

Research Report No. 30/2009

Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education

Richard J. Wilson

Follow this and additional works at: <http://digitalcommons.osgoode.yorku.ca/clpe>

Recommended Citation

Wilson, Richard J., "Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education" (2009). *Comparative Research in Law & Political Economy. Research Paper No. 30/2009.*
<http://digitalcommons.osgoode.yorku.ca/clpe/143>

This Article is brought to you for free and open access by the Research Papers, Working Papers, Conference Papers at Osgoode Digital Commons. It has been accepted for inclusion in Comparative Research in Law & Political Economy by an authorized administrator of Osgoode Digital Commons.



Comparative Research in Law & Political Economy

CLPE RESEARCH PAPER 30/2009

Richard Wilson

Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Education

EDITORS: Peer Zumbansen (Osgoode Hall Law School, Toronto, Director, Comparative Research in Law and Political Economy, York University), John W. Cioffi (University of California at Riverside), Nassim Nasser (Osgoode Hall Law School, Toronto, Production Editor)
Also Available at <http://www.germanlawjournal.com>

German Law Journal

Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education
Richard Wilson

10 German Law Journal 823 (2009), available at:
<http://www.germanlawjournal.com/article.php?id=1123>

This article was originally published in Volume 10, Number 7 of the German Law Journal as part of the journal's 10th anniversary symposium on "Transnationalizing Legal Education" edited by Nadia Chiesa, Adam de Luca, and Bernadette Maheandiran.

Richard Wilson

**WESTERN EUROPE: LAST HOLDOUT IN THE WORLDWIDE ACCEPTANCE OF
CLINICAL LEGAL EDUCATION**

Abstract: Clinical legal education has achieved widespread acceptance throughout the world, growing by leaps and bounds during recent decades in countries like Russia and China, and expanding rapidly in other areas of Eastern Europe, Latin America and Africa. It is, arguably, the most significant innovation in legal education since the “invention” of the Socratic-case method in the United States, at the turn of the 20th Century. There is, however, one geographic area where the philosophy and methodology of clinical legal education has been resisted. That area is Continental Western Europe (the UK has something of a tradition of clinics, though stunted). This article examines the reasons for resistance to clinical theory and practice as part of law school curricula in Western European law schools. Some of that resistance lies in history and structure of legal education and the legal profession, particularly the organization and power of the law school professoriate. The article further suggests that the Bologna process of European integration in all fields of education may provide opportunities for innovation in clinics through law school curricular reform. The doctrinal area of international human rights law and practice may provide further inroads into that resistance.

Keywords: Legal Education, Curricular reform, Clinical legal education

JEL classification: K10, K40

Richard Wilson

Professor of Law and founding Director of the International Human Rights Law Clinic, which has operated at American University's Washington College of Law, in Washington, DC, since 1990.

Email: rwilson@wcl.american.edu

Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education

*By Richard J. Wilson**

A. Introduction

I. My Personal Experience with Clinical Legal Education Abroad

I have come to believe, over the last two decades of my consulting work outside of the United States, that the origins, growth and acceptance of clinical legal education throughout the world is the greatest single innovation in law school pedagogy – and certainly in student learning – since the “science” of the Socratic, case method was brought to Harvard by Christopher Columbus Langdell. I remember distinctly when I came to this conclusion. It was around the time of a conference held at beautiful Arrowhead Lake, in California, hosted by UCLA Law School and the University of London at the university’s conference facility in the mountains of San Bernardino County, startlingly close to Los Angeles. The event was the Sixth International Clinical Conference, held in October of 2005,¹ and it was the first truly international event in that series. Yes, it was an “international” clinical conference, and prior events had provided participants with something of an international flavor, and the event was sponsored by British and American law schools. This, however, was something new, something different.

This was the first occasion when the agenda of the conference was filled with international speakers presenting papers on clinical legal education developments in their home countries. This was not American clinicians giving their papers on “how I spent my summer vacation developing clinics in [insert developing country name here].” This was clinicians from the United States, together with foreign colleagues, presenting work on the newest

* Richard J. Wilson is Professor of Law and founding Director of the International Human Rights Law Clinic, which has operated at American University’s Washington College of Law, in Washington, DC, since 1990. Email: rwilson@wcl.american.edu, Prof. Wilson wishes to thank his student Dean’s Fellow, Sarah Melikian, and law school librarians William Ryan and Adeen Postar, for their (typically) invaluable assistance in locating sources and information for this article.

¹ The official website for the Sixth Conference is available at: <http://www.law.ucla.edu/home/index.asp?page=1917>, visited on March 12, 2009. The conference papers cited hereafter are available at: <http://www.law.ucla.edu/home/index.asp?page=1949>, visited on March 12, 2009.

frontiers of clinical legal education in India,² Israel,³ Japan,⁴ Russia,⁵ China⁶ and Australia.⁷ These clinics were profoundly altering the shape and trajectory of legal education in countries that account for more than a third of the world's population, countries both developed and developing, countries that had seen radical shifts in the legal culture within the past few decades, and countries with stable democracies.

I remember that same feeling of awe a decade ago when I participated in a gathering of law school deans and teachers from Russia and other countries of the former Soviet Union, held in Budapest in 1998, under the sponsorship of what was then called COLPI, the Constitutional and Legal Policy Institute. COLPI was one of several initiatives in Central and Eastern Europe funded by George Soros, the philanthropist and social entrepreneur.⁸ This was a groundbreaking meeting, with a strong share of skeptics, frowning and doubting deans and university administrators arguing that clinics were too costly, too "new" to be adopted by their faculties or their government agencies with oversight of legal education. The bar might oppose the provision of legal services by students, they argued, because of strict rules of admission to the bar and ethical standards forbidding non-lawyers from practicing law, and, perhaps most basically, because a clinic might take bread from the table of the practicing bar.

However, no one sat passively when I rose to speak and said that my preparations for my talk at the meeting were difficult, in that I had to keep up my training as high-jumping

² *Id.*, Frank S. Bloch and M.R.K. Prasad, *Institutionalizing a Social Justice Mission for Clinical Legal Education: Cross-national Currents from India and the United States*; *Id.*, Margaret Martin Berry, Martin Geer, Catherine F. Klein and Ved Kumari, *Justice Education and the Evaluation Process* (discussing faculty evaluation in clinical and non-clinical courses in the United States, India and other countries).

³ *Id.*, Yuval Elbasha, *Teaching Justice, Creating Law – The Legal Clinic as a Laboratory* (discussing clinical legal education at Hebrew University in Jerusalem).

⁴ *Id.*, Peter Joy, Shigeo Miagawa, Takao Suami & Charles D. Weisselberg, *Building Clinical Legal Education Programs in A county Without a Tradition of Graduate Professional Legal Education: Japan Educational Reform as a Case Study* (discussing clinical legal education at Waseda Law School in Tokyo, Japan).

⁵ *Id.*, Oleg Anischik, *Situation in Clinical Legal Education in Russia and Activities of Clinical Legal Education Foundation (CLEF)*.

⁶ *Id.*, Zhen Zhen, *The Present Situation and Prosperous Future of China Clinical Legal Education*; Dou Mei, Lin Lei & Wu Zhongming, *An Innovation in Clinical Law Education of Nationalities Universities*.

⁷ *Id.*, Phil Falk, Keryn Ruska, Jeff Giddings & Maree Stainlay, *Legal Clinics and Indigenous Australian Student Learning*.

⁸ Ed Rekosh, founding director of the Public Interest Law Institute, in Budapest, delivered a paper at the 1998 conference. Edwin Rekosh, *Possibilities for Clinical Legal Education in Central and Eastern Europe* (1998), available at: <http://www.pili.org/en/content/view/158/26/>, visited on March 12, 2009.

champion of the world.⁹ When the laughter stopped, I challenged them to ask me questions that would prove I was *not* the high-jumping champion, and the room exploded with action. Where did you train?, they asked. What is the record you hold? How much do you weigh? What methods do you use? (one eager participant rose, put a chair in front of me and challenged me to hop over it to show my skills. I declined – I pleaded that I was “in training, and had no proper equipment. Injury could set me back by months!”). When we had finished the fun, I asked them how a teacher might use that exercise in teaching a lawyer’s skills. Their answers were excellent, and they did not depend on the legal system they came from – soviet, civil or common law – but on the kinds of questions that lawyers ask a potential witness or their clients when they doubt they are being told the truth, an all too common situation faced by practicing lawyers in any legal system.

The formerly Soviet deans and professors, all masters of the classroom lecture, had learned by doing, then by reflecting on their experience, the way most adults learn. Their experience had taught them more than anything I could lecture about for hours on end. I continued the session by asking, only somewhat rhetorically, which of them would rather be a passenger in an airplane whose pilot had obtained high marks in courses on the “The Laws of Aerodynamics,” and “Theories of Aviation,” and had studied planes taking off from the ground for 5,000 hours but had never flown, versus a pilot who had flown solo for 5,000 hours, preceded by in-flight training with an accomplished pilot at her side. The point was not lost on the audience, which nodded knowingly as to the answer.

The COLPI meeting, happily, was the first of my many trips back to the region – to Slovakia, Latvia, Lithuania, Georgia, Ukraine, the Czech Republic, Moldova, and several more conferences in Budapest – where it quickly became apparent that clinical legal education had taken hold in the region as one of the great innovations in legal education reform in those transitional democracies. The American Bar Association’s Rule of Law Initiative now reports that there are more than 160 clinics in Russia.¹⁰ Clinical legal education was recognized by schools in the region as a teaching and learning method that actually prepared students to practice law by exposing them to work in role, as an attorney representing clients, with all the attendant issues surrounding the skills, ethics and values of law as it is practiced throughout the world. Further, the clinical method of experiential learning – learning by doing – was not only consistent with everything we have learned in recent years about adult learning theory, but was also a breath of fresh air in the otherwise stultifying atmosphere of the “classical” classroom lecture methods imposed on law students during the Soviet era and before. In fact, these methods find their roots in Medieval university education throughout Europe.

⁹ This exercise, and others, are among the games and other techniques I have used in teaching lawyer skills, as set out in Wilson, *The New Legal Education*, at 454 et seq.

¹⁰ USAID/Russia, American Bar Association Rule of Law Initiative, *Projects: Development of the Legal Profession*, available at; http://russia.usaid.gov/about/partners/ABA_ROLI/, visited on March 20, 2009.

II. The Global Reach of Clinical Legal Education

I had the same feeling again in Latin America in October of 2007, when I met with new clinical teachers in Mexico City, Mexico, this time under the auspices of the Justice Initiative, another Soros-funded initiative. This meeting brought together not only new clinical teachers from several law schools in Mexico, some with established clinics and some with proposals to open new clinics, but also with veteran clinical co-teachers from programs in Chile and Argentina. My “roots” in clinical legal education outside of the United States had begun with scholarships to Nicaragua¹¹ and Colombia¹² in 1986 and 1987, respectively, an odyssey that taught me much about practice and procedure in the civil law tradition and, more importantly, about the history of legal education, and particularly of pedagogical methods, in Central and South America. I studied the deep roots of clinical legal education in Chile¹³ and found that they were parallel to those of the United States, where clinics had their roots in the social movements of the late 1960’s and early 1970’s.

The explosive global growth of clinical legal education is documented in my own writing and in the scholarship of others who have immersed themselves over many years in clinical legal education innovations throughout the world.¹⁴ That growth is both broad in its reach, inside and outside of the United States, and deeply rooted in educational philosophy and experience. Within the U.S., clinical legal education has achieved status as a mainstay of legal education, with well over 800 in-house clinical programs operating in U.S. law schools, an average of 6 clinical subject-matters in each school.¹⁵ Upwards of 600 clinical teachers attend the annual meeting of clinical teachers sponsored by the Association of American Law Schools (AALS), and hundreds more attend regional meetings sponsored by the same organization or the Clinical Legal Education Association (CLEA). The clinical

¹¹ Richard J. Wilson, *Criminal Justice in Revolutionary Nicaragua: Intimations of the Adversarial in Socialist and Civil Law Traditions*, 23 UNIVERSITY OF MIAMI INTER-AMERICAN LAW REVIEW 269 (1991-92), summarizes that experience.

¹² Richard J. Wilson, *The New Legal Education in North and South America*, 25 STANFORD JOURNAL OF INTERNATIONAL LAW 375 (1989). This was my first foray into the teaching of law school pedagogical methods, clinical and non-clinical, to traditional classroom and clinical professors in Latin America.

¹³ Richard J. Wilson, *Three Law School Clinics in Chile, 1970-2000: Innovation, Resistance and Conformity in the Global South*, 8 CLINICAL LAW REVIEW 801 (2002).

¹⁴ See, e.g., Frank S. Bloch, *Access to Justice and the Global Clinical Movement*, 28 WASHINGTON UNIVERSITY JOURNAL OF LAW AND POLICY 111 (2008); Leah Wortham, *Aiding Clinical Legal Education Abroad: What Can Be Gained and the Learning Curve on How to Do So Effectively*, 12 CLINICAL LAW REVIEW 615 (2006).

¹⁵ Data on the number of clinics at all American law schools, and on the total number of clinical teachers, is still somewhat preliminary. The most comprehensive source is the data collected from 131 of the more than 190 U.S. law schools by the Center for the Study of Applied Legal Education, at the University of Michigan Law School. See, CSALE, Report on the 2007-2008 Survey, at 9, available at <http://www.csale.org/CSALE.07-08.Survey.Report.pdf>, visited on March 20, 2009.

movement received strong support from the American Bar Association (ABA) in 1992, when the MacCrate report moved legal education strongly in the direction of preparing students for practice by teaching skills and ethical values within the curriculum.¹⁶ Those recommendations have been strengthened and reinforced by new ABA standards requiring inclusion of skills courses in law school curricula and providing more secure status for clinical teachers.¹⁷ Most recently, newly issued reports by the Carnegie Foundation¹⁸ and CLEA, on best practices in legal education,¹⁹ have further cemented the role of experiential learning in law schools. Within the United States, the scholarly writing of clinical teachers has produced an enormous bibliography²⁰ of writing on issues emerging from the practice of law, the work of clinics, learning theory, the structures and operations of bureaucratic legal institutions, and a branch called the “theoretics of practice,”²¹ which inductively extracts theory from practice, rather than the more traditional deductive research on the application of general rules to specific situations.

As noted in my references above, private foundations, particularly the Ford Foundation,²² the American Bar Association’s Rule of Law Initiative,²³ and various Soros-funded initiatives²⁴ have done much to promote clinical methodology outside of the United States, primarily in developing and transitional countries, but also in established legal cultures. Two recent collections on “justice education” include extensive references to global

¹⁶ American Bar Association, Section of Legal Education and Admissions to the Bar, *An Education Continuum, Report of the Task Force on Law Schools and the Professions: Closing the Gap* (The MacCrate Report) (July 1992) available at: <http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html>, visited on March 20, 2009.

¹⁷ American Bar Association, *Standards for Accreditation of Law Schools*, Standard 301(a), 302(a)(4); 302(b)(1), 405(c). See, Peter A. Joy & Robert R. Kuehn, *The Evolution of ABA Standards for Clinic Faculty*, 75 TENNESSEE LAW REVIEW 183 (2008).

¹⁸ WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

¹⁹ CLEA, *BEST PRACTICES FOR LEGAL EDUCATION* (2006), available at http://bestpracticeslegaled.files.wordpress.com/2008/08/best_practices-full.pdf, visited on March 20, 2009.

²⁰ Perhaps the most comprehensive such bibliography is the one introduced by Karen Czapanskiy, and maintained by J.P. “Sandy” Ogalvy, available at: <http://faculty.cua.edu/ogilvy/Index1.htm> (as of October 2005), visited on March 20, 2009.

²¹ See, e.g. Robert D. Dinerstein, *A Meditation on the Theoretics of Practice*, 43 HASTINGS LAW JOURNAL 971 (1992),

²² Aubrey McCutcheon, *University Legal Aid Clinics: A Growing International Presence with Manifold Benefits*, in *MANY ROADS TO JUSTICE: THE LAW RELATED WORK OF FORD FOUNDATION GRANTEES AROUND THE WORLD* 267 (Mary McClymont & Stephen Golub eds., 2000).

²³ See, e.g., the Rule of Law Initiative’s web page on *Legal Education Reform and Civic Education*, available at: http://www.abanet.org/rol/programs/resource_legal_education.html, visited on March 12, 2009.

²⁴ See, e.g., (author?) *Clinical Legal Education: Forming the Next Generation of Lawyers*, in *PURSuing THE PUBLIC INTEREST: A HANDBOOK FOR LEGAL PROFESSIONALS AND ACTIVISTS* 257 (Edwin Rekosh, Kyra A. Buchko & Vessela Terzieva eds., 2001).

innovations in clinical education in law.²⁵ The Mexico meeting discussed above produced a book,²⁶ the first of its kind on clinical legal education in that country, but not the first in the region.²⁷ There is a growing collection of books on clinical legal education in the United States,²⁸ in Australia,²⁹ in India³⁰ and even in Britain.³¹ I say *even* in Britain because the United Kingdom is exceptional among the Western European nations in its acceptance, albeit recent, of clinical legal education.

III. Resistance to Clinics in Western Europe?

The continental countries of Western Europe, those of the civil law tradition, have been particularly resistant to innovations involving the implementation of clinical legal education. This short article explores why that is, and what to do about it. In the sections that follow, I will briefly describe just what I mean by clinical legal education. I will attempt to analyze why continental Western Europe has been so resistant to clinical legal education, and discuss a few innovation has begun to make headway, even in this last bastion of tradition. Some of those innovations have been or will be promoted through the recent process of educational reform embodied in the so-called Bologna process at work in Europe today. I will discuss why the Bologna process is a particularly appropriate context for innovations in clinical legal education. Finally, I will suggest that work in the area of human rights protection may provide a beachhead for clinical innovation in Council of Europe countries, but particularly in Germany and France, where the traditional lecture

²⁵ EDUCATING FOR JUSTICE: SOCIAL VALUES AND LEGAL EDUCATION (Jeremy Cooper & Louise G. Trubek eds., 1997)(discussing clinical innovations in Sri Lanka and Australia); EDUCATING FOR JUSTICE AROUND THE WORLD: LEGAL EDUCATION, LEGAL PRACTICE AND THE COMMUNITY (Louise G. Trubek & Jeremy Cooper eds., 1999) (discussing clinical innovations in Thailand, Chile and Argentina).

²⁶ ENSEÑANZA CLÍNICA DEL DERECHO: UNA ALTERNATIVA A LOS MÉTODOS TRADICIONALES DE FORMACIÓN DE ABOGADOS (CLINICAL LEGAL EDUCATION: AN ALTERNATIVE TO THE TRADITIONAL METHODS FOR LAWYER TRAINING) (Marta Villareal & Christian Courtis eds., 2007) (my translation)

²⁷ There is, for example, the series of books published by the Diego Portales Law School in Santiago, Chile on public interest clinics in Chile, Argentina, Colombia, Mexico and Peru. The first in that series is DEFENSA JURÍDICA DEL INTERÉS PÚBLICA: ENSEÑANZA, ESTRATEGIAS, EXPERIENCIAS (LEGAL DEFENSE OF THE PUBLIC INTEREST: TEACHING, STRATEGIES, EXPERIENCES) (Chile, Felipe González & Felipe Viveros eds., 1999).

²⁸ See, e.g., PHILIP G. SCHRAG & MICHAEL MELTSNER, REFLECTIONS ON CLINICAL LEGAL EDUCATION (1998).

²⁹ See, e.g., S. RICE, A GUIDE TO IMPLEMENTING CLINICAL TEACHING METHOD IN THE LAW SCHOOL CURRICULUM (1996); MARLENE LE BRUN & RICHARD JOHNSTONE, THE QUIET (R)EVOLUTION: IMPROVING STUDENT LEARNING IN LAW (1994) (exploring clinical and other teaching innovations in legal education).

³⁰ A HANDBOOK ON CLINICAL LEGAL EDUCATION (N.R. Madhava Menon ed., 1998).

³¹ HUGH BRAYNE, NIGEL DUNCAN & RICHARD GRIMES, CLINICAL LEGAL EDUCATION: ACTIVE LEARNING IN YOUR LAW SCHOOL (1998); EFFECTIVE LEARNING & TEACHING IN LAW (Roger Burridge et al. eds., 2002).

method of law school teaching has held sway for centuries, indeed, as many authors note, since the Middle Ages.

B. What is “Clinical Legal Education”?

I have a particular five-part definition for what constitutes “clinical legal education,” as I technically use the term. However, let me make clear from the outset that a law school can call its clinical legal education program by any name – live-client clinic, legal aid, field placement (externship or internship), street law, simulation or role-play, apprenticeship or any other local name – so long as the focus is on student experiential learning – learning by doing – for academic credit.³² Notice that the key is not teaching, but learning; the teacher is, as some of my clinical teaching colleagues abroad have commented, not the “sage on the stage” but the “guide on the side.” Learning does occur when the student is more active than passive, and teaching techniques can be arrayed along a spectrum from most passive (lecture and case method) to most active (the live-client clinic).³³ The subject matter areas of clinics can cover any of a wide array of subject-matter areas, from the classic criminal and general civil legal services areas to more explicit areas such as tax, small business or intellectual property. My own clinic, in the area of international human rights law, has been operating for nearly twenty years, and provides a model that might be ideally adaptable to the new European legal education reforms under the Bologna process, to be discussed below. Finally, most clinics, like my own, are intensely aware of the mission of lawyers in serving justice, and in representing the weak against the strong.

Having prefaced my definition by those caveats, let me set out what I have called the particular, ideal model of clinical legal education.³⁴ The five components are: (1) academic credit for participation, within the law school curriculum; (2) students provide legal services to actual clients with real legal problems (this is the origin of the “live-client” appellation), within a framework permitted by local statute, bar or court rules permitting limited student practice, advice or other legal services; (3) clients served by the program are legally indigent; generally, they are not able to afford the cost of legal representation and/or they come from traditionally disadvantaged, marginal or otherwise underserved communities; (4) students are closely supervised by an attorney licensed to practice law in the relevant jurisdiction, preferably a professor who shares the pedagogical objectives of

³² My colleague, Elliott Milstein, has set out this range of possibilities in his own writing. Elliott S. Milstein, *Clinical Legal Education in the United States: In-House Clinics, Externships and Simulations*, 51 JOURNAL OF LEGAL EDUCATION 375 (2001).

³³ See, Wilson (note 11), 241.

³⁴ Richard J. Wilson, *Training for Justice: The Global Reach of Clinical Legal Education*, 22 PENN STATE INTERNATIONAL LAW REVIEW 421, 422-423 (2004). The article suggests six components. I deemed two components as redundant, and have combined them into one.

clinical legal education; (5) case-work by students is preceded or accompanied by a law school course, for credit, on the skills, ethics and values of practice, as well as the necessary predicate doctrinal knowledge for the area of practice of the clinic. One might see this constellation of components as a goal, with some of the components present during a process of development toward the ideal. While valuable experiential learning can take place in hypothetical or simulated cases, real people with real legal problems provide the best learning context. To use a comparison from medicine, one might see this as analogous to the use of an electronically wired, simulated human dummy to teach the Heimlich maneuver for prevention of death from choking, or to teach cardio-pulmonary resuscitation, CPR, in the event of heart attack. One can learn the proper technique for work with real human beings through the artificial dummy, but anything beyond the most basic skills is enhanced, if not required, by work with the complex reality of actual people in real medical crises. The judgment needed for proper diagnosis and problem-solving can be taught, but only by dealing with the complex interaction of factors presented by each unique human being. This is why clinical training in medical school now starts in the first year of medical school: "medical science is best taught in the context of medical practice, with integral connections between the fundamental knowledge base and the complex skills of professional practice."³⁵ This is no less true for law, if we similarly value protecting human lives through effective diagnosis and problem-solving.

C. Tradition in German and European Legal Education

I. An Outsider's View: Movement to Convergence?

As an outsider to both Europe and its largely civil law tradition, it is awkward, if not rude, to suggest shortcomings in the continent's system of legal education. Moreover, it is difficult to generalize about "European legal education", even after the advent of the European Union, given that the educational systems vary widely by country, and even within countries. Part of this is due to the enormous growth and variety of privatized legal education and law school enrollments, particularly women students, in capitalist nations beginning in the 1960's.³⁶ Also, in order to answer the question of whether clinical legal education is appropriate for Western European law schools, one must ask what lawyers in Western Europe do. If clinical legal education has, as its goal, the preparation of lawyers for the practice of law, what does that practice look like? This is a particularly difficult question in the rapidly changing legal culture of Europe during its transformation through the ongoing process of sometimes painful integration within the European Union and the much broader Council of Europe. It is sometimes said that it is hard to talk about a single

³⁵ SULLIVAN (note 18), 192.

³⁶ Richard L. Abel, *Lawyers in the Civil Law World*, in *LAWYERS IN SOCIETY: THE CIVIL LAW WORLD* (RICHARD L. ABEL & PHILIP C.S. LEWIS, EDs., VOL. 1) 1, 31-35 (1988).

German “legal profession”, for example, simply because one is not talking only about the traditional practicing lawyer, or advocate, but about those who qualify to become judges, public prosecutors, civil servants, company employees, with little mobility between these categories, and at least as of 1995, fewer than half of law graduates in Germany practicing as traditional advocates.³⁷ There are, of course, suggestions that the civil and common law systems are on a long trajectory of convergence, that the large firm model of the United States is now fully a part of European law practice, and that universities “play increasingly similar roles in training lawyers throughout the world.”³⁸ That observation seems to have been reinforced by the attempt, under the Bologna process, discussed below, to make European legal education uniform in length throughout the Continent. Finally, there are linguistic limitations, in that all of my reading on European legal education is in English, not in the mother tongue of each of the countries under study.

I will attempt, even with these limitations, to offer a few observations about the core subject of this article, the question as to why Western Europe is the “last holdout” in the global movement toward clinical legal education. Some of my conclusions are common to other countries and regions of the world where clinical legal education has been introduced. I will put these into one cluster, while those factors which I believe to be unique to the civil law legal tradition will be included in another. For purposes of this article, I do not include the United Kingdom in the critique, as it is outside of the civil law tradition and has, since the 1970s, maintained a tradition of legal clinics, though not as vigorous and thriving as that in the United States.³⁹ My focus, for this review, will lie on the German and French models, with some references to other civil law countries in Western Europe where appropriate.

II. Five Traditional Critiques of Clinical Legal Education

I will start with the “easy” critiques or bases for resistance by Western Europe to clinical legal education’s innovations: what the legal education traditions of Germany and France share with other regions of the world, in terms of current or likely critiques of clinical legal education. I will suggest five such bases for resistance, and how history has addressed them in other regions.

³⁷ Erhard Blankenburg and Ulrike Schultz, *German Advocates: A Highly Regulated Profession*, in *LAWYERS IN SOCIETY: AN OVERVIEW* 92 (Richard L. Abel & Philip S.C. Lewis eds., 1995).

³⁸ Richard L. Abel, *Revisioning Lawyers*, in *LAWYERS IN SOCIETY: AN OVERVIEW* 1,4 (Richard L. Abel & Philip S.C. Lewis eds., 1995).

³⁹ BRAYNE (note 31), 5. Brayne and his colleagues note that there is a national organization of clinical teachers, the Clinical Legal Education Organization (CLEO).

1. Pre-existing apprenticeships

First, both Germany and France already have mandatory periods of apprenticeship before entry into the profession. These apprenticeship stages of entry into the profession are designed to accomplish the very thing that clinical legal education sets out to do, which is to move students from theory to practice just before they take on the role of practicing attorney. In Germany, students in the two-year period of practical training after formal classes end, called the *Referendariat*, receive a state-paid salary.⁴⁰ In France, recent reforms will bring the structure into conformity with the Bologna reforms, making it a system of three years for License, two additional years for a Masters, and three additional years beyond that for the Doctorate.⁴¹ There is, however, nothing yet available in English to detail how formal classes will intersect with the transition to practice through an apprenticeship.

Under the prior system of legal education in France, after the completion of even the first three years of study, known as the *Licence*, the graduate could move directly into some careers such as banking, public administration, insurance or estate agencies.⁴² Those who wished to become private or company practitioners, however, continued through a fourth year, obtained a degree known as the *Maîtrise*, then began a period of practical training in programs run by special Bar schools, known as *centres de formation professionnelle*.⁴³ Prior to completion of the *Maîtrise* in France, the student's studies are almost entirely theoretical, prompting one recent dual-degree student who had studied in both England and France to observe, "After studying in France, I have no idea what the practice of law in France must be like."⁴⁴

The problem with apprenticeships is not the idea itself but the practice. In theory, the classic apprenticeship, so widely used throughout the civil and common law world outside of the United States, is testimony to the value of practical training prior to the entry into the profession. A well-designed, carefully supervised apprenticeship program could play the role that clinical legal education plays in the U.S. Practical problems with the modern, atrophied apprenticeship model around the world are many, but the most serious is

⁴⁰ Andreas Bückner and William A. Woodruff, *The Bologna Process and German Legal Education: Developing Professional Competence Through Clinical Experiences*, 9 GERMAN LAW JOURNAL 575, 613 (2008).

⁴¹ EVA STEINER, FRENCH LEGAL METHOD 193 (2002).

⁴² See, *supra*, note 41, 192.

⁴³ See, *supra*, note 41, 192-193. Pierre Sanglade and Hélène Cohen, *The Legal Professions in France*, in THE LEGAL PROFESSIONS IN THE NEW EUROPE 127, 133 (Alan Tyrrell & Zahd Yaqub eds., 2nd ed., 1996); Andrea Nollent, *Legal Education in France and England: A Comparative Study*, 36 LAW TEACHER 277, 283 (2002). Professor Nollent refers to the diploma for a later, still-practical stage of training in France as a "DESS".

⁴⁴ Nollent, *supra*, note 43, 285.

exploitation and the lack of serious pedagogical content. Ed Rekosh notes that in many cases, students learn “more about how to be filing clerks and secretaries than about how to be practicing lawyers.”⁴⁵ As one German professor notes, this very important phase of learning for students is “turned over to practitioners, bureaucrats and judges,” rather than a rigorous faculty supervisor who can help the student draw knowledge from reflection on the new experience of practice.⁴⁶ In many countries, finding an apprenticeship is not easy, requiring the applicant to rely on family connections or personal relationships, rather than merit, to obtain the right appointment, if any, to a law firm or other coveted legal work. Prof. Abel cynically adds that an advantage of the apprenticeship system “is the opportunity for discrimination.” He notes that it was only when law schools replaced the apprenticeship system in the United States during the first two decades of the Twentieth Century that “ethno-religious minorities entered the American profession in significant numbers.”⁴⁷ He notes that the same is true for women, who entered the university more quickly than they entered the profession through the apprenticeship system on the Continent. Finally, two German experts conclude that the period of practical training gives undue emphasis to “the technical skills needed in the judiciary,” an emphasis that reinforced by the tendency of examination panels to be made up of judges, prosecutors and public servants. “There is,” they note, only a four-month period required in a private office, which means “little training in advocacy, drafting, negotiation, or legal advice.”⁴⁸

2. Large size of entering law school classes and age of undergraduate law students

The exaggerated size of all entering law school classes in Europe makes very real the problem of clinical legal education, which requires smaller numbers of students per faculty member in order to provide quality supervision of student work and competent representation of clients. While student-teacher ratios in the U.S. average somewhere in the range of 20:1, the ratios in Germany, at least a decade ago, were more than 100:1. The same is true with many European law schools, not only in Western Europe but in the Central and Eastern European countries, as well as in Latin America. High student ratios should not be an impediment to clinical legal education in Western Europe for three reasons. First, the privatization of legal education has produced a number of alternative law faculties in every country in which class sizes are smaller; clinical legal education need not be limited to the traditional, large state-funded institutions. Even in the large faculties,

⁴⁵ Rekosh, *supra* note 8, 2.

⁴⁶ Bucker and Woodruff, *supra* note 40, 610.

⁴⁷ Abel, *supra* note 36, 18.

⁴⁸ Blankenberg and Schultz, *supra* note 37, 100.

however, clinics can thrive.⁴⁹ Second, clinics are offered only in the last years of formal schooling, when only the most dedicated students remain in school; large numbers of entering students drop or fail out after the first two years.⁵⁰ Second, clinics are made available as an elective course, and are offered only to those who elect to take them. This tends to produce highly motivated students prepared to take the risks and excitement attendant upon experiential learning.

A related issue to the number of entering students is their age. Legal education in Europe is an undergraduate course of study, beginning immediately after high school. Some argue that these students are “too young to think for themselves and need first to accumulate a corpus of knowledge.”⁵¹ I have argued elsewhere, and proven, I believe, that the *relative* ages of students in a clinical program are similar (21-23 years old in the fourth or fifth year of undergraduate legal education, where clinics would be appropriate, and 22-25 in typical graduate clinical programs in the U.S.), and that adult learning theory places both of these groups of young people squarely within the “adult” cohort for mature learning purposes.⁵²

3. Limitations on student practice of law, and student usurpation of paying clients

A third traditional reason for resistance is related to these first two. Large numbers of students engaged in even the limited practice of law may be seen by the profession or the state as taking away clients from the paying clientele. They are seen as a threat to the earnings of those lawyers who have “paid their dues” by going through the rigorous process of admission to the bar. This criticism can be met in two ways. First, students normally represent only those clients who cannot otherwise afford to pay a lawyer, or clients who could not retain a lawyer because of the complexity, novelty or controversy surrounding their legal claims. Many clinical programs follow local or national poverty guidelines to assure that they are not taking cases away from the private bar, and other look for novel issues involving wide impact on policies affecting the broadest of public interests, such as the rights to basic subsistence, housing or criminal charges. Second, student practice rules, where they exist, do not permit widespread representation but instead limit students to a narrow range of matters, often by permission of the presiding authority after proof is offered of the student’s enrollment in an accredited clinical

⁴⁹ One can note, for example, that two of the most successful clinics in Chile are mandatory programs integrated into the last years of study at two of the largest-enrollment universities in the country, the University of Chile and the Catholic University of Chile. Wilson, *supra* note 13.

⁵⁰ Blankenberg and Shultz suggest that the drop-out rate in German law schools is about 50% in the first phase, and about 25% in the second phase, *supra* note 37, 99.

⁵¹ Alain Lempereur, *Negotiation and Mediation in France: The Challenge of Skill-Based Learning and Interdisciplinary Research in Legal Education*, 3 HARVARD NEGOTIATION LAW REVIEW 151, 164 (1998).

⁵² Wilson, *supra* note 13, 570-573.

program, the client's indigence, the client's permission to be represented by students, and adequate supervision by a lawyer present in court.⁵³

4. The small and solo law firm as a model of practice in Europe

A fourth critique is structural in nature. Clinics tend to work best where the private bar is strong and independent, not scattered among extensive small firms and solo practitioners. Until recently, advocates in both Germany and France tended to solo or small firm practice; it is only in recent years that the big firm has made headway in both countries, providing needs for in-house counsel and large corporate firms, both local and international. The emergence of large firm practice has changed the character of the bar in Western Europe, as mergers and acquisitions accounted for 20-30% of German law firm revenues more than a decade ago, and probably more today.⁵⁴ This very phenomenon has created additional pressures for Continental lawyers to acquire the skills of negotiation and bargaining, all within the constellation of alternative dispute resolution, an area of practice growing exponentially in importance.⁵⁵ Clinics are the ideal vehicle to teach these skills, as well as the ethics and values of such practice.

5. Clinics as a way of filling the gap in needed legal services for the poor

In developing countries, clinical programs are often offered as an alternative to traditional government-funded legal aid, with students filling the gap of legal services for the poor that is not made up by the private bar. This is, in my view, an improper allocation of clinic resources, a quick fix for a problem that should more appropriately be addressed by governments assuming their responsibility to adequately fund essential legal services for the poor in both civil and criminal matters in the courts. The mission of clinics within law schools should properly be pedagogically driven, not service driven. Loading students down with too many cases of poor clients is a disservice both to student learning and client service, and even the most accomplished clinical supervisor cannot provide quality oversight with an excessive number of clients served by large numbers of students. Some in Western Europe may argue that clinics are not needed because the state already fulfills its role in providing legal services to the poor. The state's fulfillment of its role as primary funding source of legal services for the poor leaves law school clinics to their primary

⁵³ See, e.g., David F. Chavkin, *Am I My Client's Lawyer: Role Definition and the Clinical Supervisor*, 51 SOUTHERN METHODIST UNIVERSITY LAW REVIEW 1507 (1998) (containing, in Appendix A, at 1546, a listing of student practice rules by state in the United States).

⁵⁴ David M. Trubek et al., *Global Restructuring and the Law: Studies of the Internationalization of Legal Fields and the Creation of Transnational Arenas*, 44 CASE WESTERN LAW REVIEW 407, 447 (1994).

⁵⁵ See, Alain Lempereur, *Negotiation and Mediation in France: The Challenge of Skill-Based Learning and Interdisciplinary Research in Legal Education*, 3 HARVARD NEGOTIATION LAW REVIEW 151 (1998).

mission – the training of law students for the competent practice of law with a limited but closely scrutinized and reviewed caseload.

III. The Unique Traditions of Western Europe

A second set of reservations about clinic is more profound and more tenacious in Western Europe. The issue is, in a word, “tradition,” but I will attempt to examine tradition through the lens of three related critiques: the conception of law, the status and role of the law professor, and lack of faculty autonomy and control over curriculum.

1. Conceptions of law in the common and civil law traditions: the common roots of German legal science

The first critique, differences in the conception of law, is one of the most complex and illusive, but at the same time one of the most basic systemic differences. One scholar suggests that the differences in conceptions of international law lie in what she calls the U.S. allegiance to pragmatism and realism, versus the French (and German) loyalty to formalism and positivism. Those deep cultural differences were no more graphically demonstrated than in the confrontation in the UN Security Council, prior to the second Iraq war, between the views of the French Minister of Foreign Affairs, Dominique de Villepin, and the American Secretary of State, Colin Powell. These were “diametrically opposed perspectives.”⁵⁶ More on international law later, but for now, suffice it to say that the French and German systems tend to see law as “a series of fundamental principles”, while the common law traditions of the U.S. and Great Britain tend to see law as “a means of providing remedies for certain cases: remedies precede rights.”⁵⁷ Another way to put this comes from one of my clinical colleagues, Prof. Philip Genty, who argues that law in common law jurisdictions is “bottom up” and inductive, while civil law jurisdictions see law as “top down” and deductive. To the extent that law is seen as more “scientific” in the civil law than in the common law, judges become more like technicians, applying the appropriate norm to the specific facts, while the common law lawyer and judge might be seen more as social engineers.⁵⁸ Again, as summarized by a student participating in the French-British dual degree program, “I think in France we learn how to learn and how to think whereas in England we learn how to do things with facts.”⁵⁹

⁵⁶ Emmanuelle Jouannet, *French and American Perspectives on International Law: Legal Cultures and International Law*, 58 *MAINE LAW REVIEW* 292, 294 (2006).

⁵⁷ Nollent, *supra* note 43, 283.

⁵⁸ Philip M. Genty, *Overcoming Cultural Blindness in International Clinical Collaboration: The Divide Between Civil and Common Law Cultures and Its Implications for Clinical Education*, 15 *CLINICAL LAW REVIEW* 131, 137 (2008).

⁵⁹ Nollent, *supra* note 43, 287.

German “scientific method,” within the academy, in fact, can claim a strong role in influencing the original vision of legal education promoted at Harvard University in the late nineteenth century, when law schools were being “invented” in the U.S. as a replacement for the traditional apprenticeship system.⁶⁰ The German university system, then at its apex, strongly influenced Harvard’s president, Charles Eliot, and his law school dean, Christopher Columbus Langdell, in the design and implementation of the case method for study of common law jurisprudence in a structured way, together with the Socratic method of questioning in class. German scholars such as Leopold von Ranke put a strong emphasis on fidelity to sources and rigorous library research, and the influence of the German university also deeply affected the move from part-time to full-time law school faculty during the same period. That scientific method still dominates in the law schools of both Germany and the United States, through the lecture and the Socratic case method. It is the fidelity to science that makes clinical legal education so appropriate for the Continental academy.

This is not to say that clinical legal education is antithetical to Continental legal science. In fact, my own work, and that of scores of others involved in consulting in the civil law world, shows that the clinical methods work in Central and Eastern Europe and Latin America; clinical legal education has benefitted students and faculties alike in those countries, and the clinical method continues to demonstrate its acceptance by its ongoing rapid expansion. Both of the dominant systems of legal education purport to train the student to think like a lawyer, while clinical legal education teaches students to act like lawyers.⁶¹ One might view the classroom as a kind of laboratory, Professor Genty suggests, “in which professors teach the scientific, substantive principles of law and then ask the students to engage in the central activities of the natural or social scientist: hypothesis, experimentation, and refinement of the hypothesis in response to test results.”⁶² Structured clinical teaching provides an excellent compliment – not replacement – for rigorous doctrinal analysis, whether of a statute or a case.

2. The nature and status of the professoriate

Second, in the civil law tradition, the law professor not only expresses the law but formulates it, while in the common law system the judge is the primary law-giver. This corollary of the first structural characteristic may account, more than any other, for the resistance to clinical legal education. “German professors (and those in many other civil

⁶⁰ SULLIVAN, *supra* note 18, 4; Laura I. Appleman, *The Rise of the Modern American Law School: How Professionalization, German Scholarship, and Legal Reform Shaped Our System of Legal Education*, 39 NEW ENGLAND LAW REVIEW 251, 274-283 (2005).

⁶¹ Roy T. Stuckey, *Preparing Students to Practice Law: A Global Problem in Need of Global Solutions*, 43 SOUTH TEXAS LAW REVIEW 649, 663 (2002).

⁶² Genty, *supra* note 58, 152-153.

law faculties) regard themselves primarily as scholars, who also happen to teach.”⁶³ One scholar, writing about candidates for the professoriate in Germany, notes that “[t]o begin with, he is seldom a practitioner.”⁶⁴ The road to the professoriate is long and arduous, and is a career in the civil law tradition, much as is that of the judge and the prosecutor, beginning immediately after graduation, albeit at a higher level. Once tracked into a career as a professor, the Continental scholar is measured almost solely by her performance on examinations and by written scholarship, not by her courtroom victories, her time in practice or even her work as a judicial clerk, all of which are of high importance for the American aspirant to the academy. Again, I see this not as an obstacle to the introduction of clinical legal education but a challenge. At the time of its introduction in the United States, clinical legal education fought the established academic community, which felt that clinical legal education risked converting the legal academy from preparation for a profession to preparation for a trade. The echoes of legitimation through “science” resound in this critique. Let there be no mistake. If clinical legal education is grounded in the social sciences, as legal education originally purported to be in Europe, and still does in much of Latin America, it can justify its methods and principles in the current social science of adult learning equally as well, if not better than can the advocates for traditional classroom teaching.

3. State control over strictly structured legal education

The third and final hurdle to clinical legal education is a technical one involving state control over what are highly structured curricula in Europe. The standard course of study in Continental law schools is highly structured, leaving little room for elective course choices that are accorded to American law students in their final two years of study. This problem, like that of student practice of law, involves a process of persuasion outside of the law school, with both the bar and the legislatures. Some suggest that state control over law schools, combined with the tendency to condense legal education into a shorter period of time under the Bologna process, will increase pressures to strictly control the doctrinal content of law study.⁶⁵ Others assert, quite properly in my view, that an integrated

⁶³ Abel, *supra* note 34, 13.

⁶⁴ Jürgen Kohler, *Selecting Minds: The Recruitment of Law Professors in Germany*, 41 AMERICAN JOURNAL OF COMPARATIVE LAW 413, 417 (1994). The same appears to be true in France. C. Mouly and C. Atias, *Faculty Recruitment in France*, 41 AMERICAN JOURNAL OF COMPARATIVE LAW 401 (1993).

⁶⁵ See, e.g., comments by Heribert Hirte, current president of the European Law Faculties Association (ELFA), and professor at the University of Hamburg, in *Symposium, Enriching the Law School Curriculum in an Increasingly Interrelated World – Learning from Each Other*, 26 PENN STATE INTERNATIONAL LAW REVIEW 831, 897-898 (2008). Of interest is a recent study by the ABA Section on Legal Education, designated the “Out of the Box Committee”, whose mandate was to try thinking “outside of the box,” meaning a look beyond traditional boundaries, on needed reforms in legal education. One of their conclusions suggested the possibility of extending legal education in the United States to four years while cutting undergraduate studies to three years, primarily because of the growth in the fields of international law, health law, employment law and intellectual property, as well as administrative aspects of the “welfare state.” The very first reform suggested by the committee was the

curriculum of training in legal skills and values has a place alongside the teaching of legal analysis, critical thinking and legal theory, “irrespective of any potential changes in the length or organization of the *Referendariat*.”⁶⁶ Let us move, then, to a fuller discussion of the impacts of the Bologna process on legal education in Germany and France.

C. Opportunities for Innovation: the Bologna/Sorbonne Process

In 1992, almost two decades ago, a German scholar and academic wrote of the “increasing Europeanization of the legal profession,” as well as what she called “another eruption of discussions” in the “never-ending story” of German legal education. She noted complaints about many aspects of the then-current system, including the content of legal education, which tended toward “marginally important topics” driven by the demands of state examinations, which students must pass before moving on to any career in law. There was no room, she noted, for important new doctrinal areas such as environmental law, European law, tax law and immigration law. Most important, for our purposes, was her criticism of the lack of a “rapprochement of theory and practice.” While she noted a 1984 reform to introduce a practice component into the university phase, she decried its reality as “just another motion for the students and educators to go through.” She noted and endorsed what she called the movements toward a “European Law School” and a “European Common Law.”⁶⁷

These visionary critiques took shape later in the decade of the 1990s, when forty-six participating countries, including the entire European Union membership, signed onto the 1998 Sorbonne Declaration and the 1999 Bologna Declaration, along with several additional communiqués over the past decade, all collectively referred to today as the Bologna Process, with a goal to create a so-called European Higher Education Area (EHEA) by the year 2010.⁶⁸ This section discusses briefly the possibilities opened, through the Bologna process, for reform of curricula, in Germany and elsewhere in Western Europe, to include a component of clinical legal education. Particular emphasis is giving here to a project within the Bologna process called “Tuning”, as well as the recommendations of the Council for Bars and Law Societies of Europe (CCBE), which will be discussed more fully below.

“shameful neglect” by law schools of what it called the “transformative effect of globalization of the practice of law.” *ABA Section on Legal Education: Out of the Box Committee Report* (November 2008), on file with the author.

⁶⁶ Bückner and Woodruff, *supra* note 40, 611.

⁶⁷ Jutta Brunnée, *The Reform of Legal Education in Germany: The Never-Ending Story and European Integration*, 42 *JOURNAL OF LEGAL EDUCATION* 399, 413-414, 424 (1992). Prof. Brunnée was educated in law in Germany, then obtained a graduate degree and became a law professor at McGill University in Canada.

⁶⁸ Laurel S. Terry, *The Bologna Process and Its Impact in Europe: It's So Much More than Degree Changes*, 41 *VANDERBILT JOURNAL OF TRANSNATIONAL LAW* 107, 113-114 (2008).

I. Bologna Reforms in Germany

Much ink has been spilled, although less in English than in German, over the question of how Germany will adapt to the Bologna process.⁶⁹ Writing in 2001, one scholar suggested that “most important aspect” of the German debate focused on recommendations from an expert report on a model curriculum that includes “a stronger emphasis on the aspects of practical legal work.” Under the proposed plan, a focus on practice would introduce “at a very early stage in legal education the aims and point-of-view of professional legal work.” The problem, the group noted, was that “too many students who have finished university studies encounter severe difficulties when they are asked to define the interests of clients and work towards achieving them.”⁷⁰ Four years later, the same critic identified a primary issue as integration within Europe. He queries “how far qualifications acquired in other member States will allow access to practical training,” a much more complex question, implicating issues of deregulation by the German state of the giving of legal advice, “where German law traditionally has had a very strict approach requiring that only lawyers admitted to the Bar can give legal advice.”⁷¹ These are not small questions.

II. The Tuning Project, CCBE Proposals, and Clinical Legal Education

Clinical legal education is a natural fit for the Bologna Process. The Process creates “space for practice-oriented approaches in law school curricula.”⁷² Within the expansive agenda of educational reforms in Europe and the Bologna Process, which has been amply described elsewhere,⁷³ there are two aspects on which I will focus, for purposes of brevity, because of their possibilities for reforms to include aspects of clinical legal education. They are the so-called Tuning Project and the recommendations of the Council of Bars and Law Societies of Europe.

⁶⁹ Two good examples of English-language critiques are both by Johannes Riedel, a civil servant in the Justice Ministry of North-Rhine/Westphalia in Düsseldorf. Johannes Riedel, LL.M., *The Reform of Legal Education in Germany*, European Law Faculties Association, available at: <http://elfa-afde.eu/EJLEISSUES.aspx>, visited on February 26, 2009; Johannes Riedel, *The Bologna Process and Its Relevance for Legal Education in Germany*, 2 EUROPEAN JOURNAL OF LEGAL EDUCATION 1 (2005).

⁷⁰ Riedel (2001), *supra* note 69, 4.

⁷¹ Riedel (2005), *supra* note 69, 62.

⁷² See, Lusine Hovannisian, *Clinical Legal Education and the Bologna Process*, PILI Papers, No. 2, December 2006.

⁷³ Terry, *supra*, note 68; Frans Vanistendael, *Blitz Survey of the Challenges for Legal Education in Europe*, 18 DICKENSON JOURNAL OF INTERNATIONAL LAW 457 (2000); Frans Vanistendael, *Curricular Changes in Europe Law Schools*, 22 PENN STATE INTERNATIONAL LAW REVIEW 455 (2004); Louis F. Del Duca, *Cooperation in Internationalizing Legal Education in Europe – Emerging New Players*, 20 PENN STATE INTERNATIONAL LAW REVIEW 7 (2001).

1. The Tuning Project

The Tuning Project was begun in 2000. It is an independent project of a group of European universities and not a formal part of the Bologna Process, although it does receive governmental funding. Co-ordination of the Project is done by representatives from the University of Deusto in Bilbao and the University of Groningen in the Netherlands. The goal of the project is to “develop a framework of comparable and compatible qualifications” in each signatory country of the Bologna Process, with a “checklist for curriculum evaluation and examples of good practices.” Like the Best Practices project in the U.S., the Tuning Project attempts to develop a list of measurable outcomes that a student should be able to demonstrate in each of nine specified subject matter areas.⁷⁴

2. The CCBE and QUAACAS

The Council of Bars and Law Societies of Europe (CCBE) represents three quarters of a million lawyers in Europe. The CCBE report, over two hundred pages long, includes a section similar to the design and structure of the Tuning Project. It covers conceptual and analytical abilities of a successful lawyer, as well as “the managerial, personal skills, knowledge and competences, necessary to be an effective lawyer.” The report includes what it calls “deontological requirements,” which Americans would recognize as ethical requirements of practice such as professional secrecy, client confidentiality, among others.⁷⁵ The recommendations of the CCBE on training outcomes include an entire section devoted to “Practical knowledge and skills,” “Ability to consider the client’s needs,” “Ability to listen to the client’s request and to analyse the client’s request,” and “Ability to communicate.”⁷⁶ Again, these are skills, ethics and values that cannot be taught by lecture; they must be taught by doing, and clinical legal education, as I have broadly discussed it here, is, in my view, the best way to guarantee attainment of these competences within the reformed law school curricula throughout the Bologna Process.

In 2008, QUAACAS (Quality Assurance, Accreditation and Assessment Committee), a committee of the European Law Faculties Association (ELFA) charged with tuning legal studies in Europe, issued its initial findings. The committee found four “competences” for law students. Competences measure outcomes, and can be written as “This student is able to . . .” after completion of a particular educational task. Their four competence areas are: “(1) ability to demonstrate an understanding of the concept map of a legal system *and to*

⁷⁴ Terry, *supra* note 68, 143-144.

⁷⁵ Julian Lonbay, *The CCBE and ELFA Projects on Internationalizing Legal Education in Europe*, in Symposium, *supra* note 65, 889.

⁷⁶ The *CCBE Recommendations on Training Outcomes for European Lawyers* are set out in the Symposium, *supra* note 65, at 902.

deploy it in the resolution of concrete legal problems, (2) an understanding of core values associated with law, (3) an ability to use certain legal techniques, and (4) an ability to demonstrate a number of transferrable skills.” The emphasis here is mine, to make a point. Each of these four competences engages the student in measurable outcomes involving the practice of law, whether as an advocate, a prosecutor, judge or public servant. The short report, the beginning of a longer process, emphasizes that the competences are both procedural and substantive, including procedural “values such as hearing both sides before making a decision, or relying on convincing evidence, of impartiality before forming judgments, and the ability to give rational reasons as justifications.” Substantively, the values are “associated with the rule of law, constitutional rights, and human rights.”⁷⁷ The latter is implicated in my own recommendations below.

III. Beachheads in Clinical Legal Education in Europe

Law schools in Western Europe have not been idle during this rapid process of reform. There is evidence that a number of faculties have made efforts to integrate clinical offerings into their curricula. This section will identify a few of which I am aware, outside of the U.K. There are probably others.

Prof. Jon Johnsen, of the Oslo Law School in Norway, describes “voluntary” student clinics that have existed in that country since the early 1970s. He was the originator of a program called “Juss-Buss”, a mobile clinic with students involved in providing legal services in the Oslo area, one of the first known such clinics in the region, although apparently not for university credit.⁷⁸

Another early effort has been mentioned above. In France, during the 1990s, the growth of the Euro-law market contributed to the growth of law faculties. In Paris alone, eleven new law faculties came into being from the 1970s onward. One group of renegade legal educators began to develop what was, for that country, a radical new approach to legal education for business lawyers. The “Rennes School” of commercial law argued that “business law, like surgery, had to be learned in practice and through close contact with practitioners.” Practitioners were recruited as Adjunct professors and the movement created a “quasi-academic degree called a DACE, of the “Certificate for Business Lawyers.” Soon, multinational law firms began to develop links, and employment, with the new “practitioner-professors,” and the Paris “old priests club” of professors, which had stood aloof from law practice and business, began to be eclipsed.⁷⁹ That process is still unfolding,

⁷⁷ *Tuning Legal Studies in Europe: Initial Findings, Report of QUAACAS to the General Assembly of ELFA*, Hamburg 2008, available at C:\Documents and Settings\My Documents\Research\QUAACAS\ Hamburg Report\QUAACAS Report 02.doc.

⁷⁸ Jon T. Johnsen, *Nordic Legal Aid*, 5 MARYLAND JOURNAL OF CONTEMPORARY LEGAL ISSUES 301, 328 (1994).

⁷⁹ David Trubek *et al.*, *supra* note 54, 449-453.

with negotiation and mediation skills teaching achieving some measure of legitimacy in French legal education.⁸⁰

Other projects in Europe seem to represent the adoption of more recognizable clinical methods. In France, discussions about clinics have been advanced by Dean Norbert Olszak of the Robert Schuman University in Strasbourg.⁸¹ Other efforts include movements in Spain to establish a Prisoner's Rights Clinic at the University of Tarragona and another to develop a clinic in international human rights at the Carlos III University in Madrid.⁸² In the Netherlands, a Human Rights Clinic is reported to have begun work at the University of Amsterdam, and another has been considered for adoption at Utrecht University.⁸³

Closer to home, the Hochschule Wismar in Germany has begun work on development of a clinical component in their curriculum since 2004.⁸⁴ Before leaving this look forward to the Western European law schools now considering or having started new clinics in the region, I cannot resist a brief historical reference to bring us full circle. Ed Rekosh, director of the Public Interest Law Institute in Budapest, notes in a recent article now awaiting publication that the origins of clinical legal education are not to be found in the United States during the 1960s, as the conventional wisdom suggests. Instead, he finds links from the earliest mention of clinical legal education in the United States, in a 1917 article, backwards to both Copenhagen, in 1907, and to Germany, in 1847!⁸⁵ No doubt, these origins lie in the powerful pull of a truly effective apprenticeship model, the universally recognized and classic paradigm of learning by doing.

Given the substantive emphasis on human rights in curricular reform, and the focus of a number of clinics on human rights in Western Europe, the final question for this article is

⁸⁰ Lempereur, *supra* note 55.

⁸¹ Norbert Olszak, *La Professionnalisation des Etudes de Droit: Pour le Developpement d'un Enseignement Clinique*, 18/7203 Recueil Dalloz 1172 (5 May 2005), cited in Hovannisian, *supra* note 72, 20, n. 43.

⁸² The Tarragona clinic is mentioned in Hovannisian (note 72), 16, and was contacted by the author for a visit during the summer of 2007. The author has held a seminar for aspiring clinical teachers in December of 2006 in Avila, Spain, with the collaboration of Diego Blázquez. See Diego Blázquez Martín, *Apuntes Acerca de la Educación Jurídica Clínica*, 3 Revista de Filosofía, DERECHO Y POLÍTICA 43 (invierno 2005/2006).

⁸³ The Amsterdam clinic is mentioned in Hovannisian, *supra*, note 72. The author made a visit to Utrecht to discuss formation of a human rights clinic there, in conjunction with the law faculty and the Netherlands Institute of Human Rights (SIM) during the winter of 2006, and will be in residence as a visiting scholar there during the fall semester of 2009.

⁸⁴ Bücken and Woodruff, *supra* note 40, 611.

⁸⁵ Edwin Rekosh, *Constructing Public Interest Law: Collaborative Development in Central and Eastern Europe*, (draft article for publication in the UCLA Journal of International Law and Foreign Affairs, March 2008, on file with the author. Cited with permission.), at 29, (*supra* notes 88 and 89).

the question of whether human rights clinics are the best, or at least a possible direction for the doctrinal development of clinical legal education.

D. International Human Rights Law Clinics as a Way Forward?

I have been a clinical teacher for almost twenty-five years, first at the innovative public interest-focused CUNY Law School, in Queens, New York City, and now at American. I began my career as a criminal defense lawyer in Illinois, and later as spokesperson for that segment of the bar in Washington. I never dreamed that I would be a law school professor when I graduated from law school, and would have laughed at that suggestion from any of my classmates. This hardly matches the typical career path of the European law professor. Nonetheless, I feel strongly that there may be a road forward for Europe in the adoption of human rights clinics as an area of practice.

Human rights law is now one of the most active areas of practice within the Council of Europe. The caseload of the European Court of Human Rights (ECHR), in fact, reached close to 100,000 pending matters last year. Most of these cases came from four countries: Russia, Ukraine, Turkey and Romania.⁸⁶ While the ECHR will have to adapt to this growing caseload by developing faster and more efficient methods for dealing with cases, this tremendous caseload speaks volumes about raised consciousness within Europe as to the extent of serious human rights violations. Europe, unlike the U.S., has developed a strong culture of acceptance of the decisions of the ECHR, unlike its regional counterpart in the Americas, the Inter-American Commission on Human Rights, in Washington, and its counterpart in Costa Rica, the Inter-American Court.

Our International Human Rights Law Clinic at American University has dedicated itself to work on both domestic and international human rights issues since its inception in 1990. We have been involved in ground-breaking issues such as the first case to raise the issue of the risk of female genital cutting in Africa as a basis for political asylum in the U.S.; the arrest of Augusto Pinochet in London and his possible transfer to Spain for trial, along with other military officers in both Chile and Argentina during the dirty wars there; and most recently, involvement in an array of cases and issues arising from the detentions of so-called enemy combatants at Guantanamo Bay, Cuba. These are the issues of our time, cutting-edge issues in which students have played a key role as student attorneys. We have traveled with clinic students to various parts of the United States, to Sierra Leone, Botswana, Mexico and Guatemala, and to Spain. Our clinic, immensely popular within the law school, now includes 32 students each year, mostly students in their final year who are

⁸⁶ European Court of Human Rights, Press Release: Press Conference with the President of the European Court of Human Rights, at <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=846335&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649> (Jan. 29, 2009), visited on March 20, 2009.

enrolled for the full academic year, and who earn one full semester of credit toward the six total semesters of study needed for graduation. We employ four full-time faculty and carry an average caseload of 50-70 cases at any time. We are, without question, one of the largest human rights law firms in the nation, if not the world.

Our law school is not alone in offering human rights as a clinical option. At the time I started teaching human rights in 1990, I gathered with five other faculty, scattered about the country, the hearty few involved in human rights activism within law schools at the time. This year, some 40 faculty will gather at Boalt Law School in Berkeley, California for an ongoing gathering of human rights clinics and centers from around the country.⁸⁷ A growing network of human rights academics called the Brining Human Rights Home network, based at Columbia University in New York, are working together to raise the profile of human rights here in the U.S., at the national, state and local levels.

Europe presents stronger possibilities within the academic community for the development of human rights clinics and centers. Somewhat ironically, one can note that there is an incredibly strong culture of human rights within Europe, while academic focus on the real of human rights is still largely theoretical, while in the United States, the clinical movement has given ever-greater focus to human rights, but the culture of human rights adherence, in both the U.S. judiciary and foreign policy, is struggling against a long tradition of exceptionalism. The educational reforms of the Bologna Process present a historic moment: the opportunity for a new clinical movement grounded in human rights activism within the law school community of integrated Europe.

My own motivations for becoming a law school teacher were driven by what I can only describe as the painful and intuitively poor methods of law school teaching that I personally experienced, on the receiving end, in the United States during the late 1960's and early 1970's. I took a three-year hiatus from law school to join the Peace Corps, during which time I served in Panama and worked in Puerto Rico, believing I might not return. I did return, happily for me, and I offer the suggestions in this article in the spirit of international collegiality, not because I have anything to gain personally from their adoption. I truly believe these are sound educational ideas, grounded in proven theories about adult learning. I can see proof of that in my students' eyes every time they appear in court to handle their first case under my supervision, win or lose. I see it in their faces after they successfully present a victim's poignant oral appeal to the Inter-American Commission on Human Rights, something that my students have done under my supervision on scores of occasions, often against a vast array of diplomats or counsel representing governments including the United States. This is the heaven-or-hell crucible of work, in role, as a student

⁸⁷ See, Deena Hurwitz, *Lawyering for Justice: The Inevitability of International Human Rights Clinics*, 28 YALE JOURNAL OF INTERNATIONAL LAW 505 (2003) (Identifying, in Appendix, at 549, 34 human rights clinics or centers in the United States); Arturo J. Carrillo, *Bringing International Law Home: The Innovative Role of Human Rights Clinics in the Transnational Legal Process*, 35 COLUMBIA HUMAN RIGHTS LAW REVIEW 527 (2004).

attorney for real clients in real cases. And it is vastly superior to any lecturing I could do on the code or cases involved in the resolution of their cases, or even a full thesis on "The Agony and Ecstasy of the Lawyer's Work in Role." Europe should try experiential learning in its law schools. The time is now.