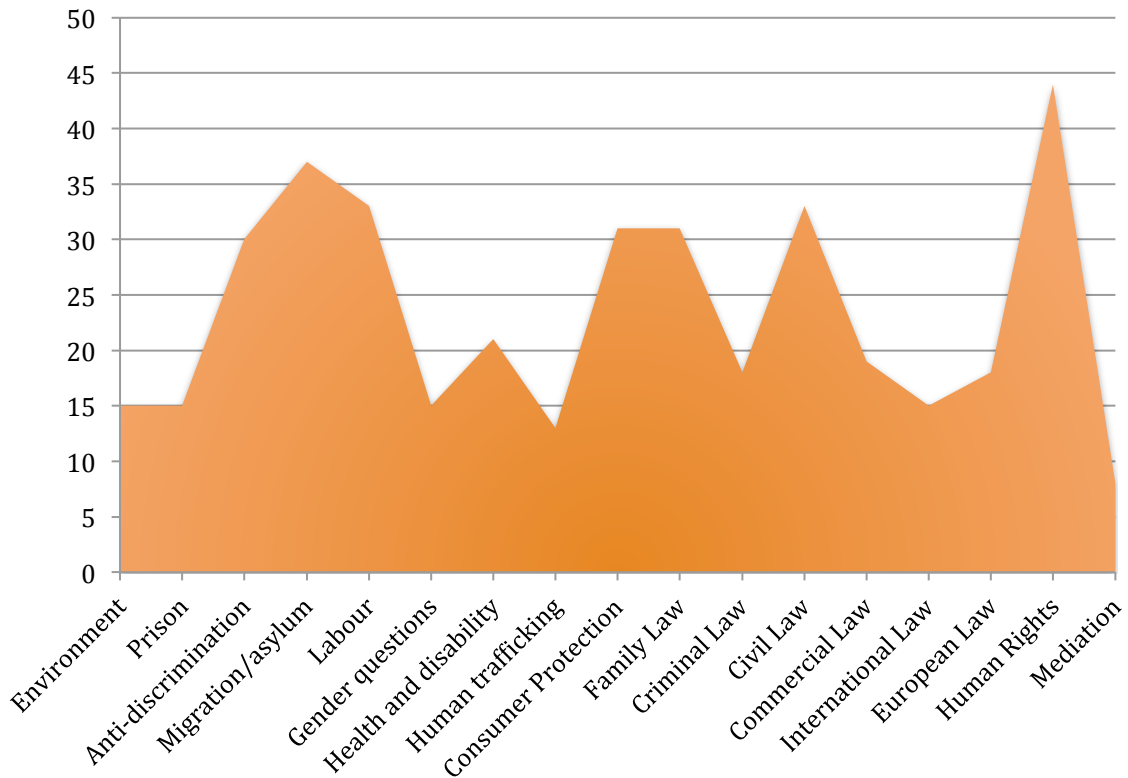
2.2.3 Areas of intervention and types of clients

As you can already guess from the previous section's last question, it is evident that the vast majority of the European clinics have a strong vocation for social justice. In fact they propose legal training through the methodology of learning by doing, but they also aim to deconstruct the University as an aseptic fortress, an ivory tower of "navel-gazing" theory afraid to engage with harsh reality. Scholars who decide to become involved in a legal clinic generally undergo the alienation and the feeling of uselessness that can sometimes go with academic work. For this reason they consider a civic commitment of cultural institutions essential.

So, it is no wonder many European clinics are active in the field of human rights, migration and asylum, labor and antidiscrimination. Many deal with the defense of the consumer, civil and family law. It is also interesting to note that there are 14 clinics engaged in environmental protection (fig. 9).

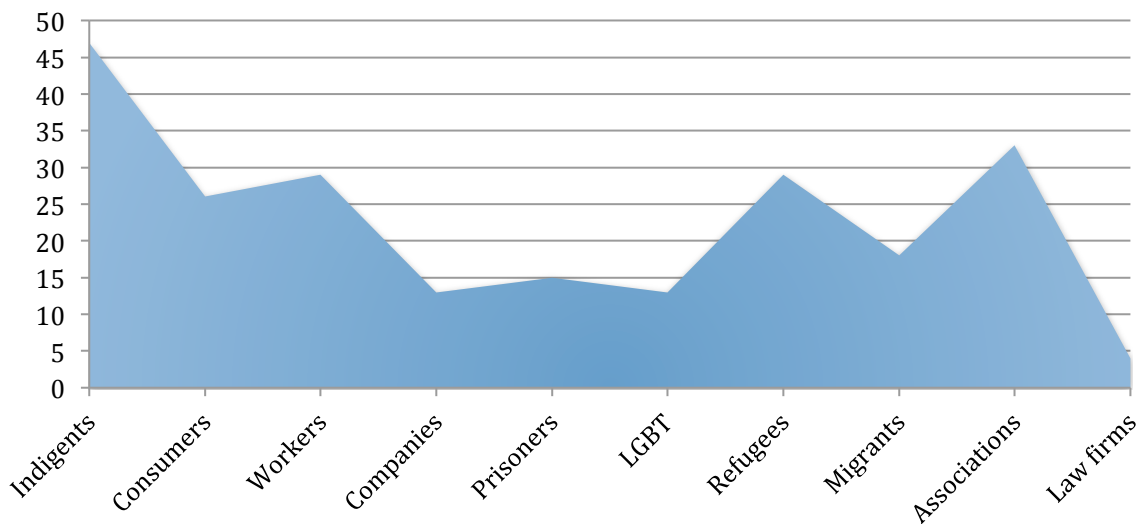
In line with ranges of action for customers of the clinics, half of these belonging to vulnerable or destitute sectors. Over a third of the clinics subsequently advise not only directly to individuals, but also to organizations and associations involved in the protection of fundamental rights.

Fig. 9 – Areas of intervention



As can be seen from the chart, one third of the clinics deal with the protection of asylum seekers and refugees. This is more important than ever. In fact, in a time of xenophobia and increased rejection of those fleeing wars and dictatorships, it is interesting to note that the legal clinics should pursue protection of this category of persons, raising awareness and actively involving new generations. Note also that a significant the number of clinics that appeal/apply to consumers, women and LGBT people, for gender issues (fig. 10).

Fig. 10 – The clients



As we have seen a single clinical team can become a promoter of various initiatives. Therefore to the question «what do you do?», the answers are inevitably multiple. The chart shows that the main activity is extrajudicial legal advice: more than half of respondents offer this service to individuals and 40% to organisations of civil society. Surprisingly only a quarter of the clinics follow clients in the process, in contrast with the North America, where the law clinics operate as law firms, facilitated also by a legislation which enables them to directly participate in the litigation. This only happens in a few European countries, so the clinics that also accompany clients in the process, generally do so in partnership with accredited lawyers. In this regard it should be noted that the legal aid generally covers only the costs of a court protection, while the consultancy in the process is not guaranteed to the impoverished. In this way clinics in Europe make up for a deficiency in the system.

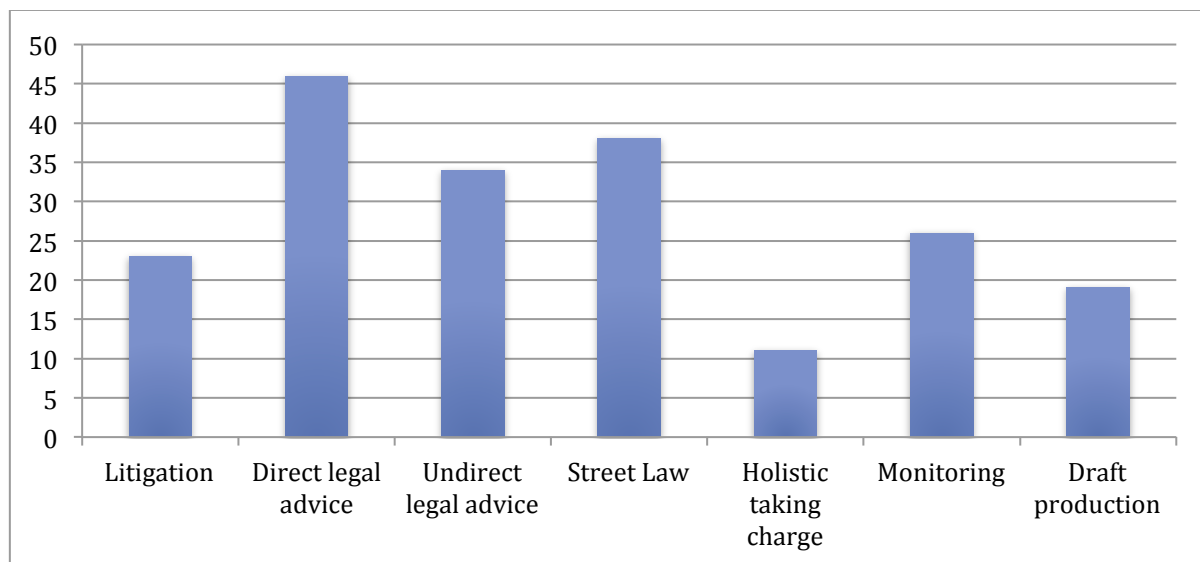
The second most performed activity is street law: as such, about 45% involves students in the popularization of legal knowledge to particular categories of people.

Ten clinics experience an outlet in the holistic care of a person, wanting to face the different needs such as those regarding housing, health or employment, thus collaborating with other organizations involved in social work.

Another activity that involves almost a third of the law clinics is the monitoring and reporting of any violations of human rights.

A very innovative activity engaged in by a quarter of the respondents is the elaboration of draft norms and policies (fig. 11). For example, the clinic of the Third University of Rome, specializing in rights of children, participated in the drafting of a Italian bill for the protection of unaccompanied foreign minors. These political and legislative activities highlight a critical and proactive law approach, capable of enhancing the active citizenship of young people in training.

Fig. 11 – *The activities*

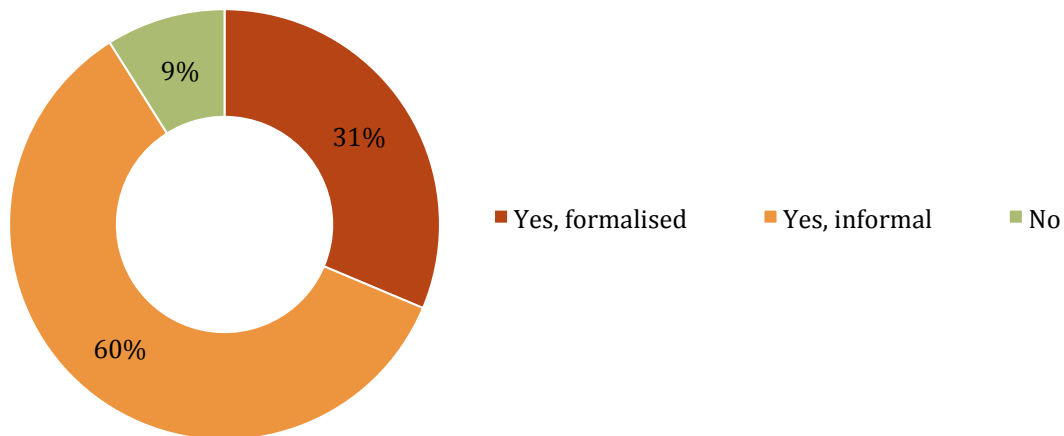


2.2.4 *The network*

One of the most relevant aspects of clinical education is being open to the external world, developing collaborations with subjects out of the academic trajectory. So, in order to have a more comprehensive overview, it is been necessary to question the clinics' partnerships.

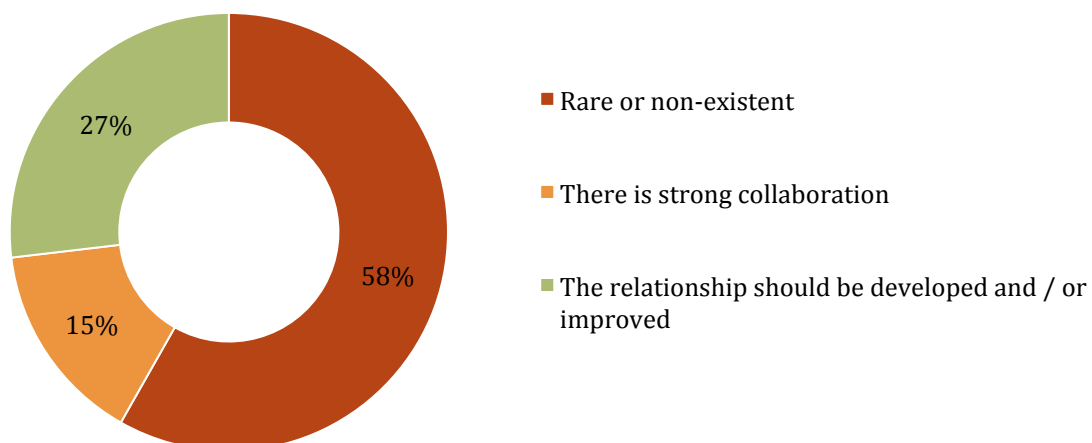
It must be stated that about 20% of the respondents did not respond to these questions. Among those who answered the data it is indicated that 90% have formal or informal relationships with lawyers and law firms (fig. 12).

Fig. 12 – Collaboration with lawyers and law firms



It is astounding that only 7 out of 86 clinics claim to have a strong and positive collaboration with the bar association, while almost 60% entertain almost no relationship. This could be explained either by a mutual distrust of an advocacy more conventional in style and the type of professional culture prevalent within the clinics. Moreover, as we have seen, many of the clinics do not perform judicial activities and therefore have less need to maintain relations with this institution. A third would still like to improve or develop the relationship (fig. 13).

Fig. 13 – Collaboration with Bar association



While the relationship with the bar association is sporadic, almost all the clinics have forms of cooperation (formalized or not) with civil society organizations and other institutions (figs. 14 and 15). This shows how European clinics emphasize the dialogue between the sphere of law and society, between university knowledge and the way of the world, in a rather unusual way.

Fig. 14 – Collaboration with institutions

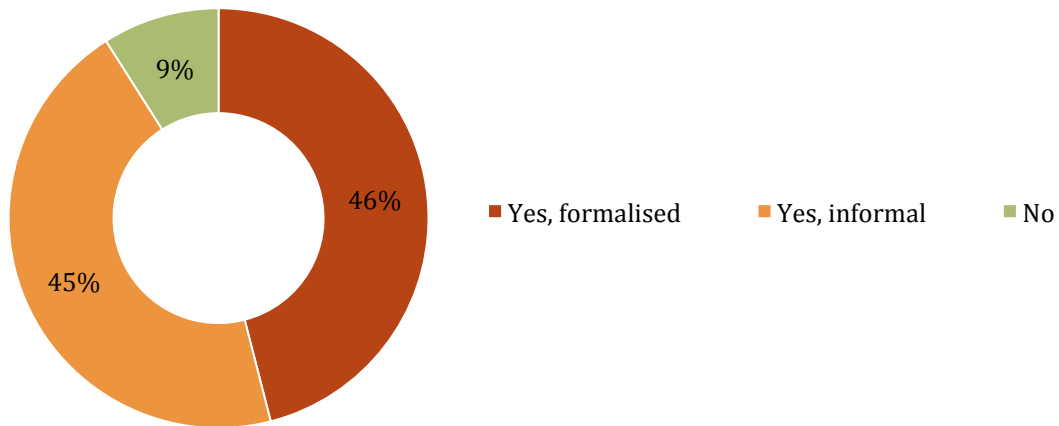
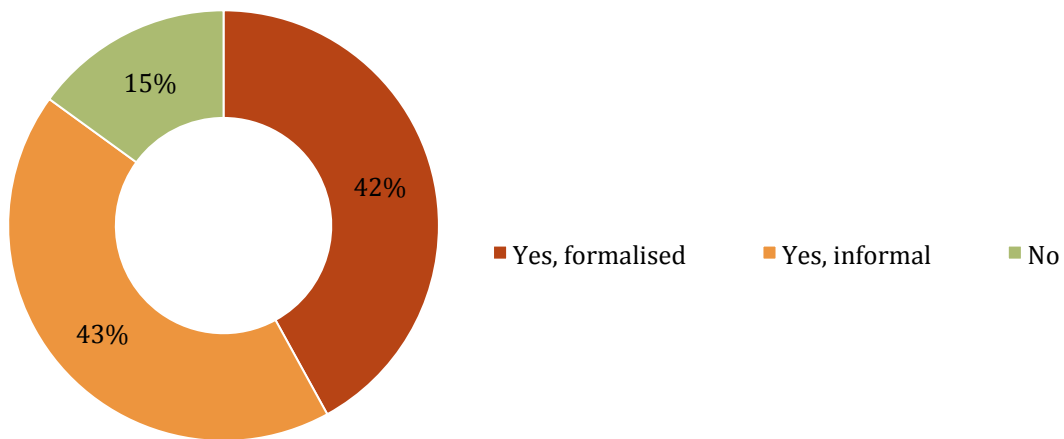
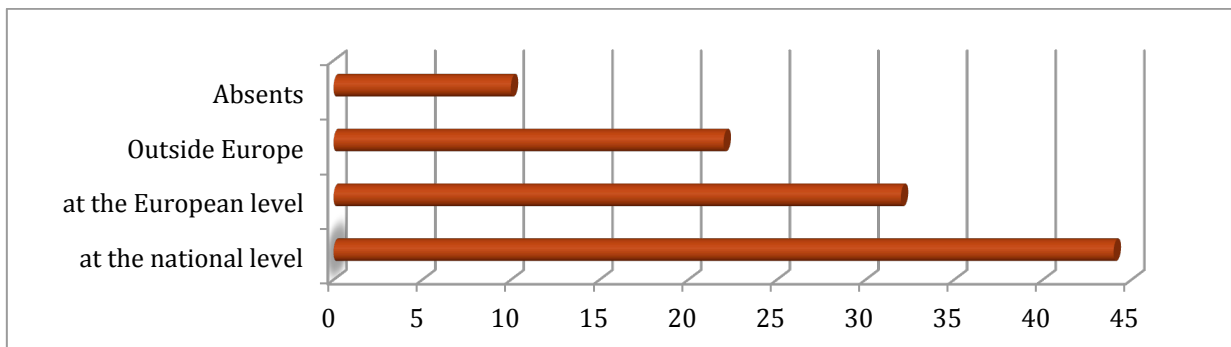


Fig. 15 – Collaboration with civil society organisations



Another interesting finding is the fact that the clinics have a good level of connection between them. Only 12% have no relations with any other similar program. Over half is in contact with other clinics of the same country, one third has relationships with other European countries clinics, a quarter maintains an exchange with similar organizations from other continents. Many clinics claim to be formally part of national and international networking, specifically: the Encle representing the Movement for the European clinical legal education and the Gaje (Global Alliance for Juridical Education) that instead brings together the world’s clinics (fig. 16).

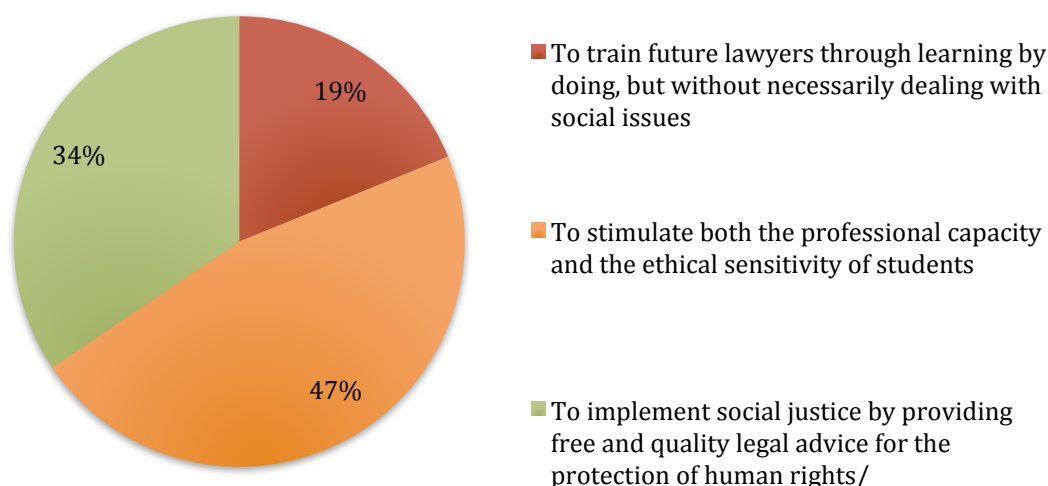
Fig. 16 – Collaboration with other clinics



2.2.5 Social impact

The social mission of the clinics is shared by most respondents. In fact, only a quarter of clinics consider that their main objective is an improvement of legal education, without necessarily dealing with social issues. As many as 65% believe that the priority is education, but that it is necessary to combine the professional growth of young people with the maturation of the ethical sensitivity of students. But more than half believe that the training of young people is not unconnected with stronger protection of human rights and an implementation of social justice (fig. 17)

Fig. 17 – Clinics' goals



The proposed measures to support the development of clinics are: more public funding; introducing measures to reward universities that activate legal clinics; strengthening networking and exchange between clinics in the EU; supporting the launch of new clinics or updating existing ones with capacity-building programs; through greater institutionalization; introducing minimum quality standards; rules that strengthen the powers and recognize the value of the clinics (eg. if this is not already the case, to allow clinics to provide legal actions). All these options have had rather similar levels of appreciation, supporting a consensus that fluctuates between 30 and 50% of the respondents (fig. 18).

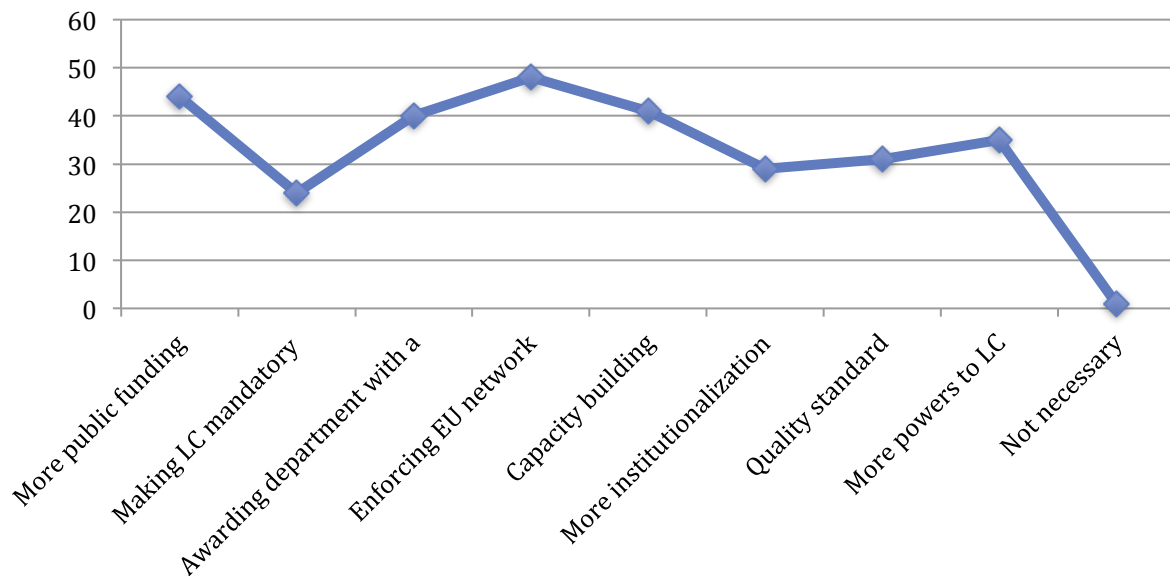
Only 20% of the respondents hold the view that a useful measure would be to render the clinical programs compulsory into the curriculum of Law. Only one respondent believes that there is no need to support the expansion of the movement.

Developing a vision of the possible role of clinical education on the European stage is particularly important and urgent in an on-going process of institutionalization and definition of standards, where the mission is partially still open.

Starting from and expanding Khadar's proposal¹, in the survey I have suggested five potential impacts of the clinics in the EU context on human rights protection: a) to contribute to the formation of a new generation of attorneys/lawyers who are EU law experts; b) to enhance the access of disadvantaged people to rights guaranteed by EU legislation by providing opportunities for pro bono legal advice given by clinics; c) to produce advanced and authoritative case law/doctrines, thanks to research carried out in universities, which will push institutions and European justice towards a growing commitment to human rights protection; d) to collaborate on the production of draft regulations and policies to implement the

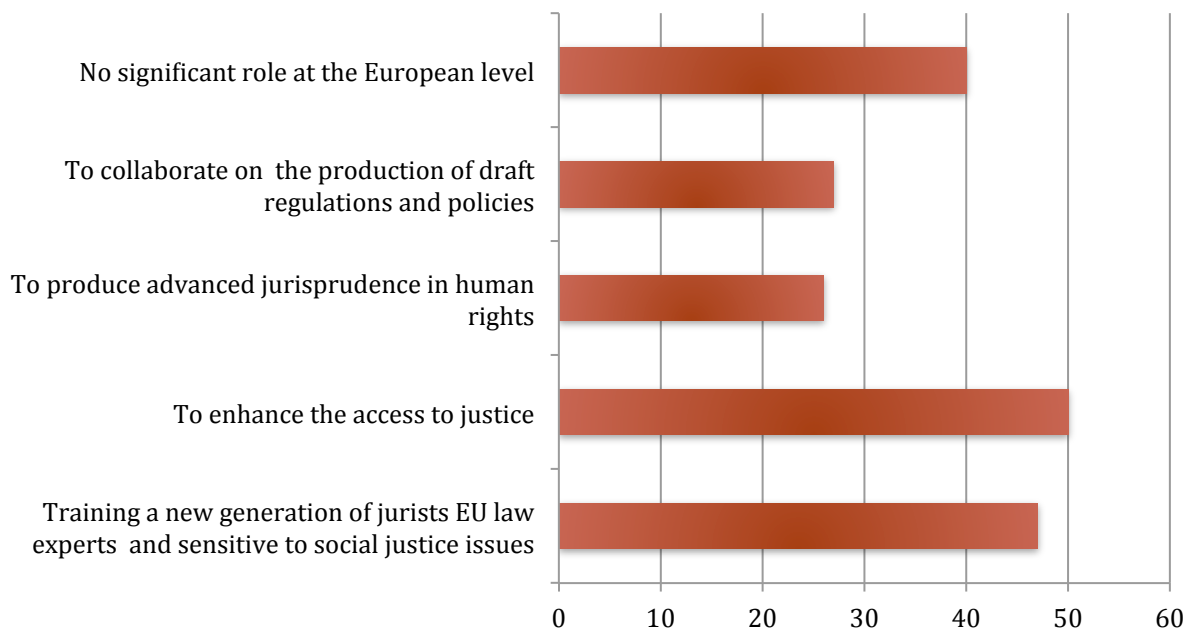
protection of fundamental rights at the European and international level; e) to create a venue which provides free legal advice outside courts for marginalised people.

Fig. 18 – Strategies to promote the role of clinical legal education



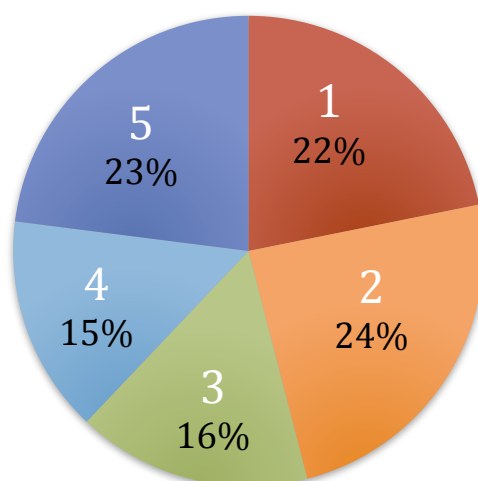
Over half of the respondents think that clinics can play a crucial role in facilitating access to justice for disadvantaged people; with a small gap in terms of consensus following the opinion that clinics can play a decisive role in the formation of lawyers more aware of European law, and half considers that it can function as a think-tank capable of suggesting bills, innovative policies and revisions of the current regulatory system in order to strengthen the protection of fundamental rights guaranteed by the Union (fig. 19).

Fig. 19 – Potentialities of clinical education in Europe



A somewhat disappointing aspect of this survey is the modest importance that European law seems to have in the work of clinicians. For more than 45% of the respondents, the European law has little weight, it is medium for about 16%, and high for less than 40% (fig. 20).

Fig. 20 – Perception of European law relevance (from 1 to 5)



It is also contradictory with the fact that, as we saw in the section dedicated to the network, that the level of contact and cooperation between the clinics of different European countries is quite developed, as is the recent emergence of Enclé.

Probably the people involved in this movement have yet to realize the importance that Community law has to resolve the issues of which they are claiming to deal with. Moreover, given the lack of familiarity with the Union projects, it seems necessary for Enclé and each clinic to work to Europeanise their field of action and tasks.

2.2.6 In conclusion

I think it's worth pointing out the reason why we are talking about legal education in Europe using the term clinical "movement". The data shows, in fact, that we are not simply in the presence of a proliferation of individual clinics, but the emergence of a new trend in academia should be conveyed. The scholars involved in this process are formulating a different way of teaching the law, an alternative view of the law itself and a different role of academia and the university professor. The emergence of such a movement could influence the professional culture of European jurists. The students enrolled in the clinics' activities have the opportunity to experiment with living law, to use their legal competence for rights, equity and public interest; they meet people who rarely enter a law firm due to their economic or social condition. So, they usually declare that they have been very affected by clinical experience and claim to have acquired more awareness and even a different sensitivity.

The movement for clinical legal education is attracting more and more students and scholars who have a strong sense of civic duty and a desire to be politically committed, in its original sense. In attrition with the doers of the legal profession principally as gainfully employing, this movement is designing a role of service for the academic and the jurist.

Of course these young people are much less than the totality of law students, and the scholars involved are a very small part of the faculty staff, but they can play what Serge Moscovici

calls the minority influence: «Our results support the notion that majority and minority influence are different processes, the former producing mostly public submissiveness without private acceptance, and the latter producing primarily changes in private responses. These processes, called compliance and conversion, are mutually exclusive and to a certain extent, opposite»¹³⁴. This means that the European movement probably cannot become mainstream and enrol the mass of students and scholars, but it can nonetheless have a deeper effect through changing the vision a little and also the attitude of those jurists who will never become clinicians.

¹³⁴ MOSCOVICI, PERSONNAZ 1980, 280.

APPENDIX B

Discussing with some exponents of the movement for clinical legal education in Europe

Interviews of Clelia Bartoli
with Dubravka Aksamovic, Marzia Barbera, Filip Czernicki,
José García-Añón, Jonny Hall, Julian Lonbay, Maxim Tomoszek, Margaret Tuite

INTERVIEW WITH DUBRAVKA AKSAMOVIC (CROATIA)

Dubravka Aksamovic is Assistant Professor at the Faculty of Law in Osijek, Croatia. She is currently engaged in teaching Company and Contract Law. Other fields of her specialization are Competition Law and Electronic Commerce. Since 2003 she runs clinical program at the faculty of law in Osijek. Since then she is very active in promoting new teaching methodologies in legal education such as legal clinical education. Since 2013 she is head of the legal-economic clinic, a unique interdisciplinary clinical program of students of law and economy. Since October 2015 she is member of the board of European Network for Clinical Legal Education.

Legal clinical education in Europe started in the Eastern countries. What characteristics does it have in that area?

Firstly, the start of CLE in all Eastern Europe happened in a time of social, educational and other changes. All Eastern European countries aspired for changes, so this is probably the reason why it was relatively easy to start the clinical program.

But on the other hand, many of those programs started *ad hoc*, many issues were not well thought out and coordinated, and that is the reason why many of the initially successful clinical programs, failed as soon as foreign donors withdraw.

It is also significant to mention that the clinical movement in eastern European countries was not spontaneous. It was supported by mainly US legal schools and donors and this is why many clinical programs in Eastern European countries share many similarities.

What developments for clinical legal education could take place, in your opinion, following the recent expansion in Western and Southern Europe?

I expect that clinics will continue to spread in all European countries for many reasons. Firstly, due to the impact of EU integration. European universities are now closely cooperating on many areas. Seeing as clinics, unlike the rest of law, don't have a national character, this is a possible and attractive area for cooperation.

Secondly, we are witnessing Europeanization of higher education and competition in higher education in Europe. Universities that can offer diversity and quality will in

future attract more European students than those that are not willing to change a century old educational system. Based on current experience it is quite obvious that clinical programs attract many students.

Another reason for which I believe in a promising future of CLE in Europe is the increased need for pro bono legal aid. Europe is facing many legal problems, refugees, bankruptcies, EU law as a growing branch of law etc. Clinics can be useful service providers who can contribute in solving those problems, and as we all know, clinical programs usually don't require significant financial resources (this might not be true for all European countries).

For the abovementioned and a number of other reasons, I believe that clinics in Europe have good perspective.

What experiences and practices already implemented in Eastern Europe could be adopted by the movement for legal clinic education throughout the entire European area?

Many Eastern European countries already got over “the childhood diseases” which many Western countries are still facing. Many of Eastern European countries have rich experiences in running clinics, they resolved sustainability issues, they integrated clinics in their curricula, they resolved supervision issues etc. So sharing those experiences might be useful to start up programs in Western countries and this can be done in many forms, via international conferences, through international networks such as ENCLE, student and teacher exchange programs etc.

INTERVIEW WITH MARZIA BARBERA (ITALY)

Marzia Barbera is professor at the Department of Law of the University of Brescia, where she teaches “Labour Law”, “Antidiscrimination Law” and “Legal Clinic I”. She is the Head of the University of Brescia Legal Clinic Program, the first Legal Clinic course ever established in Italy, in 2009. Member of the Steering Committee of GAJE (Global Alliance for Justice Education) and member of ENCLE (European Network for Clinical Legal Education). Editor of the journals: «Giornale del diritto del lavoro e relazioni industriali»; «Diritti lavori mercati»; «Quaderni di diritto del lavoro e delle relazioni industriali».

What steps do you believe are fundamental for the movement of legal clinics in Europe to take root?

There are some institutional conditions, others are cultural. The former concern the necessity of permanently including clinical courses in the curriculum of the university departments. It is, as of now, to give recognition of the teaching and professional activities in the clinics provided by teachers and the professionals who work there, and in a longer-term perspective, of adapting the framework of strict rules governing the organization of university courses, to the innovative and dynamic character of the clinics. This involves, among other things, the development and provision of human resources financial dedication.

It is also necessary to overcome the distrust with which many orders of lawyers look to clinics. As for the cultural steps, these concern the way in which the teaching of law is conceived, all centered on the knowledge of positive law and not very attentive to the law inaction. Most lawyers sensitive to the theme of experiential education could promote moments of discussion and training involving their scientific community.

What recognition and what kind of support would be appropriate to ask the European institutions so that this experience could fully express its potential?

The European institutions should encourage these internal changes to national university systems, as well as through experimentation projects of a European level, promote the cooperation and exchange of good practice and finance research and experimentation in this field.

Several times you have taken an institutional definition of the legal clinic that it should only include those experiences which bring together the students with real customers and the living law and which have, as objective, social justice. Can you argue your position?

Clinics establish learning processes of law to students, based on the awareness of the dynamic nature of legal rules and the variability and uncertainty of factual circumstances in which these rules are applied. These learning processes can really be triggered only by the discussion of real cases. The “justice oriented” clinics, also make students aware of the problems of social fairness that arise in the context in which they live and the possibility of the use of the law as a tool for social change.

INTERVIEW WITH FILIP CZERNICKI (POLAND)

Since 1998 Filip Czernicki works on promoting and the establishment of legal clinics in Poland and Eastern Europe as well as promotion of professional lawyers pro bono activity. Since 2002 he is President of the Polish Legal Clinics Foundation and member of the Steering Committee of the Global Alliance for Justice Education (since January 2009 till 2013 acting President) and serves as Head of the Supervision Council of the Polish National Union of NGO's. Filip Czernicki was co-founder of the Warsaw University legal clinic – the second oldest legal clinic in Poland, former President of Pro-European Youth Organizations Forum working by the President of the Republic, former member of the International Board of The European Law Students' Association, and co-founder of the Polish NGO's Coalition for the International Criminal Court. He is the author of several articles and publications on legal clinics and access to justice.

Which direction should be taken by the European movement for legal clinical education?

Legal Clinics in Europe should move from a nascent stage into a more well organised and structured form. This should first of all go along with their integration into legal curriculum and become part of the legal education, being fully integrated into the law school structure. I believe that legal clinics should focus on improving teaching methodology and pay more attention to the teaching component than to solving social problems. This is mostly true in Western Europe where there are already well developed state organised systems of access to legal aid and every citizen most probably knows where to go in order to get free legal advice. In comparison European law schools are far beyond the US-UK legal education model – which is far more practise oriented and so legal clinics are much better developed. European legal education models should finally recognise clinical legal education as the best tool to educate new generations of lawyers equipped with good legal skills and being socially sensitive at the same time.

How could it gain more strength and recognition?

The most important task is to convince the law schools academia and the deans of course, of the clinical legal education values. Clinicians should focus on developing the relationships among the academics and promote actively, clinical teaching methodology as the modern and effective way of teaching law. New generations of lawyers will join academia and will influence slowly the general attitude of academics – changing it from reluctance to acceptance and finally to admiration. A very similar, step by step process has happened in Poland. We've been lucky that general transformation process in all possible fields in our society happened along with the modernisation of legal education. Clinical legal education so became part of the number changes that happened in Poland and it is obvious that everybody will have to adopt to the new conditions (including new law teaching methodology). I hope that the European Law Faculties Association (ELFA) could get involved in the promotion of modernisation of legal education and introduction of legal clinics into a new common legal education scheme.

What are Polish model's strengths, as it is definitely the most structured reality in Europe?

The Polish legal clinics model has definitely worked out several strengths and special values that could be shown as a model solution. First – almost all of the legal clinics

are university-based clinics, which helped us to gain the law faculties recognition and make the law school deans responsible for the clinics' development. Secondly – clinics work with very strong student involvement and many of them are run by students, meaning that they don't have to hire paid staff and only the students act as secretaries, fundraisers and administrators of the clinics. Thirdly – all the clinics are not pending on any external funding, a long term strategy of the Polish Legal Clinics Foundation and supported by some donors, have made clinics work in a very modest and efficient way as well as to make the law school feel responsible for financing the clinics. Fifthly – more than 10 years ago clinics decided to establish the Polish Legal Clinics Foundation and thanks to this, they have formed an umbrella under which there has been a professional network with well organised exchange of information, created ways of learning from each other (national journal, twice yearly organised trainings, mailing lists, web page) as well as given the Foundation authority to represent their rights and work in favour of the whole network.

How could European institutions support clinic programs?

European institutions should first of all recognize legal clinics as the model solution for modernizing legal education through which legal education in Europe will teach not only knowledge but also will include skills training into the legal curriculum. A detailed analysis of the improvement of the Polish legal education model will show the positive influence of introducing clinical teaching methodology into law schools' curriculum. Legal clinics could be part of the Bologna process and show that reaching the goals of Bologna can be done also thanks to the strengthening of clinical legal education around the continent.

INTERVIEW WITH JOSÉ GARCÍA-AÑÓN (SPAIN)

José García-Añón, Director General of Democratic Reforms and Public Freedoms in the Department of Justice of the Generalitat Valenciana (Spain). PhD in Law, is a Professor in the School of Law and researcher in the Human Rights Institute (idh.uv.es) at the University of Valencia (Spain). He has been the Director of the International Human Rights Clinic in the Legal Clinic for Social Justice at the University of Valencia (www.uv.es/clinica). He is member of the Board of Directors of the Global Alliance for Justice Education (GAJE) and has been member of the Steering Committee in the European Network for Clinical Legal Education.

How did you make clinical programs a reality in your University?

During 2003-2012 I was coordinator in my Law School for the implementation of the Bologna Process (European Higher Education Area), that means to promote, disseminate, inform about.

After that I was the Associate Dean for Innovative teaching and this was one of the possibilities we put in practice in 2005/2006, as a pilot, before starting the normative changes in 2010.

At the beginning, we did not have any grants. Since, we have being recognized by the University as a Consolidated Group on innovative teaching and later as an Excellence group of teaching, Human Rights institute project pays a part time person to support us. Externally we have some grants through our research projects on human rights and around 3000 dollars per year from Open Society, in the last three years. This helps to disseminate and pays some trainings.

What do you enjoy most about clinical teaching?

We have not just students doing what is a compulsory externship or as a part of a Master degree but volunteers. They say they are coming because they learn law and are helping people at the same time.

How can legal clinics contribute ethically, as well as professionally, to the training of the new generations of legal experts?

The main aspect is the experiential component. If the students are trained in a realistic way (simulations, PBL...) they learn legal ethics and professional rules as if they were professionals. When they are working with real cases we use the monthly rounds to discuss if they have had an ethical problem.

“Learning by doing” is the best way to learn professional ethics. Besides, during first weeks, we ask them to review the bylaws of our clinic and add all ethical aspects they think should be included. We discuss them and the proposals are included.

Why do you think Europe needs CLE?

Because there are lots of needs and injustices not solved. Also not just in Europe, because clinics have a universal perspective. And at the same time, they are a tool that will transform the way in which Law Schools teach.

INTERVIEW WITH JONNY HALL (UNITED KINGDOM)

Jonny Hall (B.A, Hons) is Associate Dean for Academic. Prior to joining the School in 1998, he trained and practiced as a solicitor at David Gray & Co. Solicitors, a leading legal aid practice in Newcastle upon Tyne. He specialised in personal injury and actions against the police matters.

There is often discussion about whether clinics should be mainly education-oriented or a service to society. Would you be in favour of clinics as a way to integrate legal aid in Member States?

In broad terms, the goals of clinical legal education might be termed as follows:

- Educating professionally responsible competent lawyers;
- Providing a legal service to those who cannot otherwise access justice;
- Instilling in the future generation of lawyers a commitment to social justice in their professional lives.

To a certain extent it is of course possible to see these goals as being mutually compatible or even mutually dependent. For example, the goal of social justice through the practice of law is only possible if the lawyer is competent.

It is also worth noting that when we speak of ‘education’ many would argue that education is about something more than simply the attainment of competence or technical skill. That, education would also include at least a critical awareness of the role of the law and lawyer within society including (but not limited to) access to justice; the impact of social and economic inequality; human rights and reform of the law.

Having said this, it is clear that there is a debate about both the purpose and function of clinical legal education. There is a difference between giving students the opportunity to encounter the role of the law and lawyer in society in the real context of the clinic and attempting to instil a commitment to social justice and whether the latter is desirable or achievable.

To take concrete examples, should a clinic run a taxation clinic which advises those who might pay for the service elsewhere; should a clinic run a small business advice clinic which helps aspiring entrepreneurs start their business or should clinicians concentrate on providing access to justice to those who most need it and cannot afford it for example refugees.

I think it is also important to remember that the priorities of clinics are sometimes necessarily context specific. In my law school we have a diverse student body. Many students are first generation higher education entrants from lower socio-economic backgrounds. All are incurring debts of almost £40,000 in government study loans to pay fees to study law. In other countries, the position is quite different. For Northumbria’s clinic I personally feel that our first duty is to our students, to educate in the broad sense I have considered above rather than prioritise first providing a legal service.

In addition, for the first 25 years of the life of Northumbria’s Student Law Office, the UK had one of the most comprehensive and best funded legal aid systems in the World. While of course there were individuals who were not able to access justice, the degree of unmet need was tiny compared to that in many other countries. Sadly that is no longer the case but it illustrates how different clinics have developed with different agendas according to their political, social, economic and legal contexts.

Having said this, I do favour an approach to clinical provision that recognises where there is unmet need in accessing the law and seeks to provide an appropriate, properly

supervised, education for students in meeting some of that need. When considering how we define enable people to access to the law and how we serve society, I favour an inclusive interpretation. A clinic which assists entrepreneurs in starting their own business can help to ensure the establishment of businesses which are successful (thus assisting the local economy) and responsibly run. I don't believe that such clinics are any less legitimate than those representing refugees. Both have their place in my view. In summary, I think that some clinics will give greater focus to 'legal aid' issues than others depending upon a multitude of factors. For myself and my clinic, I favour the emphasis on the educative aspects of clinic (while not ignoring service or social justice). For one thing, this is Higher education we are involved in and not legal service. For another, if we (as we do at Northumbria) embed the clinical experience as a compulsory and assessed element of the award because of the primacy of the educational goal, we can ensure that the university itself ensures the provision is there (it is not dependent upon the provision of funds from the government or others). Finally, I believe that it is the duty of society as a whole to make provision for legal aid. I recognise that this will never be perfect but legal assistance to those in need should not be largely dependent upon the efforts of students.

Drawing from your experience, I would like to ask you what role may legal clinic have, regarding the goals set by the Bologna Process and the promotion of social responsibility of Academy.

I think some of my answer to this question is dealt with above. I confess that my knowledge of the Bologna process is far from extensive and it may well be that this is quite typical of UK institutions generally. However, my understanding is that the process includes a re-affirmation of the principle that higher education is a public good and a public responsibility and that the social dimension of Higher Education in Europe requires improvement.

Notwithstanding my answer to the above question on the orientation of clinics, I do believe that clinics can promote these ideals through:

- Engagement of the academy and students in the solving of real legal problems faced by individuals or organisations thus providing a service from the university to the community.
- A deepening awareness amongst students and academics that lawyers, students and legal academics have a role to play in society beyond theoretical study (which may sometimes be prevalent amongst some academics) or simply becoming a well paid lawyer.
- Promotion of the connection between university academics and students in the life of the community more generally through the provision of the service and therefore a vision of the university as a part of the community and broader society and not entirely separate from it.
- A broader education for students and academics through the interaction with the community which results in a deeper understanding of the issues in society from a practical as well as a theoretical perspective.
- The recognition that the study of law does not just include the study of legislation or the decisions of the courts but the study of law in its practical context, how it actually is experienced in society – in the myriad personal ways that people and organisations encounter the law which never reaches decisions in the courts.

Having said this, I would note two points:

1. We should recognise that law academics and students can engage in the ideal of the university as promoting public good in other ways apart from clinical work. Research and the promotion of discourse concerning the law can exist in many ways and promote the public good without providing a clinical setting.
2. We should not overstate the capacity of clinics to promote the public good unthinkingly. If there is a claim that law students merely by doing legal aid work are encouraged to work pro bono or do legal aid work in practice, that should be researched both in terms of why, how and to what extent this exposure promotes these activities.

INTERVIEW WITH JULIAN LONBAY (UNITED KINGDOM)

Julian Lonbay researches and advises on the law relating to legal education, lawyers and other professionals; and cross-border practice and the rules affecting such practice. He works at Birmingham Law School within the University of Birmingham, England. He has participated in many conferences, research projects and events around the world. He is currently a consultant to the EU and Council of Europe advising on the initial training of lawyers in Georgia. He recently published a chapter dealing with the tricky emergence of legal clinics in Turkey (with Musa Toprak).

How could legal clinics contribute to change European lawyers' professional culture? And what reluctances there may be?

Legal clinics put law into a practical context and allow for experiential learning. Law students wishing to join a legal profession will benefit from the experience of working in a legal clinic. All students will gain an improved understanding of legal processes in action. However, unless the clinics deal with European law (ECHR & EU) they will not have a great impact on promoting a common European legal culture. They could certainly play a role in improving legal training. The practical skills and competences that lawyers should have, and which legal clinics promote, are recognised in the CCBE's (Council of Bars and Law Societies of Europe) Recommendation on Training Outcomes for European Lawyers (2007).

Do you think there is a need for jurists more oriented towards legal justice and matters of public interest? And, if so, why?

There is a great deal of unmet legal need in West European societies. Clearly ways should be found to attempt to deal with this.

In addition I want to say that, in some European States, the reserved areas of legal practice (subject to a monopoly of legal advice) might be considered excessive and pose a hindrance to the emergence of legal clinics with lawyers (and Bars) opposing the emergence of legal clinics because they conflict with the lawyers' monopoly. Entry controls to the profession and the extent of their legal monopolies is subject now, for EU Member States, to the scrutiny of the European Commission, which may help to change their attitudes and the scope of their monopoly rights. Reports are expected in January 2016 as a result of the implementation of Directive 2013/55/EU.

INTERVIEW WITH MAXIM TOMOSZEK (CZECH REPUBLIC)

Maxim Tomoszek is a director of the Centre for Clinical Legal Education at the Palacky University in Olomouc, Faculty of Law, Czech Republic, since 2008. He is a member of GAJE since 2011 and he participated in the GAJE conferences in Valencia, Spain, and Eskisehir, Turkey, where he was responsible for co-organizing the Training of Trainers part of the program. He also participated in a number of clinical conferences (including IJCLE and FUPP conferences), and he organized the 2014 IJCLE/ENCLE conference in Olomouc. Since October 2013, he is the president of the European Network for Clinical Legal Education (ENCLE).

At his home university, he teaches several human rights oriented legal clinics, skill-development courses and professional ethics. As the director of the Centre for Clinical Legal Education, he is responsible for managing all clinical courses taught at his institution, including training of students and supervisors, ensuring observance of professional ethics rules within legal clinics, fundraising, and cooperation with NGOs. He strongly promotes idea of social justice as one of the core values of legal education in general, and especially in clinical legal education.

How can clinical education foster a rethinking of the role of the university within society?

Clinical legal education is unique in connecting many important aspects of legal education within one activity – namely developing practical lawyering skills, professional values, educating students about social justice and last but not least, connecting different areas of law, which are traditionally taught separately. Through these elements, legal clinics fulfil the already traditional mantra of the triad of teaching outcomes – knowledge, skills and values.

Clinical legal education is a proven method, used in many countries worldwide for many years with tremendous results. Legal clinics have been recently mentioned by a UN document as an example of best practices in ensuring access to justice in criminal matters. Legal clinics very persuasively show that legal education, which traditionally was perceived as boring, often using lectures for hundreds of students, can be also very interactive, practical and fun, and at the same time very efficient and useful. The idea of the legal clinic itself is very attractive and motivates many teachers to at least try to run a clinical course. At the same time, teaching a legal clinic requires a lot of methodological background, which makes all clinical teachers explore the methodology of legal education (and education in general) and improve their teaching methods. Most of them use advanced teaching methods in all of their courses (even substantive), not only in clinics.

Through legal clinics, universities serve not only the traditional role of spreading knowledge, but also the modern role of developing practical skills to enhance competitiveness of their alumni on job market, but, even more significantly, clinics are probably the best teaching method to develop professional ethics and professional values. This is in grave contrast with traditional legal education, which tends to avoid values or even intentionally relativizes them, and therefore resigns on developing them. Given the fact that for many students their law-school teachers serve as first professional role-models, the law schools significantly contribute to value-neutral lawyering practice.

Legal clinics are very important for the development of social justice and community awareness of law schools. Scholars sometimes tend to live in a porcelain tower, without connection to the society around them. Legal clinics bring the engaging and troubling social justice issues right to the doorsteps of legal academics and law students. Helping people in need with day-to-day legal trouble is a core principle of clinical legal education, which naturally makes both teachers and students think about

what is right and wrong about law and its effects on society. In this way, clinics help educate lawyers for future challenges, who will be empathic, socially sensitive and understand the responsibility of the legal profession and role of lawyers in society. Even legal clinics, which do not work with real clients, but are rather based on simulation, analyses for legislative process or writing amicus briefs, still all contain social justice elements and contribute to the improvement of the overall quality of life of every member of society.

Clinical legal education has great potential for strengthening another traditional role of the university, which is being a centre of research and science. Legal clinics encourage academics to involve in research with practical application, using data from real cases and addressing pressing issues. By putting much emphasis on skills development, including legal writing, legal analysis and other skills, involvement in a legal clinic requires that clinical teachers master these skills. Then they can not only transfer them to students, but also apply them in their own academic work and especially research. With growing international collaboration in the area of legal clinics, there are several international research projects dedicated to clinical legal education already being carried out and even more are being designed. This definitely creates Europe-wide and possibly even world-wide communication about how we teach law and how can we improve.

Clinical legal education shows that law schools have many different ways to fulfil their social responsibility, and when connected with street-law programs (a program, where law students educate high school students, prisoners, minorities or other vulnerable groups about law and their rights), public lectures and other activities, they can become a central element in their community. Depending on the particular context, the idea of legal clinics can be a model or inspiration for all other faculties within each university to embrace the idea of social justice connected with learning by doing. Similar models can be applied within schools of medicine, social work, nursing, education, economy and finance, political science, but also natural science, for example environment protection, and technical disciplines, for example computer sciences.

The university as a whole should not be focused only on itself, its teachers and students, but should also have significant outreach to the surrounding community and address its needs. There are countries in the world, which explicitly mention social responsibility of universities and university teachers and incorporate it in their legal regulation (for example Indonesia). I am convinced that EU member states should not deny, neglect or overlook this important aspect.

Many of professions, which require university education, are helping professions, and the students need to be trained in appropriate skills and understand the values important for these professions. While lack of professional skills leads to low quality provided help, lack of professional values leads to abuse, as can be demonstrated by many sad stories from across Europe.

Clinical legal education presents answers to many challenges, which are faced by the current higher education system, and well fulfils ideas promoted by the Bologna process or EU policy on key competences. Legal clinics benefit everyone involved – students are better prepared for their future jobs, law schools and teachers provide better education, community gets free legal aid, with significant multiplication effect. For all these reasons it would be only logical to include some form of clinical legal education in every law school's curriculum and create a suitable legal framework for their operation. Some of the legal regulation problems, which need to be addressed, are privilege of confidentiality of legal clinics and law students and teachers working

in them, as well as a student practice rule or involvement of legal clinics into legal aid schemes. If there would be a legal framework providing clinics with basic certainty in these issues, it would allow more intensive development of legal clinics and improve the quality of both educational outcomes and services provided to the community.

How could legal clinics contribute to build an alliance between civil society, academy and institutions in order to strengthen the access to justice for everybody?

Legal clinics play an important role in strengthening the access to justice. The experience with clinical legal education so far shows that in each country, regardless of how developed their model of free legal aid is, there are significant groups of people, who have limited or no access to free legal aid in many difficult situations and for whom legal clinics, due to their flexibility are the only chance to receive qualified legal aid. For this reason, legal clinics have their irrefutable place in systems of free legal aid. Legal clinics are often instrumental in initiating policy change by identifying the weak elements of the current system.

In many areas of public policy, there is a combination of several factors, which lead to inefficiency and social problems. One of them is the lack of legal consciousness of legally un-educated citizens. Legal clinics, and especially street-law programs, are excellent ways of improving this factor. Universities as higher education institution should be helping improve the legal knowledge of the whole society, not only university students, especially when they can achieve it as a by-product of providing modern and efficient education to their own students. Another important factor is the lack of knowledge about the functioning of legal institution in real life – again, legal clinics can serve as an excellent platform for collecting and analyzing this type of information. There are already clinics focusing on human rights reporting, exactly serving the before-mentioned goal. Further, many social problems have not only legal elements, but involve other expert knowledge. Legal clinics are very efficient platforms for multidisciplinary cooperation and allow for communication and collaboration of different professions, thus allowing the professionals to see the problem, which they are dealing with, from a different perspective and look for better solutions.

Legal clinics, depending on the particular model used in a particular course, provide wide opportunities for cooperation among universities, NGOs, public authorities and other institutions. Some models, which can be mentioned, are involvement of lawyers from NGOs or other institutions as supervisors in live-client clinics, or as experts in simulation clinics. Another interesting opportunity is an externship clinic, where students spend at least part of their course directly in a NGO or other institution and get involved in the work of lawyers there. Students can team-up with intervention teams formed by public authorities to help clients in socially excluded areas, learning first-hand about problems of social exclusion and the importance of inclusion. Another example of significant contribution to tackling pressing social issues is the work of refugee clinics in the current Europe-wide refugee crisis.

The partnerships mentioned here are very important from the educational point of view – students get an opportunity to meet with lawyers from outside the academic environment, who work on interesting cases every day, and who can serve as role models for their future careers. At the same time such partnerships foster communication, and through it a more intensive cooperation of universities and NGOs or institutions in other areas. Legal clinics, by creating an environment of communication, collaboration and helping each other, also create links between

universities and other entities and the community, pursuing common or similar goals. This in itself is a very important effect, which would be very hard to achieve in other ways, and within a legal clinic it happens almost incidentally.

Clinical legal education helps develop natural bonds between different sectors (academia, NGOs, institutions, community), which is due to their nature of being a bridge between theory and practice, and thus serving as a link between the community and academia. In this, clinical legal education is a unique method, and thanks to its long lasting tradition all over the world, it is relatively easy to implement with considerable benefits.

INTERVIEW TO MARGARET TUIITE

Margaret Tuite is the European Commission coordinator for rights of the child since 1st November 2011 in the unit responsible for fundamental rights and the rights of the child of DG Justice.

Why should European institutions be interested in legal clinics?

Legal clinics can play a valuable role in ensuring respect for fundamental rights and, from my particular interest point, for rights of the child. As well as providing practical support for people/children, they can serve to improve the skills of lawyers, enhance their understanding of the real-life problems faced by individuals and the work of legal clinics can feed into advocacy work, and certain aspects should be shared with policy makers.

How could they support legal clinical programs?

For the last two years, under the rights, equality and citizenship program, rights of the child program, we had tried to prioritize funding for legal clinics on rights of the child. However, the response has been almost zero, which is a shame, given that legal clinics on rights of the child are much needed.

Apart from funding, we can help by promoting them in general, e.g. helping to increase networking, and also ensuring that information on legal clinics on rights of the child is circulated to stakeholders. And by considering them as key stakeholders for the area of expertise they and we are dealing with.

What can legal clinics do to protect vulnerable people, including children?

I think it is important that legal clinics further develop their own robust networks; that they ensure that the results of their work are communicated, where relevant, to policy makers, academics, civil society, international organizations, etc. It would also be useful to step up information sharing on the impact of the work of legal clinics, meaning that legal clinics need to be quite skilled at recording/sharing (anonymized) information. Is anyone writing up case studies? Speaking to someone running a legal clinic for children in Ireland, some of the examples of what she was dealing with really stuck in my mind and I think it is important to raise awareness of these issues.

An other point is the identification of “friends of legal clinics”. Legal clinics need a broader support network and to be firmly embedded in a broader network of actors in a specific area, so, for example, I would be keen to ensure that more people are aware of and involved in, supporting, and benefiting from legal clinics on rights of the child.

With regard to legal clinics with a focus on children/rights of the child, it would be worth documenting how they embed rights of the child, including Article 12 UNCRC and what extra steps they take to hear children, including those who are most vulnerable, such as those with disabilities. (A big request, I think!)

I see the outcome could be a proposal for European institutions. Just be aware of the fact that the EU can only fund projects in response to calls for proposals. Not sure what that could entail. But certainly the first step is to raise awareness of their existence, scope, geographic coverage and value.

III CHAPTER

*Prospective and proposals:
how legal clinics can contribute to a Europe of rights
and how the Union's institutions can help this good practice*

3.1 How legal clinics can contribute to a Europe of rights

European legislation is predominantly programmatic. Community law, unlike that of most individual countries, does not intervene to standardize the national entity formed over a long time and much self awareness, whose citizens have a deep-rooted sense of belonging. Indeed Union legislation, more than ruling people's behaviours, has the purpose to shape an idea of coexistence, combining the different souls and traditions rooted in and of the Member States, but trying at the same time to create a new entity. And as the road already well traveled, European identity and reality is an open work, fluid and in flux. It is no coincidence that the peculiar norm adopted by the Union institutions is the directive: a provision that sets objectives but leave Member states leeway to translate and implement them in their specific contexts. The rules of Community law are therefore in essence the constitutive rules of a grandiose *working in progress*.

In this section we'll investigate what contribution legal clinics can give to achieve some important goals set by European legislation, in particular how they can participate in the process of creating an "area of freedom, security and justice", as established by the Treaty of Lisbon.

3.1.1 The impact of legal clinics in the Area of European Higher Education

One of the Union's key objectives is the promotion of free movement within its borders. So that the population present in the area can move without constraints and develop a European identity that works alongside the national one, they must have the opportunity to train and redeem their skills beyond the borders of their country of origin.

The Bologna Declaration, 1999, signed by the various Ministers of Education, aims precisely to carry out a "European space for higher education" which makes the universities of the old continent competitive and increases the mobility and employability of students and scholars.

In the first instance the Bologna process requires that we strive for harmonization of courses and member states' University diplomas.

In the event of the Law students and graduates, their mobility has always been more difficult than in other areas because the university training focuses largely on national legal systems.

Legal clinics, as such, oriented to the protection of fundamental rights and the promotion of social justice, tend to have a better approach to International and Community law, thereby

contributing to the “Europeanization of the study of law”¹³⁵. Also, as Stuckey noted, clinical experience stimulates critical thinking, the ability to do research, problem solving, puts in contact with the living law, sharpens the capacity for dialogue, favouring an interdisciplinary and holistic approach to reality¹³⁶. These transversal and metacognitive skills are expendable in any professional and academic context, therefore facilitating mobility and employment opportunities. But the European higher education review process, undertaken in the city where the university was born, is not content to make comparable and compatible educational curricula of different countries. It calls for the need to thoroughly reconsider the system, becoming the occasion for an increase in quality.

The movement of clinical legal education in Europe and the world is just like an academic legal community which intends to renew the teaching of law. The teaching methodology experienced in legal clinics shortens the distance between theory and practice, offering an interactive and participatory teaching, where the student is the protagonist. Knowledge and pedagogical practices identified in this area will certainly contribute to raising the quality of teaching, encouraging by example, even those teachers who are not directly employed in clinical activities.

There is, finally, a crucial further contribution clinics can provide in the European academy reform process. The social dimension of the universities had not been explicitly mentioned in the Bologna Declaration, but became central in the documents issued by the successive conferences of European higher education ministers, gathered for the implementation of the process begun in 1999. For example, the statement of the 2007 London conference puts it this way:

«Higher education should play a decisive role in cultivating social cohesion, reducing inequalities and raising the level of knowledge, skills and competences in society».

It is therefore established the principle of *social responsibility of universities*. Research on this topic sponsored by a European project, through an analysis of synoptic sources, sets out a definition of this innovative concept: higher education institutions must answer

«for the impact of their decisions and activities on society and on ‘environment through ethical and transparent strategies. Such practices should be promoted and encouraged both through students, and within the staff, in order to celebrate and promote the values of justice, equality, participatory democracy, social responsibility and sustainability»¹³⁷.

The legal clinics fully espouse the academy’s social mission. In fact, they pose the knowledge and research to serving the community, taking measures to raise social justice. They do this directly by providing advice and protection to disadvantaged people or causes that affect communities, such as environmental issues for example. But contributing also, in terms perhaps less direct but long cast, to a more mature fulfillment of democracy and rule of law. Educating new generations of lawyers, means forming men and women who will occupy key roles in the system of political and legal frameworks of individual states and the EU: lawyers, judges, bureaucrats and even many administrators, politicians, officials and journalists have graduated in law. To offer young people who attend law school the opportunity to participate directly in the defense of human rights, exposes them to the harsh reality and vulnerable groups such as disadvantaged, prisoners, asylum seekers, etc. It is a not only professional training, but which impacts deeply and indelibly their growth and human ethics.

¹³⁵ HOVHANNISIAN 2006, 4.

¹³⁶ STUCKEY 2002, 672.

¹³⁷ EU USR – UNIVERSITY SOCIAL RESPONSIBILITY IN EUROPE 2013, 9.

It is interesting in this regard the proposal by Maria Rosaria Marella and Enrica Rigo to consider the legal clinics as an innovative strategy to unlock the potential of culture as one of the *commons*¹³⁸:

«The legal clinic actualizes therefore the latest militant notion of common asset, precisely because its function is not simply to ensure the use and collective management of its own intangible resources, but its aim is to redistribute the resources outside of its community, strengthening or establishing social (and political) solidarity ties between the student community and social actors outside of it. The activities of legal clinics in part, redistributes the social and symbolic power by allowing individuals, in various marginally defined ways, to become actors on the stage of justice»¹³⁹.

3.1.2 *The impact on the implementation of access to justice*

Access to justice is a fundamental right and also a meta-right: a condition to enforce all the others, in fact the possibility of appealing to the law and its representatives is one of the main tools to defend and promote the entire set of rights. It is what allows you to transpose the rights from theory to practice and is therefore a key concept of the United Nations treaties on human rights, the Council of Europe and the EU legislation.

In particular, recall this principle to Articles 6 and 13 of the European convention on human rights; Article 2 (3) and Article 14 of the Convention on Civil and Political Rights; Article 47 of the *Charter of fundamental rights of the European Union*.

Also within the EU legislation, are many legal acts which, in various fields, point to the need to make the right of access to justice effective. For example Directive 2004/38/EC, which establishes the freedom of EU citizens and their families to move and reside throughout the Union territory, under Articles 30 and 31, guarantees the right of access to the judicial or administrative redress to defend themselves by any measure, on grounds of public policy, public security or public health adopted by the member state with regard to migrant Community. While Directive 2003/8/EC aims to improve access to justice in cross border disputes, providing free legal aid and common regulatory and procedural minimum standards. On the basis of these various provisions, a search of the European Union Agency for Fundamental Rights (FRA) has built a definition articulating the right to access to justice in the following elements:

«right to an effective remedy before a tribunal; right to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law; right to be advised, defended and represented; and right to legal aid for those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice»¹⁴⁰.

As can be seen in these important documents, the concept in question essentially is translated

¹³⁸ Ugo Mattei explains the concept of “commons”: «The commons are radically incompatible with the idea of individual autonomy as developed in the rights-based capitalistic tradition. In this respect, commons are an ecological-qualitative category based on inclusion and access, whereas property and State sovereignty are rather economical-quantitative categories based on exclusion (produced scarcity) and violent concentration of power into a few hands. [...] Commons, unlike private goods and public goods, are not commodities and cannot be reduced to the language of ownership. They express a qualitative relation. It would be reductive to say that we have a common good: we should rather see to what extent we are the commons, in as much as we are part of an environment, an urban or rural ecosystem. Here, the subject is part of the object. For this reason commons are inseparably related and link individuals, communities and the ecosystem itself», MATTEI 2011.

¹³⁹ MARELLA, RIGO 2015, 192.

¹⁴⁰ EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS 2011, 15.

as a “right of access to the courts”. To have an effective capacity to argue their case in an impartial tribunal is certainly a necessary precondition for the preservation of human rights, but it is not yet sufficient to ensure widespread access to justice, capillary and substantial. The channel to preserve and take action for many rights is not always a judicial, more often it is an administrative one. In this regard the Council of Europe has revived over the years, multifactorial analysis of the limitations in access to justice, highlighting the need to intervene widely, with not strictly judicial measures and proceedings¹⁴¹. Also, in the EU area more specifically, several directives call for the need that steps be taken – in certain circumstances and for certain subjects – for information, support and for legal counsel, both inside and outside the trial.

Nevertheless, in the European Union, like elsewhere, the right to access to justice encountered several obstacles, both in the narrow sense of the judicial sphere, mostly extending to the extra-judicial sphere¹⁴².

The first obstacle is the cost: the disadvantaged population often waives a lawsuit or does not benefit from adequate defense because of concerns about the burden of legal costs. The legal aid institution certainly provides for part of the poorest citizens. However, there is a rather large pool of people who despite having economic difficulties, do not meet the requirements to benefit from aid.

It must be said that, compared to many professionals who work conscientiously and with preparation for complete defense, we highlight some cases of public defenders unprepared or insufficiently motivated to protect clients who are not able to secure handsome profits. Another important barrier is the lack of information. On one hand the jargon, bureaucracy and even the architecture of the buildings associated to the law appear most incomprehensible, impenetrable, on the other there is a widespread legal illiteracy and a lack of awareness of their rights and procedures for upholding them. A Eurobarometer survey of 2015 shows that only 14% of surveyed Europeans are aware of the existence of a European Union Charter of Fundamental Rights, of course, a percentage even smaller knows its contents.

Even among legal professionals there is a shortage of expertise in the field of Community or international law which might be decisive for certain clients. In this regard Lamin Khadar, in an article significantly entitled ‘*Why should the EU take note of the most recent European legal clinics?*’ he says:

«There is now a vast array of rights available under EU law, covering everything from free movement to voting, but many EU citizens are unaware of their rights or do not know how to advocate for them. Recent European commission studies suggest that over a quarter of polled EU citizens living outside of their home country (in a second EU member state) experienced problems accessing their rights and over half felt that the relevant local administrations were not aware of their EU law rights [...] The knowledge gap amongst individual rights-holders is exacerbated by a skills gap within the legal profession. Although there are increasingly more EU law specialists, their services are expensive and they are often unwilling to take on unprofitable, simple and run-of-the-mill EU law queries. Beyond this group of specialists, most domestic lawyers avoid the vast and seemingly exponentially increasing body of EU law»¹⁴³.

¹⁴¹ Report of 23/04/2015 from the University of Turin at the meeting of the Italian network of legal clinics. See the five-year programs of the Tampere European Council (1999), The Hague (2005) and the Stockholm Programme (2009) and Ypres (2014) on the strategic guidelines to achieve an area of freedom, security and justice.

¹⁴² ABREGÜ 2001, 53-69.

¹⁴³ KHADAR 2014.

In addition to the economic obstacles and those related to a lack of knowledge of both ordinary citizens as well as for practitioners, we can add other obstructions, especially in the case of people who are in a vulnerable position. The homeless, for instance see a number of their rights denied or restricted due to their wandering existence and lack of an official residence; foreigners who do not yet speak the local language and have no knowledge of the basic know-how to navigate the bureaucracy of the host country, who are easily deceived and miss the opportunity to assert their legitimate grounds; victims of crime, trafficking and exploitation, blackmailed or easy blackmail, fearing for their and their families' safety, to be able to bring the matter to justice, have to face a treacherous, risky path, not always with a happy ending.

Having outlined the context of the main obstacles of access to justice, legal clinics will certainly open up the possibility for disadvantaged people to obtain free legal support and quality throughout a trial. In addition to implementing access to courts for those who would be excluded, many clinics start up advisory branches not strictly judicial and in some cases not only legal but also multidisciplinary, capable of looking in an organic way the difficulties and potentiality of individuals. In the clinic, the user finds thus information, mediation, representation in non-judicial forums, orientation with respect to administrative procedures and a network of services. The clinics responding in this way to a question of socio-legal advice for consumer needs are often not covered by free legal aid and that difficulty would apply to a lawyer for a fee. How much it serves to be said, incidentally, to emphasize the fact that clinics are not a competitor to the canonical law firms.

It should also be stressed that, despite the variety of ideas regarding the clinical mission, the prevailing view is that the pro-bono legal advice that are activated at universities should not be understood by the EU as a way to make up for structural deficits of justice, which instead require investment and an agenda of structural reform.

That said, the spread of in the EU legal clinics can play a role still extremely relevant in the implementation of access to justice; first, because they form specialist lawyers in the protection of human rights learning to become familiar not only with national, community and international law. The clinical training, in addition to the canonical competence required by a lawyer, expects that learners are guided by experienced supervisors in meeting with vulnerable subjects, learning to overcome their prejudices and enjoying the experience of being agents of social change in in a sign of equity. It thus promotes a class of politically committed lawyers, conscious of real problems, capable of entering into an authentic communication with different human kinds and above all who look to their profession as an instrument of justice for all.

It should also be considered that the activities are not limited to legal counseling services of the first level or of *pro bono* defense in the event of *litigation*, there are other means by which the movement for legal clinical education can help to strengthen and expand access to justice. Many clinics, for instance, act as gates to the second level, offering advice to law firms, corporations and associations that deal with the protection of human rights and relevant public issues. The ability to do research and to disseminate knowledge at their own university is well placed to serve the community by helping civil society patrons that call the clinic to become a stronger bulwark of Justice. Another interesting activity proposed by clinics is street law. As we have seen, it involves law students in the preparation and teaching of the information modules of rules and rights to different types of audience. This kind of intervention is very useful to overcome the barrier to justice due to lack of information and awareness. It must be said that teaching is by far the best and most lasting method of learning and therefore also affects favourably in the preparation of young lawyers.

3.1.3 *The impact on egalitarian policies and the contrast of all forms of discrimination*

The principle of non-discrimination is another keystone in the pantheon of EU values. Already the Treaty of Rome of 1957 Article 7 prohibits unequal treatment on grounds of nationality, and as stipulated in Article 119 equal pay between men and women¹⁴⁴. These provisions are followed by many other actions to promote equality and condemn any kind of act of discrimination based on gender, race or ethnic origin, religion, belief, disability, age or sexual orientation. I will mention some of the major European proceedings in the field to give an idea of this joint objective and to highlight the importance that is attributed to it.

1997 was declared *European Year Against Racism*. The actions and reflections that unfolded over the course of those twelve months led to the establishment, in 1998, of ENAR, a pan-European network against racism. It contains hundreds of organizations that share the objective of making advocacy and facilitate cooperation between those involved in anti-racist civil society from all the countries of the old continent.

1997 was a crucial year in the path for equality within the Union, also because the Amsterdam Treaty was signed (entering into force in May 1999). This document contains Article 13 (now Art. 19 of the Treaty on the Functioning of the European Union), the cornerstone of Union policy and legislation for equality. This rule introduces the principle of equality as a fundamental right to the Community body of law, indicating a large group of possible discriminatory pretexts on which to monitor (racial or ethnic origin, religion, belief, disability, age and the sexual orientation). However, it delegates the adoption of specific directives and operational measures.

From here on there will be several sources of Community law which will decide on the matter, among these we recall the Directive 2000/43/EC which provides for equal treatment irrespective of racial or ethnic origin, in employment and the social sector. This is followed by Directive 2000/78/EC extending the prohibition of discrimination in the work to other categories enumerated in Article 13 of the Amsterdam Treaty. While on the subject of gender equality included are the directives 2004/113/EC, 2006/54/EC and 2010/41/EC setting out the fair treatment of men and women in access to goods and services, employment and self employment.

Also in 2000 was signed the so-called Nice Charter, the Charter of Fundamental Rights which sets out the values, rights and freedoms guaranteed within European Union. Among these, the principle of equality, equal treatment and opportunity, the value of pluralism, multiculturalism and social cohesion, the rejection of racism and any other exclusionary ideology are affirmed several times and in various ways.

On this path we must not forget the Green Paper on equality and non-discrimination in an extended European Union – COM (2004) 379. The reflections from the Commission entrusted to the Green Paper instruct, in 2005 *The framework strategy for non-discrimination and equal opportunities for all*. Among the main tools to eradicate inequities, the Commission identifies the legal protection, but it also signals its limitations, if not accompanied by side actions that can strengthen anti-discrimination legislation, rely heavily on the willingness and capacity of disadvantaged individuals to engage in complex adversarial proceedings. It is clear that the importance of the legal protection of individual rights and emblematic cases can help to change the social and cultural order over time. However, legislation alone can hardly cope with the complex and deeply rooted patterns of inequality of some victim groups. It may therefore be necessary to initiate affirmative action policies to address the inequalities that have long plagued groups historically discriminated against. The EU's experience in the field of gender equality strongly suggests that protection of individual rights must be backed up by

¹⁴⁴ DI SARCINA 2010, 195-210.

accompanying measures in order to create sustainable change and to promote genuine equal opportunities for all. Among the accompanying measures indicated for information and awareness campaigns, is the exchange of knowledge and good practices, training and facilitating access to justice.

Ten years after the European Year against discrimination, 2007 was dedicated to homologous issue of equal opportunities for all in order to: a) raise awareness about the right to equality and non-discrimination; b) to launch a debate on ways to facilitate the participation across social, economic and political society; c) to celebrate and promote diversity; d) promote a society based on solidarity.

In 2008, the Commission also emphasizes the importance of building a Europe plural, equitable and cohesive, defending it from spreading hatred and racism, worries especially in conjunction with the beginning of the lengthy crisis. In fact the Commission, presented a second notice entitled precisely *A renewed commitment to non-discrimination and equal opportunities*.

This document is characterized by its holistic approach, suggesting what measures could further strengthen the legal framework. It is worth mentioning the fact that the document emphasizes the importance of combating inequality and racism certainly for ethical reasons, but economic as well considering that discrimination, in addition to ruining the lives of the individuals who are its victims, is detrimental to the economy and to society as a whole and undermines the trust and support toward the fundamental European values of equality and rule of law.

Regarding that the minority in Europe probably suffers the effects of discrimination, segregation and social exclusion more than any other, in 2011 the Commission presented *the EU Framework for national Roma integration strategies* (IP/11/789). And in 2013 the European Economic and Social Committee welcomed the *Proposal of recommendation of effective Roma integration measures in the Member States*. This document represents the first comprehensive legal instrument at European level, for the effective inclusion of the Romany people. It commits the 28 EU countries to invest funds and start work on the educational front, employment, health care and housing in order to solve the marginalization and fill the gap.

Another recent tool to encourage reflection and direct the production of effective legislation and policy is intergroup ARDI (European Parliament Anti-Racism and Diversity Intergroup). It exists to promote racial equality, counter racism, and educate about non-discrimination in the work of the European Parliament. It aims to be at the heart of parliamentary work for racial equality, and against all discrimination based on racial or ethnic origin, religion or belief, and nationality.

The Intergroup also looks at discrimination based on these grounds together with gender and age. It was introduced by the European Parliament Conference of Presidents in December 2014 with a mandate for the period 2014-2019. It is an interesting organization as it creates a collaboration between those who are in and out of the institutions, in fact, belonging to both members of the European parliament, potentially from all sides, and civil society organizations active in this field. Its priorities are:

- «a. Mainstream anti-racism and diversity in European Parliament policy areas such as migration, and support initiatives on other discrimination grounds (such as the adoption of the European Union (EU) Equal Treatment Directive);
- b. Adopt calls for national strategies to combat Afrophobia, anti-Gypsyism, anti-Semitism and Islamophobia, as well as ensure the implementation of a National Roma Integration Strategy in line with non-discrimination standards, and identify key policy areas to advance equality;
- c. Strengthen the EU and national legal basis to tackle all crimes of hate speech and to ensure investigation and prosecution of racist crimes;

- d. Implement appropriate disciplinary and self-regulatory mechanisms in the European Parliament to help combat hate speech in the European Parliament and by European political leaders;
- e. Promote diversity in the workplace and in political participation»¹⁴⁵.

In this regard it is interesting to note that among the non-governmental participants of ARDI there is also ENCLE, the network of European legal clinics. This synthetic and not comprehensive overview about law-making in Europe regarding the combat of various forms of discrimination demonstrates the importance of this objective, but also its complexity. Certainly the European legislation on equal treatment and opportunity is among the most advanced and richest in the world. However, we must admit that the battle against racism, sexism, homophobia or other forms of hatred and inequality is far from won. An effective strategy toward a problem so deeply rooted, ramified and gangrenous, needs a broad view, a varied group of measures, and a long term strong political will.

Among the measures essential to building a fair and inclusive society there is undoubtedly a fair progressive taxation that draws according to the possibilities and redistributes according to need. Another traditional way to achieve equal treatment is the work of the trade unions that were intended to balance power relations within excessively imbalanced workplaces.

Just as an active civil society, able to stimulate public opinion and tag politics, it can contribute to a cultural progress, and prevent and denounce the serious violations of human rights and the collective interest. But among the most important tools to support equality, as cited by the European anti-discrimination legislation, is no doubt also the democratization of access to justice, to which – as we saw in the previous section – legal clinics can give a decisive boost.

The poor, the marginalized, minorities and immigrants are who suffer most from discrimination and injustice. These individuals may find in judicial proceedings, a security channel and redress for wrongs, but also prevention. The hate crimes toward vulnerable groups are carried out very often because their perpetrators are counting on the social weakness of the victims and their difficulties in gaining access to the courts and, if well they succeed, they prevail. Therefore a way to restore justice and also to deter further crimes of hate and unequal treatment is outperforming this sense of impunity, putting at the service of the weak sectors of society an effective and efficient legal protection.

But when one pursues the aim of facilitating access to justice for members of discriminated groups, a peculiar obstacle that presents itself is not only prejudice and widespread discriminatory attitudes among ordinary citizens, but also at the hands of agents and authorities who enforce the law.

Vulnerable groups more than others, are at the mercy of arbitrary bureaucracy and an uncertain law; in spite of the solemn principle “the law is equal for everyone,” often they receive different and unfair treatment. Because of this, it is easy for members of disadvantaged groups to not have any trust in institutions and stay well away from the police and the courts¹⁴⁶.

Add to this that the institutional racism often produces in its victims an inclination to psychological self-defeat: the so-called internalized racism¹⁴⁷. Which means that the person who feels daily on his skin the exclusion mark, accumulates anger and frustration towards society, but he also loses self-respect, believing he does not deserve more or better. He internalizes the opinions of the dominant groups and thus disparages and developed contempt and shame towards himself and to the group they belong to. In this way renouncing the idea

¹⁴⁵ <http://www.ardi-ep.eu/about/priorities/>.

¹⁴⁶ KAMALI 2009.

¹⁴⁷ BARTOLI 2012, 91-95.

of being able to obtain redemption and righteousness, becoming a contributory cause of their marginalization¹⁴⁸.

Outlining the importance of the objective “equal plural” and reporting some drawbacks in the fight against discrimination, one wonders what role the movement for legal clinical education can have. Clinics create opportunities of dialogue among jurists in training, disadvantaged social groups and those discriminated against, preparing students for a commitment to personal experience. This type of training has much more profound and lasting effects than any theoretical course of professional ethics.

Moreover, clinics can provide legal protection of excellence in the field of combating discrimination because they deploy academia, associations and advocacy alongside those who suffer sexist, racist, homophobic attacks, etc. This “triple alliance” that characterizes the operation of the clinics has great potential for success because each partner brings a unique contribution and complement: i) law firms that bring their professional experience and ability to take legal action; ii) associations that can support the assisted in respect of need for foreign judicial process, but fundamentally so that they can participate (think for example to shelters that protect women from more exposure in terms of victims of violence), also creating a network that strengthens legal action, and disseminates its effects; iii) the university guarantees the pro bono service putting forward the students’ enthusiasm and experienced teachers and specialists; thanks to the knowledge that produces and disseminates, that can refine and expand the legal solution which lawyers normally recur; iv) Finally, due to the prestige and the authority that it gives the academy, the legal proceedings of marginal parties have a chance to come to school to become cases, producing an impact both on case law and on public opinion.

In support of this I suggest reading the novel *Storming the Court: How a Band of Yale Law Students Sued the President and Won*¹⁴⁹. This is the literary evidence of Brandt Goldstein, an academic lawyer. The book tells a true story: in 1992 a group of Yale students, supported by their teacher and by a law firm, took charge of the case of three hundred Haitian refugees who had been unlawfully rejected and then interned at Guantanamo before being able to formalize their request for asylum. They sued the US government and the inhuman practices perpetrated which were denounced by the US base located in the Cuban bay. Maria Rosaria Marella and Enrica Rigo commented so the story told in the book:

«It is probably the best-known case – at least in recent years – that exemplifies how a legal clinic can be the bearer of instances of justice and active subject of processing; as well as a good example to describe the enthusiasm, dedication and forms of collaboration that can be mobilized through the teaching methodology of legal clinics, far beyond what normally happens in the traditional teachings of the law»¹⁵⁰.

3.1.4 *The impact on the protection of specific rights and in the empowerment particular of vulnerable groups*

From the mapping of clinics in Europe, it is clear that many are specialized in certain fields, such as protection of the right to asylum or protection, and dealing with cases of certain of vulnerable groups, be they children, prisoners, Roma, migrants, victims of gender-based violence and trafficking, etc.

¹⁴⁸ LEWIN 1965; SPIVAK 1988, 271-313.

¹⁴⁹ GOLDSTEIN 2005.

¹⁵⁰ MARELLA, RIGO 2015, 181.

In this section I will provide examples of the impact that the clinics can have in pursuing the objectives outlined by several specific directives.

This overview does not constitute a comprehensive and closed picture as the clinical legal programs do or could do, but it is useful give an idea of their multiple potential. I would also like to show how the clinics could increase opportunities of access to justice for the poor and the outcast, interpreting in full the spirit of many important documents of Union legislation and probably pushing them even further in the pursuit of a genuinely untied Europe.

- DIRECTIVE 2012/29/EU – ESTABLISHING MINIMUM STANDARDS ON THE RIGHTS, SUPPORT AND PROTECTION OF VICTIMS OF CRIME.

This document is highly innovative in the measures proposed: far from worrying only about procedural matters, it is certainly fundamental to guarantee the security of one and all, but not sufficient to protect victims of crime «from secondary and repeat victimisation, from intimidation and from retaliation»¹⁵¹ and to facilitate their recovery. Too many times in fact, contact with the justice system becomes a further source of anxiety, humiliation and defeat for those who have suffered abuse and violence.

To overcome these distortions and achieve full access to justice, the directive puts repeatedly the emphasis on the sensitive nature of the psychological situation faced by subjects such as abused woman, victims of a terrorist attack or foreigners that in addition to have suffered aggression living the difficulty of orientation in unfamiliar environments and systems.

Thus art. 25 of the Directive states that it provides an adequate preparation of all those who come into contact with victims be they police officers lawyers, judges social workers etc. These in fact, in addition to the technical skills connected to the role that they carry out, need preparation «to increase their awareness of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner». This non legalistic approach stipulates that the mature legal operator's sensitivity exceed their own prejudices and develop communication skills and empathic perfectly matching the type of training proposed in the legal clinics.

It is clear that an exclusively bookish and sectorial preparation is not sufficient to generate multidisciplinary skills and a psychologically correct attitude towards victims of crime. The clinical pedagogical model instead provides that learners are being conducted in real and secure meetings with the injured party, which prepares them for the professional and emotional complexity of such an intervention and supports them with repeated, ongoing supervision. In this way, young people entering the legal profession, or those who are already exercising them, have access to lifelong learning paths, opportunity to develop awareness, care and mastering of very delicate human circumstances.

Another theme that recurs often in the Directive is in regard to informing victims and how to provide them the opportunity to express their opinions needs and preferences. For example paragraph 21 so pronounces:

«Information and advice provided by competent authorities, victim support services and restorative justice services should, as far as possible, be given by means of a range of media and in a manner which can be understood by the victim. Such information and advice should be provided in simple and accessible language. It should also be ensured that the victim can be understood during proceedings. In this respect, the victim's knowledge of the language used to provide information, age, maturity, intellectual and emotional capacity, literacy and any mental or physical impairment should be taken into

¹⁵¹ Directive 2012/29/EU, §2.

account. Particular account should be taken of difficulties in understanding or communicating which may be due to a disability of some kind, such as hearing or speech impediments. Equally, limitations on a victim's ability to communicate information should be taken into account during criminal proceedings».

In other words legislation is aimed not only at making more sensitive and prepared protectors but also at the empowerment of victims. In breaking with a long legal tradition that focuses exclusively on the offender's punishment this directive has as its goal, to place victims in a position to actively participate in all phases of the proceedings and to help those who have suffered abuse overcome the trauma to recover and strengthen themselves. In paragraph 38 he adds:

«Specialist support services should be based on an integrated and targeted approach which should, in particular, take into account the specific needs of victims, the severity of the harm suffered as a result of a criminal offense, as well as the relationship between victims, offenders, children and their wider social environment. A main task of these services and their staff, which play an important role in supporting the victim to recover from and overcome potential harm or trauma as a result of a criminal offense, should be to inform victims about the rights set out in this Directive so that they can take decisions in a supportive environment that treats them with dignity, respect and sensitivity».

In this respect the street law activities that some clinical programs provide is extremely interesting. As already mentioned, these are educational modules calibrated for non experienced target, designed to provide information and develop awareness on the rights, rules and procedures that affect the mediation recipients. These informative modules are prepared and delivered in partnership with the students and in fact constitute a form of empowerment. Indeed, especially for vulnerable groups to have cognizance of their rights and be enabled the opportunities to know how to navigate in tough world of laws and bureaucracy is beneficial to gain strength and independence, to make more informed choices and live with less anxiety as long as necessary in the course of justice.

• DIRECTIVE 2013/32/EU: ON COMMON PROCEDURES FOR GRANTING AND WITHDRAWING INTERNATIONAL PROTECTION STATUS

It is an ancient custom to offer refuge to foreigners fleeing war and persecution. But only in the aftermath of the horrors of World War II which produced hordes of refugees, the Universal Declaration of Human Rights of 1948 placed asylum as a fundamental right. It was the Geneva Convention adopted by the UN in 1951 that dealt with this right in a broad and articulate manner. The New York Protocol of 1967 then intervened to extend and clarify the provisions of that Convention.

In addition to the oldest streams of forced migrants from disparate parts of the world, the recent conflicts and political upheavals on Europe's doorstep have pushed a growing number of people to seek refuge in some EU member states¹⁵². This, together with the tragedy of the disproportionate number of "border victims" (victims of borders policy), has placed international protection among the top issues on the European political agenda and in public debate. As regards the Community rules, certainly the EU Charter

¹⁵² It is always good to remember that the vast majority of refugees are not welcomed in Europe, but rather in Asia and Africa. Suffice it to say that almost 60% of total displacement in the world resides in these ten countries: Turkey, Pakistan, Lebanon, Iran, Ethiopia, Jordan, Kenya, Chad, Uganda and China. See: UNHCR 2014; UNHCR 2015, 12.

of Fundamental Rights includes the right to asylum in Article 18, while Article 19 provides for protection in the event of removal, expulsion or extradition.

A limit to the implementation of this right on EU soil is represented by the variety of measures under the different legal systems and in the differences of practices. Already the Directive 2005/85/EC had tried to harmonize the rules and procedures of the Member States for granting and withdrawing refugee status, but the text proved quickly outdated and the legislature has had to return to this matter with Directive 2013/32/EU.

This document expresses in paragraph 22, the value both for the Member State and obviously also for the asylum seeker, of access to accurate information and legal assistance: «It is also in the interest of both Member States and applicants to ensure correct recognition of international protection needs already in the first instance. To this end, applicants should be provided initially, with free legal and procedural information, in accordance with their specific situations.

Such information should, among other things enable them to better understand the process and help them to meet their obligations. It would be disproportionate to require the Member States to provide such information only through the services of qualified lawyers. Member States should therefore have the possibility to use the most appropriate means to provide that information, such as through non-governmental organizations, professionals from government authorities or specialized state services».

Legal advice to donate to the potential beneficiaries of international protection and preparation for examining with authorities responsible for assessing any application for asylum do not have a judicial nature. The judge is involved, in fact, only at the time of the appeal of a possible denial. The Directive clarifies that information and legal advice to asylum seekers should be done by trained individuals, but not necessarily lawyers, given the scale of demand. This obviously makes it easier for the intervention of young participants in clinical and non-governmental organizations in partnership with universities. No coincidence that many clinics in Europe already provide this kind of service, involving students and young scholars in assisting asylum seekers in ‘process necessary to have access to international protection. Through the legal consulting, judicial assistance in case of appeal, the street law activities or through targeted projects, several European clinical programs contribute to the implementation of this fundamental right. But they could do even more if there was an appropriate recognition of their function.

For the students it is also a form of extremely stimulating internship, however sensitive, since it is a confrontation with people from the harsh and dramatic experiences, whose stories weave the plot of a much wider world than on hand to the young university students. We must also remember that travelling on the road to Europe, are mainly young men and women, close in age to the students. This mutual recognition is beneficial to both parties and, of course, contributes to the overall goal of building a plural, cohesive and inclusive society.

• DIRECTIVE 2011/36/EU: ON PREVENTING AND SUPPRESSION OF HUMAN TRAFFICKING AND PROTECTING VICTIMS

The directive, from the beginning, very clearly asserts the seriousness of this crime and the importance of its effective contrast as a priority:

«Trafficking in human beings is a serious crime, often committed within the framework of organised crime, and constituting a gross violation of fundamental rights and explicitly prohibited by the Charter of Fundamental Rights of the European Union. Preventing and combating human trafficking is a priority for the Union and the Member States».

This legislation introduces several innovative elements in the approach to the crime and the protection of victims. On the basis of the provisions of the anti-trafficking Palermo Protocol of 2000 as part of the United Nations Convention against international crime, the Directive adopts a very broad definition that includes several conduits and circumstances. Human trafficking therefore includes:

«The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. [...] Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs»¹⁵³.

A valuable element of this norm is the socio-psychological perspective that permeates the provisions, therefore it maintains that one can talk about it also if there is a consent of the victim. Such consent would result, in fact, not a truly free membership, but the disproportion of power between the exploiter and the exploited.

It follows that the victim, often placed under blackmail, scared and brainwashed, hardly chooses to initiate criminal proceedings against their tormentor, until after a considerable period of reintegration. That is why Article 9 (1) clarifies:

«Member States shall ensure that investigation into or prosecution of offences referred to in Articles 2 and 3 is not dependent on the reporting or accusation by a victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement».

In addition, Article. 11 (3) provides that measures of assistance and support for the victim should not be subject to the will of the latter to cooperate in criminal investigations. Obviously, in the network of traffickers, fall the most vulnerable or those rendered fragile by circumstances. For a minor it is almost impossible to escape the control exercised over him or her by adults who care for and at the same time, exploit them. A young foreign girl forced into prostitution, deceived and violated, trained to fear the police, kept in check with beatings and threats related to her family, in a foreign land and without references, will have great difficulty to trust anyone least of all institutions. Similarly, the farm laborer employed in exhausting agricultural work in exchange for a sporadic begging, will often hesitate to denounce, not only out of fear, but also because this miserable employment is the only way to survive and to send at least something to his family.

It is then necessary to establish relationships of trust with those who are oppressed, inform them of their rights, build paths of emancipation and autonomy, seizing the opportunity that the community and national legislation has in their favor. From this it is clear that much work has to be done to prevent and prosecute such crimes, protecting the victims should take place regardless of what side of the process.

However, of a large part of the member states that offer free legal aid, it is only available in the event of judicial proceedings. It is true that legislation foresees the possibility for victims to be included in support programs that include both the psychological and legal aspect, but the scarcity of funds, the small number of approved

¹⁵³ Directive 2011/36/EU, art. 2.

centers for this purpose and probably an institutional habit to curb the most progressive elements of the Directive, determine modest results in the fight against trafficking and especially in the protection and reintegration of victims. So, in the face of an excellent European law, the data emerging from the national rapporteur indicate a low effectiveness.

The EU Strategy 2012-2016 outlined by the Commission to eradicate the phenomenon of trafficking highlights the need to establish a composite task force that can deal with the problem in a comprehensive and integrated key:

«A multi-disciplinary, coherent policy against trafficking in human beings requires the involvement of a more diverse group of actors than before in policy-making. These should include police officers, border guards, immigration and asylum officials, public prosecutors, lawyers, members of the judiciary and court officials, housing, labour, health, social and safety inspectors, civil society organisations, social and youth workers, consumer organisations, trade unions, employers organisations, temporary job agencies, recruitment agencies and consular and diplomatic staff as well as those more difficult to reach, such as legal guardians and legal representatives, child and victim support services. Volunteers and people who work in conflict situations could also be involved».

In order to address the delicate relationship with victims and to collaborate with a variety of subjects, that are very different to training and mandate, it's necessary to have a very open mind, a strong attitude to cooperation, the ability to identify different points of view, from one perspective to another, a strong motivation and the highest ethical integrity. The legal clinics are already task forces involving not only the university, lawyers, associations, social services, organizations and institutions, volunteers etc. They tend to deal with the case of the individual from an interdisciplinary perspective, taking charge the user holistically. For example, woman who are sexually exploited, probably before even getting justice by convicting the perpetrator, feel the urgent need of a safe place to live, they will need a medical examination, a psychological support, literacy classes, guidance and job placement, etc. Now, for each of these objectives red tape and regulations may arise, such as whether the person is not well-adjusted, does not have a residence, if he or she has children who would like to be reunited, etc. This is why the work of many clinics does not end in *litigation*, but seeks to provide extended support to the person in synergy with other institutional and civil stakeholders.

So these clinical programs offer – not only a global service and a chance of empowerment for vulnerable people – but they also develop a effective program to train a new professional figure that strongly we feel it is needed: the “social jurist”.

The young people involved learn to look at people and issues across disciplinary horizons. They have experience with working in groups and on the net, a very rare opportunity in academic contexts; deepened through a fieldwork knowledge of social problems such as trafficking.

Finally they have the opportunity to refine empathy and sensitivity, requirements to try to create a relationship of trust with those who have suffered repeated deceptions, betrayals and abuse.

Without professionals who have the talent and the proper training to bring to life the spirit of a law such as Directive 2011/36/UE it could be difficult to have the grip on reality that is necessitated.

3.1.4 *The impact of clinics in the advancement of law on human rights*

As it is shown by the scientific literature and this current investigation, the creativity of European clinical teams, to design and implement a variety of projects of training youth and strengthening fundamental rights, is remarkable.

There are therefore many more activities than those cited being undertaken, such as participation in projects with extensive institutional partners and civil society, the creation of observatories, the drafting of bills, the comment to rules and policies, even a kind of “legislative” theater experience, etc.

In the United States the “clinical” teachers have a separate status compared to other teachers of the law school and thus eventually specializing in the most hands-on activities related to the preparation for advocacy. This of course provides a strong recognition for the role and the opportunity for staff to devote themselves fully to educational programs. In Europe, however, the university staff involved in the clinics maintain the obligations and the professional mandate of any other colleague. This state of things in part constitutes a limit, given the poor validation and enhancement of the image of the clinician, in part also, however, they avoid excessive specialization, with the consequent loss of a number of important tasks and capacity. One of the most interesting aspects of the university profession is, in fact, circularity of teaching and research: two activities that, if properly measured, are mutually enriching. That is why even within the clinical setting it would be a great loss to give up the research, focusing exclusively on the educational side.

By the findings made, it appears that among the EU clinical programs are those that combine several legal counsels with research, survey and monitoring. The International University College (IUC) based in Turin, for example, has done monitoring on the conditions of the administrative detention of foreigners. Students are committed to expose and denounce some violations of human rights and dignity of persons.

An overview of the phenomena, the data composition and trends, comparison, deepening and reflection can be presented in individual cases in a very different light from what is normally the case in court.

Law firms, in fact, have as an inevitable focus, the circumscribed case. Their task is exhausted in assisting the client that they have in front of them. Clinics, in addition to responding to user’s demand, can pursue a more ambitious aspiration. The scholars’ view allows them to make a healthy abstraction, recognizing in a particular situation an example of a general condition, so they can transform an individual case in a public issue.

We have already said that the clinics can not be considered a crutch to legal aid, in part because the number of cases that they can follow is typically very low, whereas these should be selected so as to provide students with a valid teaching proposal. The social impact of the clinics is not calculated, but based on the amount of completed practices and procedures. But, by combining legal practice with research and observation activity, they can provide innovative solutions to other legal professionals, to extend the horizon of interpretation of standards, making individual events of the school cases, in other words they can – thanks to the authoritativeness of the opinions formed in the academy – produce new case law or a progressive jurisprudence. Finally mentioned are other trials, still few in number but certainly significant, where clinics go as far as to assist the legislator. The philosophical matrix of legal clinics is legal realism. In controversy with a university education that paints the law as an ordered, organic and rational system, clinical experience exposes learners to make contact with the ever changing, contradictory and disordered living law. And when the imperfection and the perfectibility of the law is taken seriously, the lawyer’s task is not only to apply the law, but to interpret it, comment on it, fill gaps and solve contradictions, denounce the discrepancies between the rules and practices.

In view of a proactive approach to the law, a clinic can set up a think tank where young trainees and experienced adults engage in producing amendments to the existing regulations, draft laws and creation of social policies. For example the association “Altro Diritto”, that has worked for twenty years at the University of Florence and in collaboration with many local authorities, has set up a course on social planning.

The impact of this kind of initiative is not limited in helping to achieve specific objectives proposed by European Union law, but they also have a vital role in the development of the law and its practice.

Legality is certainly an important value, but maimed if it does not combine with the yearning for justice, even considered from a pluralist perspective. As Kelsen remembers, the essence of democracy is the identity between rulers and ruled, that means that the ordinary citizen, and more so the jurist, should not be identified with the subject whose relationship with the law is reduced to obedience¹⁵⁴. While respecting the rules of democracy, it is legitimate and even desirable, to be able to recognize the limits of existing law, propose changes and push for the best. Students are called to develop a critical view towards norms and institutions, intending to drive those who legislate and govern in shaping the tools order to give substance to the laws.

Clinics continue to this day in Europe to prepare mainly to the legal profession, but this kind of program can innovate the mandate of the clinics, constituting, in fact, an internship useful for other categories of legal professionals: for those who do research, for those who will attempt a political career, for those who will work in a legislative office, for those who work with NGOs or other entities engaged in development cooperation or in various forms of advocacy and lobbying.

Furthermore this spectrum of clinical activities permits the expansion of the variety of legal professions for which Law faculties provide training, emphasizes the vocation of universities to form active citizens, capable of independent judgment and not resigned to the existing reality. These programs are fully in line with the strategic framework for European cooperation in education and training (‘ET 2020’).

The third of the four objectives set by the Commission relates in fact to promoting equity, social cohesion and active citizenship and specifically states:

«Education and training systems should aim to ensure that all learners — including those from disadvantaged backgrounds, those with special needs and migrants — complete their education, including, where appropriate, through second-chance education and the provision of more personalised learning. Education should promote intercultural competences, democratic values and respect for fundamental rights and the environment, as well as combat all forms of discrimination, equipping all young people to interact positively with their peers from diverse backgrounds».

The table below summarizes how the actions carried out by legal clinics can contribute to the achievement of several important targets set by European legislation.

¹⁵⁴ KELSEN 1945, 284-299.

Fig. 21 – Clinics and the European EU objectives

Legal clinics' actions	European Law	European goals which clinics can contribute to
<p>Training new generations of lawyers through the methodology of learning by doing oriented towards social justice</p>	<ul style="list-style-type: none"> • Bologna Process • The European Higher Education Area • Magna Charta Universitatum 	<p><i>Promoting the mobility of students and strengthening the relationship between universities and European scholars</i></p>
		<p><i>Increasing employability</i></p>
		<p><i>Renewing the curriculum and academic education by raising the legal quality of teaching</i></p>
	<ul style="list-style-type: none"> • Communications of the Conference of Ministers of Education of: London (2007); Lovanio (2009); Budapest (2012) 	<p><i>Promoting the mobility of students and strengthening the relationship between universities and European scholars</i></p>
		<p><i>Increasing employability</i></p>
		<p><i>Renewing the curricula and academic education by raising the legal quality of teaching</i></p>
<p><i>Affirm and practice the social responsibility of universities participating in the defense of the common good</i></p>		
<p>Legal aid <i>pro bono</i> and extrajudicial legal advice</p>	<ul style="list-style-type: none"> • Charter of Fundamental Rights of the European Union, art. 47 • Convention on Human. Rights, art. 6, 13 	<p><i>Implement access to justice understood as access to courts</i></p>
		<p><i>Implement access to justice in the broad sense</i></p>
	<ul style="list-style-type: none"> • Treaty on the Functioning of the European Union, art. 19 • Directive 2000/43 / EC [social-labor anti-discrimination based on race and ethnicity] • Directive 2000/78 / EC [employment antidiscrimination based on religion, opinions, disability, age, sexual orientation] • Directive 2004/113/CE, 2006/54/CE, 2010/41/CE [Gender equality] • Green Paper on equality and non-discrimination in an enlarged European Union COM(2004)379 	<p><i>Promoting equality of opportunity and treatment</i></p>
		<p><i>Oppose any form of discrimination based on race, ethnicity, religion, opinions, disability, age, sexual orientation</i></p>

Legal advice	• Council recommendation of 9 December 2013 on effective Roma integration measures in the Member States	<i>Promoting equality and social inclusion of the Roma population</i>
	• Charter of Fundamental Rights of the European Union, art. 18,19 • Directive 2013/32/UE [Asylum]	<i>Guarantee the right of asylum</i>
	• Directive 2011/36/UE [preventing and combating trafficking and labor exploitation]	<i>Prevent and combat trafficking in human beings and all forms of exploitation</i>
Street law	• Charter of Fundamental Rights of the EU • Treaty of Lisbon, art. 11 [Active citizenship and participatory democracy]	<i>Spread the knowledge of European law, awareness of rights guaranteed by Union and the procedures to claim them</i>
		<i>Increase the participation of European citizens and the sense of proximity of the EU institutions</i>
	• Directive 2012/29/UE: protection of victims of crime	<i>Protect victims of crime through correct and accessible information that achieves empowerment</i>
Research and Monitoring	• Charter of Fundamental Rights of the European Union • Council Conclusions of 12 May 2009 on a strategic framework for European cooperation in education and training (ET 2020)	<i>Spur the law towards greater attention to fundamental rights</i>
Production of case law and the draft of rules and policy	• Charter of Fundamental Rights of the European Union • Council Conclusions of 12 May 2009 on a strategic framework for European cooperation in education and training (ET 2020)	<i>Promoting active citizenship and democratic participation, especially of young people</i>

3.2 Conclusion: a proposal for the European institutions

Until now we have mainly reasoned on what legal clinics can do for the European Union, by participating in the achievement of some of its major priorities. It is worth reflecting on what the Union's institutions can do to help this good practice to spread and take root.

From reports of the European and international meetings of the clinical legal movement, emerge basically three critical issues. They are: the lack of a stable and unambiguous definition of the clinical-legal experience, the lack of institutional recognition and the difficulty to ensure sustainability in the continuity of activities. Obviously these three issues are closely linked, for without a shared identity it is somewhat tough to can get an official recognition and, if you do not have an institutional status defined it is difficult to access some form of public funding. But let's explore these three nodes:

a. Legal clinic identity. As repeatedly stated, the range of activities that fall in the 'umbrella of the legal clinics is extremely varied, because the legal systems change from country to country and because there is a high degree of creativity among the actors of this movement,

but also because being a poorly institutionalized phenomenon, there are neither procedures nor an established form to be followed. This, in part, is a strength, since it enables shaping of the clinical experience by adapting smoothly to the reality in which it interacts and becoming an opportunity for the expression of specific skills and talents of its promoters. From another point of view it is a weakness. In fact as there are no established standards, there are not quality guarantees, but mainly the promoters have to beat around the bush within curricula in which the clinical experience is generally not contemplated and, to be able to engage therein, are compelled to force rules and procedures, interacting with an academy that is at times hostile or disinterested, and with a bar association that is often suspicious that clinics could steal the market¹⁵⁵.

How then to arrive at a definition that does not entail any flattening of the experience? It is desirable that the identity is the result of a dynamic and dialectical process, in which the protagonists of this adventure negotiate a definition of what they are and do, on the basis of shared purpose and attitudes. The legal clinical motion is a scientific community that has the necessary authority to self-determination with regard to parameters and regulations. The Union's institutions may, however, facilitate the work of clinicians contributing to formal recognition.

b. Public recognition. With the exception of a few countries the legal clinics in Europe do not have a clear status within the universities and are still scarcely known. Those who pursue the bold goal of starting a clinic will generally have to face countless bureaucratic and economic obstacles; but in a sense also cultural ones, and rather than being rewarded with glory, they are treated with suspicion and indifference. «Whilst clinicians work extremely hard to make their programs successful, there can be a lack of recognition»¹⁵⁶. That which then pushes to insist in a strenuous and not very rewarding activity however, is strong recognition that originates at the bottom, namely assisting the enthusiasm of the students and finding the benefits in the lives of users. However this finding from the lowermost, unfortunately, almost never affects the allocation of resources and titles of merit.

Legal clinics, in order to enhance their positive impact on education and social welfare, would need to:

- i. obtain a clear status within university courses, for example by activating a legal clinic course as a curricular subject or as a form of pre or post-graduate internship.
- ii. have a legal personality, so for example that clinics can be establish a civil party in a process or to take part in projects autonomously (which implies that the legal clinic is an entity eligible as a partner or lead partner in European projects).
- iii. that the activation of clinical programs is a title of respect in the evaluation of universities.
- iv. that clinical work of an academic can be calculated and evaluated, as scientific publications, participation in research projects, etc.

¹⁵⁵ In this regard: «Lobbying government or the courts to adopt student practice rules requires leadership from the global clinical movement to educate rule-makers on the importance and benefit of law student practice. These rule-makers must be sure that law students will have the necessary supervision to provide high-quality legal representation so that clients will be not hurt, and law students will learn to set high professional standards. They also need to be shown that law students representing low-income clients will not take business away from practicing lawyers but instead will provide representation for clients who otherwise have no access to lawyers», MAISEL M.(P.) 2011, 339.

¹⁵⁶ DUNN, MCKEOWN 2015, 16.

c. Sustainability. Probably the most critical point for the future of this good practice is that of economic sustainability. As shown by the investigation, there is an explosion of legal clinics. However, they are born in a large part thanks to the help of private foundations that accompany the start-up phase but then require the clinic has its own independent source of income. Those foundations do not intend to accustom these initiatives to dependence on private donors, but believe it is important to encourage clinics to find the recognition and public support they deserve.

However it is not at all certain that these projects can cross the initial enthusiasm phase and take root. Clinical work is extremely expensive and full of responsibility, it is unthinkable that it is based in good part on unpaid voluntary work, or even on self-taxation of its promoters. And even the oldest clinics are likely to collapse for lack of financial support. For instance, the legal clinic of Maastricht University in the Netherlands, which had existed and flourished since 1988, has been closed by the Faculty Board as of January 1, 2015, due to budgetary reasons.

Yet as we have seen legal clinics manage to work with a fairly low budget, because, emerging in universities, they have structures and partly of staff already covered financially. They also contribute to achieve three important objectives:

«Three goals which are widely shared by the clinics around the world: increased access to justice for previously unrepresented groups; a system of legal education that ensures future lawyers have the knowledge, skills, and values needed to help solve the world's complex problems; and a legal profession that is more diverse, skilled, and committed to serving social needs».¹⁵⁷

Therefore investment to provide continuity for clinical programs is low and the benefits are high and multidimensional.

In what way can the union institutions help ensure recognition and sustainability at legal clinics? Certainly the view and action of the European institutions must remain broad, so I believe in fruitful redefining issues in more general terms.

Legal education is part of higher education. The *law clinics* are not just good practice in the channel of the law school, but for the whole academy. They constitute an example of how universities and societies can mutually enrich interaction.

The roots of European educational institutions lie in medieval monasteries, where it was believed that contact with the world outside was a dangerous distraction for scholars. The knowledge should remain elitist, since dissemination was tantamount to bribery. Such convictions have even influenced the architectural form of the education buildings. In fact, they were equipped with tall windows or openings only on the inner courtyard, to prevent a view from the outside which outsiders could penetrate, contaminating knowledge.

Certainly the invention of printing, the Protestant Reformation, revolutions, movements for justice and many other historical events have pushed on culture to democratize, but it seems that the gulf which separates the Academy from the outside world, as well as theory from practice, it is not yet filled.

The general principle which carries forward the movement for clinical legal education is that knowledge increases as it feeds on reality and when serving to the world. This means that universities have a responsibility and a mission to the community to which they belong and that they have everything to gain in taking charge.

Taking seriously this broader and complex mandate means that universities implement dialogue with different stakeholders and provide, as part of the training, to offer an opportunity for a guided and advantageous meeting between young people and the real

¹⁵⁷ MAISEL M. (P.) 2011, 335-336.

world¹⁵⁸. In the case of the Law Faculty, clinics are the model of how the Culture could be of service to Society, but each different faculty can conceive of programs based on their specific field or can design an “interdisciplinary collaboration to the service”.

It is easy to imagine how students of medicine or nursing, always under careful supervision, could engage in programs of assistance to the elderly or how future language teachers can implement literacy in schools with high drop-out rates or to teach immigrants the host language, etc. But, for example, even business students might offer consulting services to small start-ups, helping to build a budget or doing “street economy” with groups of unemployed persons seeking to free themselves from poverty by starting their own business.

Young architects and engineers could follow the training of self-building experiments to help reduce housing problems. And so the list of ways in which the students, led by their teachers and professionals may better learn the metier of serving the community could go on and on. Some of these examples are already in place, but the difficulty in gaining recognition and grants makes those actions sporadic and less incisive.

So in order to implement the mission of University: contributing to social development research (in addition to the classical two mission research and education) it could be important to foresee a priority in the next European programs 2021-2027.

Developing the relationship between inside and outside the academy and promote Culture as crucial agent of social growth, is not an option alien to the direction indicated by the Bologna Process and the objectives repeatedly reaffirmed in subsequent conferences of the education ministers of the EU countries. They however could support these good practices through concrete measures, such as a similar funding from the Daphne program or a specific section of the Erasmus plus, dedicated to universities wishing to develop social accountability and commitment.

Supporting people and institutions willing to take this path with funds and recognition, may generate virtuous circles from which all come out as winners.

In this way, the temples of knowledge become agents of social change towards equity and justice. They contribute to building thriving professional skills of young people and their ethical sensitivity, breaking the solitude which is often faced by scholars and giving more meaning to their work, increasing their general well-being and making a culture of sharing, that brings value to the consortium of men and women.

¹⁵⁸ See FIA, SACCONI 2013, 94-106.

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