

**CLINICAL LEGAL EDUCATION AS AN INSTRUMENT TO ADDRESS ACCESS TO JUSTICE: A CRITICAL ANALYSIS OF THE CLINICAL MOVEMENT IN GERMANY**

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**Abstract**

This report explores the role of clinical legal education in promoting Access to Justice and human rights. Legal clinics have the potential to provide practical skills to law students, sensitizing them to social challenges and Access to Justice issues while offering free legal advice to marginalized individuals. By effectively combining these approaches, legal clinics can contribute significantly to achieving greater Access to Justice. However, German law clinics take up a rather neglected role within German legal education. After highlighting the role of legal clinics within Access to Justice, the report assesses the movement of clinical legal education in Germany, providing a historic overview and discussing the current situation. The report then identifies the main challenges of the German clinical movement such as limited recognition in the academic environment and financial instability. In conclusion, institutional support, and recognition within the educational and academic fields are identified as crucial elements in enhancing Access to Justice through legal clinics in Germany.

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## **Introduction**

Clinical legal education plays a prominent role in promoting human rights and Access to Justice. By providing justice education for future lawyers while enhancing Access to Justice for marginalized groups, legal clinics have the potential to have a great impact. However, in order to live up to their full potential, it is necessary for legal clinics to be acknowledged within (legal) society as a prominent and esteemed structure. This report critically analyses the clinical movement in Germany and develops ideas and strategies for increasing the benefit factor of legal clinics in Germany.

## **Potential of clinical legal education for Access to Justice**

Clinical legal education mainly serves two goals: First, the theoretical studies of law are supplemented with practical experience, and value is added to the studies of law students. They will be equipped with practical skills that enable a smooth transition into the legal profession. Secondly, free legal advice can help marginalized groups of people access legal support.<sup>1</sup> When these two approaches are effectively combined,

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<sup>1</sup> See also: *Gigimon/Nandwana*, Clinical Legal Education: A Virtual Mode Of Access To Justice, International Journal of Clinical Legal Education 04/2020, accessible at: <https://journals.northumbria.ac.uk/index.php/iicle/article/view/1054> (last reviewed: 15.08.2022), p. 64; *Hannemann/Dietlein*, Studentische Rechtsberatung und Clinical Legal Education in Deutschland, 2016, pp. 1, 3; *Hilb/vom Felde*, Refugee Law Clinics in Deutschland – ein studentisches Modell für die Veränderung der juristischen Ausbildung?, Kritische Justiz, 02/2016, p. 221; *Lück*, Guter Rat zu teuer? Bestandsaufnahme zu studentischer Rechtsberatung und Überlegungen zu Qualitätssicherungsmaßnahmen in Law Clinics, Juristische Ausbildung 07/2020, p. 706; *Lewis*, Clinical Legal Education Revisited, accessible at: <http://orca.cf.ac.uk/27655/1/CLINICED.pdf> (last reviewed: 01.08.2022), p. 7; *Odigie-Emmanuel*, The role of legal clinics in promoting human rights: the experience of Nigeria Law School Yenagoa Law Clinic and the legal support and care centre at GD Goenka University School of Law Gurgaon India, International Journal of Clinical Legal Education 01/2023, accessible at: <https://northumbriajournals.co.uk/index.php/iicle/article/view/1331> (last reviewed: 24.03.2023), p. 4; *Singer/Schimpf/Steinbach*, Die „Humboldt Consumer Law Clinic“ als Beispiel

legal clinics are a meaningful instrument to achieve greater Access to Justice. This report will outline the concept of Access to Justice, before analyzing in depth how legal clinics in particular can contribute to the social justice mission.

### *The basic understanding of Access to Justice*

Being right does not always mean being proven right. As *Balmer* states: “The ability of people to protect their legal rights and hold others to their legal responsibilities is a prerequisite of the rule of law and underpins social justice.”<sup>2</sup>

Access to Justice is the term used to denote the institutional and social conditions for the realization of rights. It is multifaceted: Access to Justice is seen as equal access to the legal system but also enhances the justice quality of the relations and transactions in which people are engaged by creating a law that is value-neutral.<sup>3</sup> The institutional, formal side of the realization of the law comprises access to a fair trial (procedural guarantees, sufficient number of courts, reasonable length of proceedings, education and training of judges), enforcement of judgments, and access

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zivilgesellschaftlicher Stärkung von Verbraucherrechten, in: Hellmann/Klein/Baule (Ed.): Verbraucherpolitik von unten; Paradoxien, Perspektiven, Problematisierungen, p. 341; *Qafisheh*, The Role of Legal Clinics in Leading Legal Education: The Model from the Middle East, *Legal Education Review*, 01/2012, p. 186.

<sup>2</sup> *Balmer*, English and Welsh Civil and Social Justice Panel Survey: Wave 2, Legal Services Commission, 2013, accessible at: [https://discovery.ucl.ac.uk/id/eprint/1575457/1/Balmer\\_Civil\\_Justice\\_England\\_Wales\\_Wave2.pdf](https://discovery.ucl.ac.uk/id/eprint/1575457/1/Balmer_Civil_Justice_England_Wales_Wave2.pdf) (last reviewed 01.08.2022), p. 1.

<sup>3</sup> *Kötter*, Besserer Zugang zum Recht (Access to Justice) durch staatliche Anerkennung informeller Justizsysteme? – Zur Relevanz rechtssoziologischer Forschung für die Außen- und Entwicklungspolitik, SFB-Governance Working Paper Series, 74/2018, accessible at: [https://www.sfb-governance.de/publikationen/sfb-700-working\\_papers/wp74/WP74.pdf](https://www.sfb-governance.de/publikationen/sfb-700-working_papers/wp74/WP74.pdf) (last reviewed: 15.08.2022), p. 6; *Sandefur*, Access to What?, *Daedalus* the Journal of the American Academy of Arts and Sciences, 04/2019, accessible at: [https://www.amacad.org/sites/default/files/publication/downloads/19\\_Winter\\_Daedalus\\_Sandefur.pdf](https://www.amacad.org/sites/default/files/publication/downloads/19_Winter_Daedalus_Sandefur.pdf) (last reviewed: 15.08.2022), p. 50; *Whelan*, Grounding inside/out Professional Identity formation by developing wholehearted lawyers with therapeutic intent, *International Journal of Clinical Legal Education* 01/2022, accessible at: <https://northumbriajournals.co.uk/index.php/ijcle/article/view/1228> (last reviewed: 15.08.2022), p. 43.

to cost-effective legal assistance (pro bono work, legal aid, public attorneys).<sup>4</sup> The material side of Access to Justice goes beyond this and asks for justice as it is expressed in the normative and social order of the respective community. It forms a normative ideal alongside the law.<sup>5</sup>

A significant number of people experiences legal problems. When considering that social, financial, health or economic problems often lead to legal problems, it becomes clear that disadvantaged people (especially the unemployed, indebted, disabled, chronically ill or people with mental illness, welfare recipients, lone parents, people suffering from substance abuse and migrants) are more susceptible to experiencing justiciable problems.<sup>6</sup> This experienced social and financial vulnerability does not only have a bearing on the acquisition of legal problems but also on their response to legal problems.<sup>7</sup> The more educated, affluent people are, the more aware they are of their rights and potential legal remedies to fight for these rights.<sup>8</sup>

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<sup>4</sup> Kötter, Besserer Zugang zum Recht (Access to Justice) durch staatliche Anerkennung informeller Justizsysteme? – Zur Relevanz rechtssoziologischer Forschung für die Außen- und Entwicklungspolitik, SFB-Governance Working Paper Series, 74/2018, p. 6; *Rass-Masson/Rouas*, Effective Access to Justice, Directorate-General for Internal Policies, European Parliament, 2017, accessible at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2017/596818/IPOL\\_STU\(2017\)596818\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/596818/IPOL_STU(2017)596818_EN.pdf) (last reviewed: 15.08.2022), pp. 23 ff.

<sup>5</sup> Kötter, Besserer Zugang zum Recht (Access to Justice) durch staatliche Anerkennung informeller Justizsysteme? – Zur Relevanz rechtssoziologischer Forschung für die Außen- und Entwicklungspolitik, SFB-Governance Working Paper Series, 74/2018, p. 6.

<sup>6</sup> *Drummond/McKeever*, Access to Justice through University Law Clinics, accessible at: [https://www.ulster.ac.uk/data/assets/pdf\\_file/0003/132654/Access-to-Justice-through-Uni-Law-Clinics-November-2015.pdf](https://www.ulster.ac.uk/data/assets/pdf_file/0003/132654/Access-to-Justice-through-Uni-Law-Clinics-November-2015.pdf) (last reviewed 01.08.2022), p. 9; *Hannemann/Dietlein*, Studentische Rechtsberatung und Clinical Legal Education in Deutschland, 2016, p. 10.

<sup>7</sup> *Drummond/McKeever*, Access to Justice through University Law Clinics, p. 9.

<sup>8</sup> *Balmer/Buck/Patel/Denvir/Pleasence*, Knowledge, Capacity and the Experience of Rights Problems, Legal Services Research Centre, 2010, p. 30; *Ponce*, Global insights on Access to Justice – Findings from the World Justice Project General Population Poll in 101 Countries, 2019, accessible at: <https://worldjusticeproject.org/sites/default/files/documents/WJP-A2J-2019.pdf> (last reviewed: 15.08.2022), p. 9.

Furthermore – particularly due to language or psychological barriers – marginalized groups seldom make use of counseling assistance. Therefore they have very limited access to legal advice and representation and in consequence cannot resolve their justice problems.<sup>9</sup> One looming result of not using the judicial process is the disconnection between formal equality before the law and access to the law.<sup>10</sup> Thus the main question when addressing Access to Justice is how to ensure access to the – at least partially existing – formal equality?

This question is not new: *Hannah Arendt* already pointed out many decades ago, that freedom and justice are rights of all citizens.<sup>11</sup> Since we are not born equal, we become equal as members of a group based on our decision to guarantee ourselves mutually equal rights.<sup>12</sup> A first step to building equality and justice within the group is to abandon privileges and prejudices and focus on the needs of the poor and downtrodden by creating laws and social structures that protect the rights of all people.<sup>13</sup> Nonetheless, it has to be kept in mind, that the discrepancy between legality and justice can never be bridged because laws “are necessarily general and must be

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<sup>9</sup> *Hannemann/Dietlein*, *Studentische Rechtsberatung und Clinical Legal Education in Deutschland*, 2016, p. 10; *Rudolf*, *Rechte haben – Rechte bekommen: Das Menschenrecht auf Zugang zum Recht*, Deutsches Institut für Menschenrechte Essay 15/2014, accessible at: [https://www.institut-fuer-menschenrechte.de/fileadmin/migrated/tx\\_commerce/Rechte\\_haben\\_Recht\\_bekommen\\_Das\\_Menschenrecht\\_auf\\_Zugang\\_zum\\_Recht.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/migrated/tx_commerce/Rechte_haben_Recht_bekommen_Das_Menschenrecht_auf_Zugang_zum_Recht.pdf) (last reviewed: 15.08.2022), p. 13; *Task Force on Justice*, *Justice for All – The report of the Task Force on Justice*, 2019, accessible at: <https://www.justice.sdg16.plus/report-old2022> (last reviewed 01.08.2022), p. 3.

<sup>10</sup> *Lüeck*, *Guter Rat zu teuer? Bestandsaufnahme zu studentischer Rechtsberatung und Überlegungen zu Qualitätssicherungsmaßnahmen in Law Clinics*, *Juristische Ausbildung*, 07/2020, p. 703; *Marx*, *Studentische Rechtsberatung vs. Beratungshilfe*, *German Journal of Legal Education*, 02/2015, p. 12.

<sup>11</sup> *Arendt*, *The Origins of Totalitarianism – New edition with added prefaces*, 1973, p. 296.

<sup>12</sup> *Arendt*, *The Origins of Totalitarianism – New edition with added prefaces*, 1973, p. 296.

<sup>13</sup> *Arendt*, *The Origins of Totalitarianism – New edition with added prefaces*, 1973, p. 329; *Pati/Mohanty*, *Clinical Legal Education – A Bare Necessity in the Scientific Era*, in: *Asian Journal of Legal Education*, 03/2017, accessible at: <https://journals.sagepub.com/doi/abs/10.1177/2322005815607143> (last reviewed: 15.08.2022), pp. 118, 121, 122.

valid for countless and unpredictable number of cases so that each concrete individual case with its unrepeatable set of circumstances somehow escapes it.”<sup>14</sup>

So, in theory, there might be adequate laws to protect the rights of people of all cultural, ethnic, financial, economic, gender, and health backgrounds. However, there are numerous gaps in the enforcement of these rights. The challenge of achieving Access to Justice, therefore, constitutes the task of providing mechanisms that enable all people to defend their rights by reducing the hurdles of legal enforcement.<sup>15</sup>

Hence, political and social preconditions of legal awareness and knowledge (education, language) as well as affordable legal prosecution (legal aid, public lawyers, alternative dispute resolution, pro bono) should be provided.<sup>16</sup> It is also important for people to have legal awareness, be informed about their rights, understand the law and get information on how to pursue these rights since the lack of relevant information is one of the causes of the enforcement deficits in law.<sup>17</sup> Therefore, adequate information about (legal) options and possibilities is needed. Furthermore, in order to counteract the experienced psychological and language

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<sup>14</sup> *Arendt*, *The Origins of Totalitarianism – New edition with added prefaces*, 1973, p. 462.

<sup>15</sup> *Rudolf*, *Rechte haben – Rechte bekommen: Das Menschenrecht auf Zugang zum Recht*, Deutsches Institut für Menschenrechte Essay 15/2014, p. 8; *Wrase/Thies/Behr/Stegemann*, *Gleicher Zugang zum Recht – (Menschen-)Rechtlicher Anspruch und Wirklichkeit*, *ApuZ* 37/2021, p. 49

<sup>16</sup> *Barendrecht*, *Legal Aid, Accessible Courts or Legal Information?*, *Global Jurist*, 11/2011, accessible at: [https://pure.uvt.nl/ws/portalfiles/portal/1326528/Barendrecht\\_Legal\\_Aid\\_110420\\_full\\_text\\_bij\\_url\\_geen\\_toestemming.pdf](https://pure.uvt.nl/ws/portalfiles/portal/1326528/Barendrecht_Legal_Aid_110420_full_text_bij_url_geen_toestemming.pdf) (last reviewed: 15.08.2022), p. 1; *Kötter*, *Besserer Zugang zum Recht (Access to Justice) durch staatliche Anerkennung informeller Justizsysteme? – Zur Relevanz rechtssoziologischer Forschung für die Außen- und Entwicklungspolitik*, *SFB-Governance Working Paper Series*, 74/2018, p. 5.

<sup>17</sup> *Barendrecht*, *Legal Aid, Accessible Courts or Legal Information?*, *Global Jurist*, 11/2011, p. 17; *Evans/Cody/Copeland/Giddings/Joy/Noone/Rice*, *Australian Clinical Legal Education – Designing and Operating a best Practice Clinical Program in an Australian Law School*, 2017, p. 99; *Rudolf*, *Rechte haben – Rechte bekommen: Das Menschenrecht auf Zugang zum Recht*, Deutsches Institut für Menschenrechte Essay 15/2014, pp. 14, 21; *Singer/Schimpf/Steinbach*, *Die „Humboldt Consumer Law Clinic“ als Beispiel zivilgesellschaftlicher Stärkung von Verbraucherrechten*, in: *Hellmann/Klein/Baule (Ed.): Verbraucherpolitik von unten; Paradoxien, Perspektiven, Problematisierungen*, p. 360.

barriers of marginalized people, low threshold, empathetic support needs to be provided.<sup>18</sup>

### *The role of legal clinics in Promoting Access to Justice*

The roles law clinics play in promoting Access to Justice are multifaceted.

#### *a) Low threshold Access to Legal support by providing a low-cost, easily accessible, and low-cost counseling*

Just by doing their groundwork (meaning providing a social, low-threshold possibility for underprivileged and underserved people seeking information and legal advice without financial risk), legal clinics have a social function and strengthen the enforcement of rights and therefore improve legal security and (access to) justice for our society.<sup>19</sup>

Also, law clinic students can take the time to examine, prepare and reflect on the cases and their surrounding circumstances, give further help outside the legal

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<sup>18</sup> *Davis*, Access and Justice, *Fordham Law Review*, 03/2004, accessible at: <https://ir.lawnet.fordham.edu/flr/vol73/iss3/5/> (last reviewed: 15.08.2022), pp. 916 ff.

<sup>19</sup> *Hannemann/Dietlein*, *Studentische Rechtsberatung und Clinical Legal Education in Deutschland*, 2016, p. 3; *Hannemann/Dietlein*, *Studentische Rechtsberatung in Deutschland, Juristische Ausbildung* 06/2017, p. 460; *Kötter*, *Besserer Zugang zum Recht (Access to Justice) durch staatliche Anerkennung informeller Justizsysteme? – Zur Relevanz rechtssoziologischer Forschung für die Außen- und Entwicklungspolitik*, *SFB-Governance Working Paper Series*, 74/2018, p. 5; *Remmert*, *Vorschlag für die Regulierung der Law Clinics als Dienstleistung*, *AnwBl* 2017, p. 946; *Singer/Schimpf/Steinbach*, *Die „Humboldt Consumer Law Clinic“ als Beispiel zivilgesellschaftlicher Stärkung von Verbraucherrechten*, in: *Hellmann/Klein/Baule (Ed.): Verbraucherpolitik von unten; Paradoxien, Perspektiven, Problematisierungen*, pp. 341 f., 358, 365.

question, and therefore provide a more wholehearted service than many lawyers. This can be understood as a (not exclusively legal) community service.<sup>20</sup>

Legal clinics can also emphasize human sensibility by providing a humanistic approach and offering multi-dimensional training that emphasizes morality, self-accountancy, fellow feeling, and compassion.<sup>21</sup> Therefore, legal clinics provide an integrative opportunity for students to develop practical and theoretical skills and develop empathy values.<sup>22</sup> This plays an important role in preparing them for providing legal advice as lawyers, convey good lawyer-client relationships, and reflect the law critically.

***b) Sensitization for justice challenges***

*“A lawyer can only be as good as the system of legal education that preceded him. Legal education – academic as well as vocational – is a vital ingredient that affects the quality of our justice system and the role of lawyers in the political, economic and social development of our country.”<sup>23</sup>*

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<sup>20</sup> *Evans/Cody/Copeland/Giddings/Joy/Noone/Rice*, Australian Clinical Legal Education – Designing and Operating a best Practice Clinical Program in an Australian Law School, 2017, p. 12.

<sup>21</sup> *Pati/Mohanty*, Clinical Legal Education – A Bare Necessity in the Scientific Era, Asian Journal of Legal Education, 03/2016, pp. 118, 121, 122.

<sup>22</sup> *Bücker/Woodruff*, The Bologna Process and German Legal Education: Developing Professional Competence through Clinical Experiences, German Law Journal 09/2008, p. 610; *Giddings*, Promoting Justice through Clinical Legal Education, Justice Press, 2013, pp. 3, 49; *Saban/Wittham/Lawton*, Do we want a human first, and a lawyer second? Developing law student empathy through clinical legal education, International Journal on Clinical Legal Education 01/2022, accessible at: <https://www.northumbriajournals.co.uk/index.php/ijcle/article/view/1227> (last reviewed: 15.08.2022), p. 6.

<sup>23</sup> *Onolaja*, Problem of Legal Education in Nigeria, accessible at: <https://alimiandco.com/wp-content/uploads/2021/10/ACCREDITATION-AND-LEGAL-EDUCATION-IN-NIGERIA.pdf> (last reviewed: 24.03.2023).



Therefore, legal education should be able to produce lawyers that have the necessary skills and capacity to meet the evolving needs of today's society. The question at hand is, how do we shape law students to be fit for the purpose of justice? What training is needed to promote justice and a general understanding of the rule of law?

Abstract knowledge alone is not sufficient. It can become a deceptive semblance of competence.<sup>24</sup> Therefore, legal education needs to incorporate both acquiring knowledge and gaining "on-the-job experiences" through interactive training. The latter also provides students with first-hand experiences on the justice problems of marginalized groups. Legal clinics can help sensitize future lawyers and lawmakers to the social challenges in our society as well as in our legal and political systems: Legal clinics encourage students to be more aware of the legal and social needs of marginalized groups and learn to mold the social fabric needed for a just society, promoting a culture of lawfulness through generating solutions to several social issues. Students learn to develop understandings and approaches that foster ethical and reflective practices. By being confronted with cases in which rights cannot be enforced to all extent, legal clinics create confusion regarding the morality or social utility of the legal system. As a result, this creates awareness for investigating the potential of the law to achieve justice.<sup>25</sup> This helps students evolve their professional

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<sup>24</sup> *Hannemann/Dietlein*, Studentische Rechtsberatung in Deutschland, *Juristische Ausbildung* 06/2017, p. 450; *Schneider*, *Juristische Rhetorik*, MDR 1997, 625 ff.

<sup>25</sup> *Evans/Cody/Copeland/Giddings/Joy/Noone/Rice*, Australian Clinical Legal Education – Designing and Operating a best Practice Clinical Program in an Australian Law School, 2017, p. 12; *Hathaway*, *Clinical Legal Education*, *Osgoodee Hall Law Journal*, 02/1987, p. 251; *Jacobs*, *Beziehungsweise Law Clinic*, *Kritische Justiz* 2021, p. 300; *Nicolson*, "Our roots began in (South) Africa": Modeling law clinics to maximise social justice ends, *International Journal on Clinical Legal Education* 03/2016, accessible at: <https://journals.northumbria.ac.uk/index.php/ijcle/article/view/532> (last reviewed 27.03.2023), p. 94.

identities and supports the development of their understanding of their purpose and the role they play as future lawyers and policymakers in advancing Access to Justice.<sup>26</sup>

To be concrete, legal clinics help students to develop their sense of justice as they cannot handle the problems presented without an emotional response.<sup>27</sup> Since clinical legal education can help students focus on understanding the relationship between law and justice, it encourages the examination of the impacts of the application of the law. Legal clinics help students question the link between law and fairness.<sup>28</sup> They begin to develop their own perception and judgment and are sensitized to social justice issues through exposure to victims of social injustice.<sup>29</sup> Particularly this results in students understanding and reflecting on the impacts of laws on marginalized people.<sup>30</sup> This in turn results in an increased understanding of the structural barriers to accessing lawyers and the legal system and the imperative of reforming the legal system to redress those barriers.<sup>31</sup>

The more law students are trained that way, the more awareness there will be for the needs of marginalized groups and Access to Justice problems.

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<sup>26</sup> See regarding this development in the USA: *Maranville/Lynch/Kay/Goldfarb/Engler*, Re-vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering, University of Washington School of Law Research Paper, 19/2012, p. 521; *Whelan*, Grounding inside/out Professional Identity formation by developing wholehearted lawyers with therapeutic intent, International Journal on Clinical Legal Education 01/2022, p. 60.

<sup>27</sup> *Giddings*, Promoting Justice through Clinical Legal Education, Justice Press 2013, p. 61.

<sup>28</sup> *Hathaway*, Clinical Legal Education, Osgoode Hall Law Journal 02/1987, p. 251.

<sup>29</sup> *Aiken/Wizner*, Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice, Fordham Law Review, 03/2004, accessible at: <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1296&context=facpub> (last reviewed: 15.08.2022), p. 1009.

<sup>30</sup> *Giddings*, Promoting Justice through Clinical Legal Education, Justice Press, 2013, p. 61.

<sup>31</sup> *Whelan*, Grounding inside/out Professional Identity formation by developing wholehearted lawyers with therapeutic intent, International Journal on Clinical Legal Education 01/2022, p. 40.

As Aiken/Wizner points out, clinical education (when done right):

*“creates opportunities for law students to recognize the injustices in society and in the legal system, to appreciate the role they can play in challenging social injustice and in reforming the legal system, to make society and the legal system more just, and to inspire them to do just that. If we do that well, clinical legal education will have an even greater impact on promoting social justice than if we handle more cases. And to do that, we must all be both effective teachers and effective doers.”<sup>32</sup>*

Therefore, clinical legal education can result in good citizenship, improved policies, good governance, Access to Justice, and effective remedies.<sup>33</sup> In consequence, law schools have a unique opportunity and obligation to make Access to Justice a central social priority by implementing work in a legal clinic in the curriculum.

## **An Assessment of the Movement of clinical legal education in Germany**

### *Historic overview*

Whereas legal clinics have been developing in the US and Australia for over 40 years, they are a rather new development in Germany. Until 2004, legal professionals were not allowed to provide pro bono legal advice.<sup>34</sup> Until 2008, Art. 1 § 1

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<sup>32</sup> Aiken/Wizner, Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice, Fordham Law Review 03/2004, p. 1010.

<sup>33</sup> Odigie-Emmanuel, The role of legal clinics in promoting human rights: the experience of Nigeria Law School Yenagoa Law Clinic and the legal support and care centre at GD Goenka University School of Law Gurgaon India, International Journal of Clinical Legal Education 01/2023, p. 4

<sup>34</sup> BVerfG, Beschluss v. 29.07.2004 –1 BvR 737/00, NJW 2004, p. 2662.

Rechtsberatungsgesetz (*Legal Advice Act*) did not allow persons other than “persons who have been granted permission to do so by the competent authority” (meaning lawyers) to provide legal services to third parties. This regulation led *de facto* to a complete ban on free legal advice.<sup>35</sup> The “Rechtsberatungsgesetz” dates back to the time of the National Socialists and was intended to prevent Jewish lawyers, whose professional licenses had been revoked, from providing legal advice.<sup>36</sup> Until 1935 only the commercial provision of legal services to third parties was prohibited under sec. 3 Gewerbeordnung (*Industrial Code*) (old version).<sup>37</sup>

Why such a regulation from the Nazi era lasted for so long, remains unclear. In the year 2008 the legislator recognized (following a decision of the German highest court<sup>38</sup>) that the protective purposes of the “Rechtsberatungsgesetz” and the protections of the person seeking legal advice, would hardly be jeopardized by the provision of legal services free of charge by a lawyer with professional experience.<sup>39</sup> As a result, the “Rechtsdienstleistungsgesetz” (*Act on Out-of-Court Legal Services*) replaced the “Rechtsberatungsgesetz”. Even though there is no indication in the

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<sup>35</sup> *Deckenbrock*, Law Clinics als Rechtsdienstleister – Voraussetzungen und Grenzen des RDG, AnwBl 2017, p. 937; *Hannemann/Dietlein*, Studentische Rechtsberatung und Clinical Legal Education in Deutschland, 2016, p. 16; *Hannemann/Dietlein*, Studentische Rechtsberatung in Deutschland, Juristische Ausbildung 06/2017, p. 450; *Lück*, Guter Rat zu teuer? Bestandsaufnahme zu studentischer Rechtsberatung und Überlegungen zu Qualitätssicherungsmaßnahmen in Law Clinics, Juristische Ausbildung 07/2020, pp. 703 f.; *Singer*, Studentische Rechtsberatung. Legal Clinical Education an der Humboldt-Universität, in: Barton/Hähnchen/Jost (Ed.), Anwaltsorientierung im Studium: Aktuelle Herausforderungen und neue Perspektiven, 2016, p. 94

<sup>36</sup> *Hannemann/Dietlein*, Studentische Rechtsberatung und Clinical Legal Education in Deutschland, 2016, p. 16; *Lück*, Guter Rat zu teuer? Bestandsaufnahme zu studentischer Rechtsberatung und Überlegungen zu Qualitätssicherungsmaßnahmen in Law Clinics, Juristische Ausbildung 07/2020, pp. 703 f.

<sup>37</sup> *Kramer*, Die Entstehung des Rechtsberatungsgesetzes im NS-System und sein Fortwirken, Kritische Justiz 2000, p. 601; *Rücker*, Das Ende der Rechtsberatung durch jüdische Juristen – Zur Entrechtung der ab 1933 aus der Anwaltschaft ausgeschlossenen Juristen, AnwBl 2007, p. 804.

<sup>38</sup> BVerfG Beschl. 29.07.2004 – 1 BvR 737/00, NJW 2004, pp. 2662 ff.

<sup>39</sup> *Kramer*, Die Entstehung des Rechtsberatungsgesetzes im NS-System und sein Fortwirken, Kritische Justiz 2000, p. 601

legislative materials that the legislator had the phenomenon of law clinics in mind when reorganizing the area of legal services provided free of charge, the “Rechtsdienstleistungsgesetz” allowed legal clinics to open.<sup>40</sup>

According to sec. 3 Rechtsdienstleistungsgesetz, law clinics require a permission standard for their activity. This is found in sec. 6. The standard declares legal services that are not related to a paid activity to be generally permissible. Outside of close personal relationships, the legal service provider must ensure, in accordance with sec. 6 (2), that the legal service is provided by a person who is permitted to provide this legal service for remuneration, by a person qualified to hold judicial office or under the guidance of such provision. Therefore, the law only allows for legal clinics to provide legal advice when the students are guided by a lawyer or other legal professional. This requires instruction and further training as well as cooperation in the provision of legal services. This is mainly provided by legal supervision (see more to this later).

Once the legal path was clear for the establishment of law clinics in Germany, the first clinics – mainly specializing in civil law – were founded by students.<sup>41</sup> A catalyst for the German law clinic movement was the so-called “refugee crisis”, starting in 2014 when the number of asylum applications started to rise immensely.<sup>42</sup>

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<sup>40</sup> *Deckenbrock*, Law Clinics als Rechtsdienstleister – Voraussetzungen und Grenzen des RDG, AnwBl 2017, p. 937; *Hannemann/Dietlein*, Studentische Rechtsberatung und Clinical Legal Education in Deutschland, 2016, pp. 1 f., 7; *Schmidt*, § 6 RDG, Krenzer (Ed.) Rechtsdienstleistungsgesetz Handkommentar, 2017, Rn. 69, 72.

<sup>41</sup> *Hannemann/Dietlein*, Studentische Rechtsberatung und Clinical Legal Education in Deutschland, 2016, pp. 18 ff.

<sup>42</sup> *Kilian/Wenzel*, Law Clinics in Deutschland: Zahlen, Typologien und Strukturen, AnwBl. 10/2017, p. 963; Statista - Anzahl der Asylanträge (insgesamt) in Deutschland von 1995 bis 2020; accessible at:

In the following years, numerous (refugee) law clinics opened all over Germany, focusing mainly on refugee law, and now shifting towards matters concerning the right of residence as well as labor and social law.<sup>43</sup> Currently, more than 38 refugee law clinics provide legal advice all over Germany.<sup>44</sup>

### **Current situation**

Most of the law clinics are tied closely to a university, with the university providing facilities and a professor supporting the clinic in their education program.

However, although numerous authors have pointed out the important didactic functions of law clinics for legal education and doctrine<sup>45</sup>, almost all legal clinics in Germany lack, more than half a decade after their establishment, institutional anchoring.<sup>46</sup> The legal clinic is never part of the mandatory curriculum of legal studies in Germany.<sup>47</sup> Legal clinics in Germany are – with very few exceptions – student-run clinics where the organization of the consultations as well as the consultations themselves are done by students voluntarily.<sup>48</sup>

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<https://de.statista.com/statistik/daten/studie/76095/umfrage/asylantraege-ingesamt-in-deutschland-seit-1995/> (last reviewed: 01.08.2022).

<sup>43</sup> *Hilb/vom Felde*, Refugee Law Clinics in Deutschland – ein studentisches Modell für die Veränderung der juristischen Ausbildung?, *Kritische Justiz*, 02/2016, pp. 221 f.; *Kilian/Wenzel*, Law Clinics in Deutschland: Zahlen, Typologien und Strukturen, *AnwBl.* 10/2017, p. 963.

<sup>44</sup> <https://home.refugeelawclinics.de/2022/11/22/rlc-standorte/> (last reviewed: 27.03.2023).

<sup>45</sup> *Hannemann/Dietlein*, Studentische Rechtsberatung und Clinical Legal Education in Deutschland, 2016, p. 1; *Riehm/Heiß*, Alternative Streitbeilegung in der studentischen Rechtsberatung, *German Journal of Legal Education*, 03/2016, p. 23; Wissenschaftsrat, (Ed.), *Perspektiven der Rechtswissenschaft in Deutschland. Situation Analysen, Empfehlungen 2012*, WR-Drs. 2558–12, p. 57 f.

<sup>46</sup> *Hannemann/Dietlein*, Studentische Rechtsberatung und Clinical Legal Education in Deutschland, 2016, p. 9; *Kilian/Wenzel*, Law Clinics in Deutschland: Zahlen, Typologien und Strukturen, *AnwBl.* 10/2017, p. 964; *Wenzel/Kilian*, Law Clinics in Deutschland, 2022, p. 5.

<sup>47</sup> *Hannemann/Dietlein*, Studentische Rechtsberatung und Clinical Legal Education in Deutschland, 2016, p. 1; *Wenzel/Kilian*, Law Clinics in Deutschland, 2022, p. 27.

<sup>48</sup> *Wenzel/Kilian*, Law Clinics in Deutschland, 2022, p. 27.

This lack of institutional anchoring and the segregation of clinical methodology from the core curriculum leads to the disinterest of many law teachers in matters of educational theory and therefore a lack of appreciation in the academic environment.

<sup>49</sup> As a result, voluntary extracurricular work in a clinic mostly does not qualify in any way as academic work and therefore hardly any credits are offered for clinical work.<sup>50</sup> Accordingly, legal clinics are still largely the private passion of students or the extracurricular commitment of individual university teachers.<sup>51</sup> Therefore German law clinics are highly dependent on these individuals.<sup>52</sup> Even the transfer of a university professor to another university can cause a law clinic that has been painstakingly built up to totter or collapse.<sup>53</sup>

As mentioned above, most legal clinics in Germany are refugee law clinics. However, refugee, migration, asylum, and residence law are not part of the legal curriculum. Therefore, most students do not have any knowledge in these areas of law and need to be taught before consultations can start.<sup>54</sup> Since legal clinics are – at best – at the margin of the academy, there is no room, no money, and no faculty to focus more deliberately on the pedagogical aspects of clinical legal education besides the mere legal information.

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<sup>49</sup> *Wenzel/Kilian*, *Law Clinics in Deutschland*, 2022, p. 27.

<sup>50</sup> *Giddings*, *Promoting Justice through Clinical Legal Education*, Justice Press, 2013, p. 8; *Kilian/Wenzel*, *Law Clinics in Deutschland: Zahlen, Typologien und Strukturen*, *AnwBl. 10/2017*, pp. 964 f.

<sup>51</sup> *Wenzel/Kilian*, *Law Clinics in Deutschland*, 2022, p. 27.

<sup>52</sup> *Kilian/Wenzel*, *Law Clinics in Deutschland: Zahlen, Typologien und Strukturen*, *AnwBl. 10/2017*, p. 964; *Wenzel/Kilian*, *Law Clinics in Deutschland*, 2022, p. 5, 27

<sup>53</sup> *Kilian/Wenzel*, *Law Clinics in Deutschland: Zahlen, Typologien und Strukturen*, *AnwBl. 10/2017*, p. 964; *Wenzel/Kilian*, *Law Clinics in Deutschland*, 2022, p. 27

<sup>54</sup> *Deckenbrock*, *Law Clinics als Rechtsdienstleister – Voraussetzungen und Grenzen des RDG*, *AnwBl 2017*, p. 940.

Legal clinics have yet to be accepted as part of mainstream legal education and are at the moment isolated outposts of law schools. They are seen as a service for the poor for free legal advice instead of also valuing the concept for their educational benefits. As a result, German law schools and policymakers are hesitant in supporting legal clinics with the resources they require (funding, staff, organizational, and liability frameworks) and hesitate to integrate them into the curriculum. Clinical education is largely viewed as a perk, a somewhat exotic adjunct to the range of “hard law” courses taught in accordance with more traditional methodologies. As a result, although legal studies primarily aid in a practical legal profession, the studies are still quite theoretical.<sup>55</sup>

### **Quality control and supervision**

Without effective supervision, reflection, and the development of the social skills that give the clinical methodology its educational validity, the clinics suffer in several ways.<sup>56</sup> Quality control and adequate legal and psychological supervision have implications for both students (learning) and clients.

Protection seekers are in a situation that makes them particularly vulnerable due to their financial situation, language and cultural barriers, and the vital

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<sup>55</sup> With the exception of a practical study period of three months, other practical training opportunities such as Moot Courts and legal clinics are purely optional: *Hannemann/Dietlein*, *Studentische Rechtsberatung und Clinical Legal Education in Deutschland*, 2016, pp. 5 f., 9.

<sup>56</sup> See already about this effect in Canada more than 30 years ago: *Hathaway*, *Clinical Legal Education*, *Osgoode Hall Law Journal*, 02/1987, accessible at: <https://digitalcommons.osgoode.yorku.ca/ohlj/vol25/iss2/1/> (last reviewed: 15.08.2022), p. 244.



importance of the asylum process. This must not be exploited by students “learning by doing” on the poor rather than for the poor.<sup>57</sup> Therefore, the framework and limits of student legal counseling must be clear: students must receive specialized training in order to provide high-quality counseling. They need to be instructed in the legal issues essential to their work so that they can grasp and process the typical case constellations in a legal manner largely independently.<sup>58</sup>

They also need to learn basic skills in “client processing”. They need to learn how to conduct a client interview, how to ask the right questions, determine the facts of the case, identify possibilities of legal research, use negotiation techniques, find practical solutions as well as assist in drafting letters, contracts, and settlements.<sup>59</sup>

The participation of a fully qualified lawyer is not always necessary during the consultation. Also, it is not necessary for a lawyer to approve every letter or every train of thought of the student.<sup>60</sup>

Furthermore, regular mandatory legal supervision in which all cases are discussed with lawyers is an important component of a law clinic. The supervision

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<sup>57</sup> *Nicolson*, “Our roots began in (South) Africa”: Modeling law clinics to maximise social justice ends, *International Journal on Clinical Legal Education* 03/2016, p. 99

<sup>58</sup> *Deckenbrock*, Law Clinics als Rechtsdienstleister – Voraussetzungen und Grenzen des RDG, *AnwBl* 2017, 937, 940; *Hannemann/Dietlein*, Studentische Rechtsberatung in Deutschland, *Juristische Ausbildung* 06/2017, p. 452; *Hilb/vom Felde*, Refugee Law Clinics – Aktuelle Entwicklungen, *NVwZ* 2017, 598, 599; BT-Drs. 16/3655, p. 58.

<sup>59</sup> *Deckenbrock*, Law Clinics als Rechtsdienstleister – Voraussetzungen und Grenzen des RDG, *AnwBl* 2017, 937, 940; *Hannemann/Dietlein*, Studentische Rechtsberatung in Deutschland, *Juristische Ausbildung* 06/2017, p. 452; *Hilb/vom Felde*, Refugee Law Clinics – Aktuelle Entwicklungen, *NVwZ* 2017, 598, 599.

<sup>60</sup> *Deckenbrock*, Law Clinics als Rechtsdienstleister – Voraussetzungen und Grenzen des RDG, *AnwBl* 2017, 937, 940; *Hannemann/Dietlein*, Studentische Rechtsberatung in Deutschland, *Juristische Ausbildung* 06/2017, p. 453.

prevents counseling errors and students learn by discussing cases with other students and lawyers.<sup>61</sup>

During consultations, students must make their own limitations transparent and must always avoid patronizing those seeking advice. The goal of counseling should be to inform clients as best as possible about their situation and legal options so that they can make an informed decision afterwards.<sup>62</sup>

Besides legal supervision and education, law clinics should create framework conditions to minimize the personal burden for students. This includes clear contact persons who relieve students of the responsibility for decisions made during the consultations.

Furthermore, psychological supervision can play an important role in students wellbeing. Working in the field of asylum and migration law can be associated not only with many positive feelings, but also with sadness, anger, disappointment, and powerlessness. Working with those seeking advice creates closeness to people who are often not recognized by the legal system. The demand on the law for objectivity, neutrality, democracy, and security, which students develop in their legal education, can become cracked in the legal practice of asylum law. Doubts arise when the law in practice fails to live up to its own promises.<sup>63</sup> In order to strengthen students' psychological liability and the quality of their given advice, psychological supervision is highly relevant within clinical legal education.

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<sup>61</sup> *Hilb/vom Felde*, Refugee Law Clinics – Aktuelle Entwicklungen, NVwZ 2017, 598, 599.

<sup>62</sup> *Hilb/vom Felde*, Refugee Law Clinics – Aktuelle Entwicklungen, NVwZ 2017, 598, 599.

<sup>63</sup> *Jacobs*, Beziehungsweise Law Clinic, Kritische Justiz 2021, pp. 299 f.

## **Optimizing the Access to Justice impact of German legal clinics?**

Considering the mentioned potential Access to Justice impact of legal clinics and the still somewhat new clinic movement in Germany, it becomes clear, that German law clinics have not maximized their social impact yet. A comparative analysis with more established law clinic systems in the US and Australia will be undertaken to identify three possible variables in clinic organization that might help German law clinics to evolve further. These variables are not conclusive and share strong intersections.

### ***Focus on social justice versus focus on education***

In the starting phase, legal clinics in Australia and the US should fill evident gaps in legal protections for those in need.<sup>64</sup> By now, the fundamental concept of Anglo-American legal clinics is to limit the theoretical nature of legal studies by means of an extended practical part in teaching – clinical legal education. As a result, law clinics are far more common there than they are in Germany. By now, 185 American law schools have altogether 1521 law clinics, which are specialized in different areas of

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<sup>64</sup> In Australia, the Henderson-Commission (Australian Government Commission of Inquiry into Poverty, Poverty in Australia: first main report (April 1975) Australian Government Publishing Service) aimed to fight poverty, which included facilitating access to the legal system for minor matters (*Dickson*, Clinical Legal Education in the 21<sup>st</sup> Century: Still Educating for Service?, Journal of Clinical Legal Education, 01/2000, accessible at: <https://www.northumbriajournals.co.uk/index.php/ijcle/article/view/129> (last reviewed: 15.08.2022), p. 39; *Evans/Cody/Copeland/Giddings/Joy/Noone/Rice*, Australian Clinical Legal Education – Designing and Operating a best Practice Clinical Program in an Australian Law School, 2017, pp. 102 f.). In the US, there was an immense need for lawyers to fulfill the right to criminal defense which was expanded by the US Supreme Court in 1963 and 1972 (*Gideon v Wainwright*, 372 US 335 (1963) and *Argersinger v Hamlin*, 407 US 25 (1972)). In the interest of meeting these needs, legal clinics were formed to support the persons in need (*Dickson*, Clinical Legal Education in the 21<sup>st</sup> Century: Still Educating for Service?, Journal of Clinical Legal Education, Nov. 2000, p. 38; *Maranville/Lynch/Kay/Goldfarb/Engler*, Re-vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering, University of Washington School of Law Research, 19/2012, accessible at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1626568](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1626568) (last reviewed: 15.08.2022), p. 521.).

law.<sup>65</sup> Since 1996, a law school's effort to get its students to participate in a pro bono program at the university has been one of the law school accreditation requirements by the American Bar Association.<sup>66</sup>

Social justice and student education are not mutually exclusive alternatives. Students serving the community will automatically learn about the law, its (in)justices, and the way the law operates. In order to effectively serve the community and strengthen their sense of (access to) justice, students need to be taught legal skills as well as legal ethics.<sup>67</sup> Both can only be taught in the needed detail if legal clinics are not only seen as a social justice project but also as a part of legal education.

However, although the relevance of this assessment had been discussed within German research<sup>68</sup>, it has not made its way into legal education politics. Therefore,

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<sup>65</sup> *Hannemann/Dietlein*, Studentische Rechtsberatung und Clinical Legal Education in Deutschland, 2016, p. 13; *Jacobs*, A Lexical Examination and (Unscientific) Survey of Expanded Clinical Experiences in U.S. Law Schools, *Tennessee Law Review*, 02/2008, accessible at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1136786](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1136786) (last reviewed: 15.08.2022), p. 343; *Kilian*, Klinische Juristenausbildung als Element einer modernen Juristenausbildung – Warum die Nebenwirkungen und Risiken gering sind, der Gewinn für die Rechtspflege aber erheblich ist, *AnwBl* 10/2017, p. 953; *Kuehn/Reuter/Santacroce*, 2019-20 Survey of Applied Legal Education, accessible at: [https://uploads-ssl.webflow.com/5d8cde48c96867b8ea8c6720/628457f6d9c25cc6c1457af4\\_Report%20on%202019-20%20CSALE%20Survey.Rev.5.2022.pdf](https://uploads-ssl.webflow.com/5d8cde48c96867b8ea8c6720/628457f6d9c25cc6c1457af4_Report%20on%202019-20%20CSALE%20Survey.Rev.5.2022.pdf) (last reviewed: 01.08.2022), p. 6.

<sup>66</sup> See: American Bar Association Standards for approval of Law Schools, Standard 302 (a) (4) und 405 (c) from August 1996; by now: Standard 303 (b) from August 2014: „A law school shall provide substantial opportunities to students for: law clinics or field placement(s); and student participation in pro bono legal services, including law-related public service activities“ as well as Standard 405 (c) from August 2014: „A law school shall afford to full-time clinical faculty members a form of security of position reasonably similar to tenure, and non-compensatory perquisites reasonably similar to those provided other full-time faculty members. A law school may require these faculty members to meet standards and obligations reasonably similar to those required of other full-time faculty members. However, this Standard does not preclude a limited number of fixed, short-term appointments in a clinical program predominantly staffed by full-time faculty members, or in an experimental program of limited duration.

<sup>67</sup> *Nicolson*, Problematizing Competence in Clinical Legal Education: What do we Mean by Competence and How do we Assess Non-skill Competencies, *International Journal on Clinical Legal Education* 01/2016, p. 66 ff.

<sup>68</sup> *Hannemann/Dietlein*, Studentische Rechtsberatung in Deutschland, *Juristische Ausbildung* 06/2017, p. 459; *Stephan*, *AnwBl* 1998, p. 92.

legal clinics are still merely seen as social service projects rather than education options in German legal education practice.

### *Compulsory versus voluntary involvement and academic credits*

When law clinics are not only seen as a community service act but also as a part of legal education, the legal framework and the material operating conditions will automatically be taken over – at least to some extent – by the law school itself. This assumption is proven by clinics in the US and in Australia, where the provision of legal advice by students constitutes a separate legal matter. In that context, the legal clinics are built into academic clinical programs at the law schools where students are educated and supervised by professors and other academic staff of the law school. The work in the legal clinic is compulsory and academic credit is provided for it.<sup>69</sup>

However, building legal clinics into the mandatory curriculum might also come along with some disadvantages. The number of students involved and the resulting level of community service and therefore Access to Justice will be reduced. The period of service in extra-curricular clinics will probably be longer than the usual curricular experience.<sup>70</sup> Providing a smaller group of students with a long-lasting

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<sup>69</sup> For the USA: *Hannemann/Dietlein*, *Studentische Rechtsberatung und Clinical Legal Education in Deutschland*, 2016, p. 46; *Maranville/Lynch/Kay/Goldfarb/Engler*, *Re-vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering*, University of Washington School of Law Research Paper, 19/2012, pp. 521 f.; *Onoja/Sule*, *Clinical Legal Education in Nigeria and the United States: A Comparative Perspective*, *Public Law Research*, 2015, p. 10. For Australia: *Evans/Cody/Copeland/Giddings/Joy/Noone/Rice*, *Australian Clinical Legal Education – Designing and Operating a best Practice Clinical Program in an Australian Law School*, 2017, pp. 48 f.

<sup>70</sup> *Nicolson*, “Our roots began in (South) Africa”: Modeling law clinics to maximise social justice ends, *International Journal on Clinical Legal Education* 03/2016, p. 104 f.

more in-depth experience will therefore probably have more of an impact than educating all students on clinical legal education.<sup>71</sup> Another possible drawback to compulsory legal clinic activities is that this runs the risk of students not being as involved with cases and clients as they would be when they are working solely on their own accord or for gaining benefits instead of completing a mandatory class. Therefore, it seems optimal for legal clinics to allow for academic credit but still not be a mandatory part of the curriculum.

In Germany, however, legal clinics mostly do not allow for any academic credit to be given at all. This appears to be the worst option out of all. Students put in all the work and do not gain anything in return. Instead, the clinic work adds on to their already busy schedule, leaving them at make the daily choice of sacrificing their free time or letting their academic work slip.

### *Self-organized and financed clinics versus law school managed clinics*

Strongly connected with the first two issues is the question of whether a clinic is staff- or student-managed. If a clinic is part of the legal education system at a law school and some kind of academic credit is provided, this often goes hand in hand with the law school providing at least some basic material conditions for law clinics to operate as well as the legal framework. If the law school provides funding for professionally qualified staff and allows for permanent employment of this staff, this helps to secure

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<sup>71</sup> *Nicolson, "Our roots began in (South) Africa": Modeling law clinics to maximise social justice ends, International Journal on Clinical Legal Education 03/2016, p. 109.*

qualified education and supervision of the students. Nevertheless, various (management) tasks can be taken over by students or shared between staff and students. This allows students to gain decision-making power, assume responsibility outside of the legal counseling and feel a sense of “psychological ownership” of the clinic which might encourage them to enhance their engagement in the clinic.<sup>72</sup> They also gain knowledge within the policy and legal justice landscape and will improve their management skills.

However, since most students will only be involved in a clinic for a shorter period of time, tasks have to be shifted often which can lead to inefficiency within the organization of the clinic.<sup>73</sup> Also, having paid administrative and especially academic or clinical staff plays an important role in providing good and consistent education and supervision.

In Germany, acquiring funding for qualified supervision and education is mostly done by the students themselves. Having to deal with these topics takes students’ focus away from their actual mission of providing legal advice and learning in the field.

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<sup>72</sup> *Pierce/Kostova/Dirks*, Towards a Theory of Psychological Ownership in Organizations, *Academy of Management Review* 02/2001.

<sup>73</sup> See also: *Nicolson*, “Our roots began in (South) Africa”: Modeling law clinics to maximise social justice ends, *International Journal on Clinical Legal Education* 03/2016, p. 112.

## **Conclusion and Recommendation**

Legal clinics consist of far more than students giving free legal advice to those in need.

Legal clinics are also a means of educating law students in the field and letting them gain experience with real cases. This not only generates substantial community benefits but at the same time promotes student awareness of social justice.

The students who have been educated within clinical legal education programs have the opportunity to learn about legal aspects, and acquire sufficient lawyering skills and values in order to appreciate the role of the law and law in society.<sup>74</sup> They learn how to adjust to different psychological states, to language barriers, and how to understand the non-legal issues behind legal problems and the diverse functions of law and the legal profession.

They will also learn to critically analyze the law, its limits, and its rationales within the framework of Access to Justice.<sup>75</sup> Therefore law clinics can be seen as a guarantee for learning experiences that promote an understanding of the possibilities, limits, and deficits of the law and legal processes, and highlight the importance of ethical standards for legal professionals.<sup>76</sup>

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<sup>74</sup> See also: *Bücker/Woodruff*, The Bologna Process and German Legal Education: Developing Professional Competence through Clinical Experiences, *German Law Journal* 09/2008, p. 610; *Onoja/Sule*, Clinical Legal Education in Nigeria and the United States: A Comparative Perspective, *Public Law Research* 2015, p. 3.

<sup>75</sup> *Curran/Dickson/Noone*, Pushing the Boundaries or Preserving the Status Quo? Designing Clinical Programs to Teach Law Students a Deep Understanding of Ethical Practice, *International Journal of Clinical Legal Education* 08/2005, accessible at: <https://www.northumbriajournals.co.uk/index.php/ijcle/article/view/90> (last reviewed: 15.08.2022), pp. 104, 121.

<sup>76</sup> *Giddings*, Promoting Justice through Clinical Legal Education, *Justice Press* 2013, pp. 3, 49; *Kilian*, Klinische Juristenausbildung als Element einer modernen Juristenausbildung – Warum die Nebenwirkungen und Risiken gering sind, der Gewinn für die Rechtspflege aber erheblich ist, *AnwBl* 10/2017, p. 953.



However, in pursuance of providing social justice in a true sense, clinical programs need to go far beyond providing legal aid. There is a need for imparting value-based pragmatic legal education so as to make sure law students are competent enough to identify social problems in their future properly and to implement solutions and strategies to address and eradicate social evils like injustice, poverty, corruption, etc. rather than just focusing on analyzing the problem in theory.<sup>77</sup> Legal clinics are a great way to implement and strengthen these values and teach students to reflect on how the justice system (fails to) respond in specific cases. It is the task of the universities to provide a curriculum on clinical legal education that focuses on these aspects and to make sure to train wholehearted, skilled lawyers.<sup>78</sup>

Whereas a lot of countries seem to be quite far along, Germany is just starting its journey of improving Access to Justice through legal clinics.<sup>79</sup> The first – much needed – step is the institutionalization of law clinics within the law schools that will go along with a more multi-perspectival, interdisciplinary approach to the clinical legal education program. In order to do so, legal policy will have to internalize that clinical legal training is always training and not free consultation to relieve the

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<sup>77</sup> See also: *Bücker/Woodruff*, The Bologna Process and German Legal Education: Developing Professional Competence through Clinical Experiences, *German Law Journal* 09/2008, p. 615; *Pati/Mohanty*, Clinical Legal Education – A Bare Necessity in the Scientific Era, *Asian Journal of Legal Education*, 03/2016, p. 117.

<sup>78</sup> See also: *Whelan*, Grounding inside/out Professional Identity formation by developing wholehearted lawyers with therapeutic intent, *International Journal of Clinical Legal Education* 01/2022, p. 40.

<sup>79</sup> See also: *Hannemann/Dietlein*, Studentische Rechtsberatung und Clinical Legal Education in Deutschland, 2016, pp. 9, 50; *Hannemann/Dietlein*, Studentische Rechtsberatung in Deutschland, *JA* 2017, 449. See for the advanced scope and stage of development of clinical legal education in general: *Bloch*, *The Global Clinical Movement: Educating Lawyers for Social Justice*, 2011.

treasury.<sup>80</sup> Education policy must not only provide for the legal framework but also create the material conditions for law clinics to operate. This requires not only adequate funding for professionally qualified staff but also, in particular, the possibility of permanent employment of appropriate staff. The German higher education system in its current structure is unsuitable for this purpose since there is practically no long-term academic middle class, which is the central pillar of clinical training concepts in other countries. The establishment of professional structures, in which law clinics in line with foreign models are more than volatile extracurricular activities of individual university lecturers and their staff, will not be possible without an impetus from outside.<sup>81</sup>

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<sup>80</sup> *Kilian*, Klinische Juristenausbildung als Element einer modernen Juristenausbildung – Warum die Nebenwirkungen und Risiken gering sind, der Gewinn für die Rechtspflege aber erheblich ist, AnwBl 10/2017, p. 955.

<sup>81</sup> See also: *Kilian*, Klinische Juristenausbildung als Element einer modernen Juristenausbildung – Warum die Nebenwirkungen und Risiken gering sind, der Gewinn für die Rechtspflege aber erheblich ist, AnwBl 10/2017, p. 955.