

## Book Review

Frank S. Bloch, ed., *The Global Clinical Movement: Educating Lawyers for Social Justice*. New York: Oxford University Press, 2011, pp. 400.

Reviewed by Sameer M. Ashar

In *The Global Clinical Movement*, Frank Bloch and his co-authors set out to document a movement to “transform legal education into justice education” (xxcvi). The volume captures the work of a group of committed and passionate legal educators. The authors, drawn largely from the organization Global Alliance for Justice Education (GAJE), view clinical legal education as a key component of justice education. Their global documentation project is ambitious. Bloch has assembled an impressive group of authors with experience developing clinical programs at over forty-three law schools on six continents. The programs range from street law to externships to live-client clinics, and have been initiated at the behest of students, funders, faculties, and administrators. Eight chapters in the opening part survey clinical programs by region. A ninth chapter takes up the question of whether clinical legal education can be viewed as a form of “legal imperialism.” The next part of the volume is comparative, as authors sketch out cross-cutting themes with particular focus on the justice mission of clinical programs. The final part surveys the conceptual connections and institutional networks that cross borders. Bloch and N.R. Madhav Menon, the latter of whom started the first law school clinic in India at Delhi University, name this cluster of relationships among law faculty a “global clinical movement,” implying dynamic, cause-driven growth.

This is one of the first books focused exclusively on descriptions of clinical legal practice. It offers an opportunity to think coherently about law school clinics as a subset of public interest law. In addition to the descriptive ambition underlying the book, Bloch and his collaborators make key choices in the construction of the project. They include descriptions of programs from countries in both the global north and global south and give the accounts equal weight. The chapters, in more than a few cases, are co-written by clinicians with roots on different continents, which creates opportunities for comparative analysis both within and across chapters. The book exhibits a clear understanding of the complexity and variation within clinical practice; it includes dedicated chapters on externships and street law, in addition to the

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descriptions of live-client practice within law schools. Finally, Bloch and his collaborators demonstrate a generous and aspirational spirit as they attempt to unearth transformative justice education from current practices. They do not accept globalization as it is but rather project a form of globalization as it ought to be, linking lawyers, law students, and clients across lines of economic and political inequality in a common project to ameliorate injustice and elevate the rule of law.

I believe that the book is a significant achievement and one with consequence and meaning throughout legal education and the legal profession. Perhaps its greatest virtue is to open up space for analysis and discussion of clinical legal practice outside of the boxes in which it has been put up to this point. Bloch and his collaborators offer the possibility that we think about law schools clinics as something other than pedagogical sub-units of law schools. These chapters begin an essential dialogue about the meaning of the spread of clinical legal education across borders as a phenomenon in and of itself. I argue here that the meaning of this programmatic spread remains uncertain, contingent, and contested. Indeed, this volume should cause us to question the contested meaning and purposes underlying clinical legal education at law schools both within and outside of the United States. I argue for thick description of the content of clinical work and the contexts in which clinics operate. The goal of subsequent scholarship in this area should be to develop taxonomies of institutional form that allow us to assess and further develop clinical legal education. Second, I argue for nuanced description of the movement of people and ideas across borders so as to understand more fully the relationships between clinics in different parts of the world, as well as to consider how clinical legal education fits within larger theoretical frameworks in the field, such as law and development theory. Third, I argue for a theory of justice education that captures the dynamics between experiential education, legal education, legal profession, and civil society and nation. I contend that making law clinics and law schools more permeable to social movements ought to be a central strategy in the development of justice education both in the United States and abroad.

### **Taxonomic Description and Conservation**

Naturalists classify species on the basis of rules and relations. Taxonomy reveals biodiversity, as well as relationships between species over time and across space. Conservationists rely on taxonomy to preserve biodiversity, particularly in circumstances of limited resources. As clinical legal education spreads and complicates itself as a result of both indigenous and exogenous factors, we would benefit from systems of classification that define institutional manifestations in the field. We should be able to relate new variations to older institutional forms so as to reveal both path dependence and productive differentiation. We need a better understanding of how exogenous factors—such as the demands of governments, university administrators and funders, student-consumers, and the private bar—may extinguish some institutional

forms and promote others. We need to learn to dissect our own motivations and institutional impulses as well, as we survey the field.

Perhaps embarking on a documentation project outside of the United States is only appropriate. Particularly for U.S.-based legal educators, going abroad has the lure of starting over and promoting particular institutional forms outside the tangle of entrenched beliefs and systems within U.S. legal education. Perhaps we can see institutional forms and relations more clearly abroad than at home, where what we do defines and limits how we see. The question that *The Global Clinical Movement* raises is whether those who are responsible for the creation and development of clinical programs will be able to effectively classify those institutional forms in a larger taxonomic system and whether they can unearth the external and internal factors that have come to define each program. Erika Castro-Buitrago, Nicolas Espejo-Yaksic, Mariela Puga, and Marta Villarreal, in their chapter on clinical legal education in Latin America, make the best case for an affirmative answer to this question. They productively draw on the law and development literature to historicize the rise, fall, and rise again of law school clinics in four countries in the region. They are particularly interested in the fate of what they call public interest law or PIL clinics, characterized by commitments to progressive social change projects, cause-based lawyering, and collaborations with non-governmental organizations. PIL clinics developed in response to critiques of reigning schools of legal education and practice. “These clinics charged directly against the formalist approach to law, focusing on public law issues such as free speech, minority rights, due process, human rights, treaty enforcement, and other issues related to democratization and the rule of law. They worked initially on strategic litigation, attempting to connect law schools with both social issues and new theoretical challenges for legal theory” (70). Unfortunately, some of the book’s descriptive chapters do not historicize clinics in this way and lack thick description of the legal work undertaken by faculty and students.

Because of the intensely local, contextual foundation of legal work, to have meaning across radically differing contexts we need to be able to understand the content, aspirations, and outcomes of programs. We need some understanding of the politics that encourage and inhibit various institutional forms across national and local contexts. To either generalize without linkage to models of legal work or to get lost in specificity and singularity undermines comparative projects. We need to know enough about legal practice in the various settings to understand how it might constitute a model of work that is shared across borders.<sup>1</sup> An accurate taxonomy requires thick description of work and a

1. Frank Bloch and Mary Anne Noone propose the following as categories of classification:

Many clinical programs that are concerned primarily with increasing individual access to legal services adopt an “individual service” model. This is an open-ended approach to legal aid, handling a variety of cases—and as many individual cases as possible—limited only by external considerations. A “specialization” model, by contrast, seeks to provide legal services in a particular area of law, often to a specifically targeted group of clients. A “community” model is oriented toward a local

better understanding of the intentions and design choices made by clinicians. By looking outward from U.S. shores and analyzing a range of institutional forms, *The Global Clinical Movement* encourages us to look more intently at the content of our own work and the continuities and discontinuities across borders and across programs. It begins a process through which we may derive new rules of description and methods of classification and that might lead to other comparative studies of law school clinics. Taxonomy has the potential to provide a clearer picture of programmatic forms, preserve institutional diversity, and provide the tools by which we might fight to preserve certain forms, most likely against the powerful forces roiling legal education.

### Globalization and Neoliberalism

Up to this point, the global clinical movement has emerged from the bottom up; groupings of local programs come together to start a national movement, programs scattered around the world come together to start a global movement (275).

Without some better understanding of these processes, we are likely to see our growing foreign contingent simply as a recognition and legitimation of the essential goodness of our own commitments and strategies in favor of progressive change.<sup>2</sup>

These descriptions of programmatic spread across borders offer two contrasting conceptions of its meaning. It seems to me that both conceptions, at least partly, describe the growth of clinical legal education outside of the United States. Clinical legal education is not yet produced dialogically through the joint and equal contributions of clinicians within and outside the United States. Some of its growth is attributable to U.S. foundation funding and the decision of visionary U.S. clinicians to seek new frontiers in institutional development abroad. To be sure, their equally visionary collaborators have independent motivations for the pursuit of this project, including but not limited to meeting a dire need for legal advocacy, integrating a justice mission

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community and utilizes a range of approaches—including organizing and community legal education—to address that community’s legal needs, broadly defined (158–59).

While I appreciate the impulse to classify, how would one define a clinic that provided direct service in a particular area of law on the basis of need as defined by community organizations? There seems to be a fair amount of overlap between the categories set out by Bloch and Noone. It may be that some of the classifications that we employ on a regular basis within clinical legal education—big versus small cases, individual versus impact, access to justice versus social change—are rooted in models of practice that no longer reflect current reality. The danger is that these classifications might justify and entrench path dependence, or even more harmful impulses, such as the inclination to prioritize governments, administrators, funders, and student-consumers over clients and communities. *See, e.g.*, H.B. 751, 430th Sess. (Md. 2012) (proposed bill mandating that state-funded law school clinics only represent “an indigent individual”).

2. Bryant G. Garth, *Law and Society as Law and Development*, 37 *Law & Soc’y Rev.* 305, 313 (2003).

into the expansion of legal education in their home countries, and raising their own status within their own institutional-political contexts.<sup>3</sup>

Do the mixed motivations of the initiators and developers of global clinical legal education matter? I think they do for two reasons. First, it matters for the sake of descriptive accuracy and classification—the case I made above. It matters whether clinical models are being wholly transplanted, modified, or created anew in contexts outside of the U.S. It is important to acknowledge both generalized and specific influences in the development of programs without conceding that clinics constitute a new form of “legal imperialism.”<sup>4</sup> Taxonomies depend on an accurate understanding of relations between institutional forms. An over-commitment to a counter-imperialist, bottom-up narrative of clinical legal education across borders scuttles the effort to accurately classify, evaluate, and conserve.<sup>5</sup>

A second reason this matters is that without an accurate map of relationships between people and institutions in sending and receiving countries, we cannot fit this “movement” into larger theoretical frameworks of globalization. *The Global Clinical Movement* presumes a strong normative commitment to social justice and justice education shared across clinical legal education. However, law school clinics both within and outside of the U.S. operate in complex

3. See Yves Dezalay and Bryant G. Garth, *The Internationalization of Palace Wars: Lawyers, Economists, and the Contest to Transform Latin American States 208–19* (Univ. of Chicago Press 2002) (on the incentives for business lawyers in Mexico to engage with U.S. law firms and market initiatives).
4. Scott L. Cummings and Louise G. Trubek map the complexity inherent in the spread of global public interest law, which in their account includes clinical legal education:

It is not the case that public interest law emerges organically around the world; rather it is “constructed,” which means that there must be actors at both the global and local levels, who have a stake in its development and are willing to make investments in public interest law and institutions. The process of construction implicates competing values and visions of legal change: the motivations of funding institutions or government officials may diverge from those of lawyers and activists on the ground. And it also implicates questions of national autonomy and identity: while some lawyers may embrace public interest law as a way to contest governmental and corporate abuse, others view it as an unwanted American export, a tool of social control that dissipates political conflict through legalization or displaces more emancipatory forms of legal resistance.

Globalizing Public Interest Law, 13 *UCLA J. Int’l L. & Foreign Aff.* 1, 4–5 (2008).

5. Again, Cummings and Trubek note—and subtly critique—the need of advocates of globalized public interest law to root programmatic developments in the local:

Yet privileging the local produces its own tradeoffs. There is the risk of romanticizing local efforts and minimizing the global role of outside funders. There is also the more complicated question of how the legacy of U.S. imperialism may impact long-term efforts to build transnational alliances and promote informational exchange . . . . Going forward, it is therefore crucial that lawyers across the North-South divide continue to frankly confront the history and current reality of U.S. power, while also attempting to move beyond distrust in order to open up the possibility for transformative alliances across borders.

*Id.* at 43.

contexts and within contingent opportunity structures. The work that just about all need-based clinics do in the U.S. is to fight the most extreme instances of governmental abuse of power and to process individual cases of people seeking redress from state or market actors. Other than the example of PIL clinics in Latin America and two case studies of community-based advocacy in the chapter by Daniela Ikawa, it appears from *The Global Clinical Movement* that programs abroad are replicating the individual representation model that prevails in law school clinics in the U.S. If so, Bryant Garth's concern about the integration of international scholars in the U.S.-based Law and Society Association offers a cautionary analogy as we assess the meaning of the spread of clinical legal education:

Legal idealists confident of their own good intentions—and fortified with professional ideology that celebrates those intentions—want to fight on the side of justice. They look for their potential counterparts abroad, listen to their explanations about their own idealistic intentions to put law in the service of good causes, and then naturally support and celebrate those counterparts.... We seek to remedy the inequities of U.S.-style globalization by offering more of our favored brand of U.S.-style globalization.<sup>6</sup>

The danger is that we view the spread of clinical legal education uncritically and that we advance the project with less awareness than we should have about its implications in new contexts.

David Trubek and Alvaro Santos recently characterized the current era as the “third moment” of law and development, following an initial state-centered period in the 1960s and 1970s and a period of market-focused neoliberalism in the 1980s and 1990s.<sup>7</sup> The third moment is meant to encapsulate legal regimes that remain market-oriented but that also account for the critiques of neoliberalism rooted in concerns about human rights, labor rights, and environmental stewardship. Clinical legal education fits nicely in a “third moment” analysis. Clinics, with variations over time and across borders, are civil society institutions that, in the service of human rights initiatives, leverage resources allocated primarily for the production of legal workers trained to serve powerful private interests. The law and development frame also explains dynamics in the growth and retreat of clinical legal education and an opportunity structure that is external to the enterprise while it is simultaneously shaped by the actual work clinics undertake. For example, the PIL clinics in Latin America appear to invite suppression by undertaking projects that fundamentally challenge private power or states captured by such interests. Another interesting example from *The Global Clinical Movement* is the differing orientation of law school clinics in Apartheid-era South Africa.

6. Garth, *supra* note 2, at 312–13.

7. Introduction: The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice, in *The New Law and Economic Development: A Critical Appraisal* 1–18 (David M. Trubek & Alvaro Santos eds., Cambridge Univ. Press 2006) [hereinafter *The New Law and Economic Development*].

Programs at outlying English-language law schools focused on social impact and activism against the state, while the Boer-language law schools and law schools funded by the state for the black elite focused on skills acquisition (27).<sup>8</sup>

An alternative means by which to examine this “third moment” law and development dynamic is in terms of the spectrum of rights development and enforcement activity, from traditional civil rights and civil liberties at one end to economic and social rights at the other. When clinics move from civil to economic (or from negative to positive rights), opportunities for institutional growth recede, even in the relatively safe harbor of private power-reinforcing legal education programs. The role of the state or its civil society proxies in protecting people from the vagaries of the market is no longer felt or presumed. Institutionally, the contained development of clinical legal education offers an illustration of the constraints placed on civil society institutions buffeted by market forces during an era in which the state balances between policy considerations and interest groups.<sup>9</sup>

There are more than a few instances globally in which civil society institutions and social movements—of which the institutions are both a manifestation and a target<sup>10</sup>—are able to leverage slight concessions by state and market opponents to further mobilize, build power, and gain wider concessions.<sup>11</sup> Even if a law school clinic is part of a neoliberal rule of law project, it is not fated to either remain toothless or to wither and disappear. However, it remains essential that we understand how these institutions succeed in redistributing power in a particular context to replicate success, to avoid pitfalls and to contribute to the development of new theoretical frameworks, including future iterations of law and development theory. It is also essential that we understand how the transplant or transmission of elements of U.S. clinical legal education works. Does it create openings for social change in new host countries or does it shut down avenues of mobilization and empowerment? *The Global Clinical Movement*

8. According to David McQuoid-Mason, Ernest Ojukwu, and George Mukundi Wachira, in their chapter on Africa, “[t]he liberal universities in apartheid South Africa primarily tried to assist the victims of apartheid, while the universities that supported the apartheid regime tended to focus on practical skills.” Titi Liu similarly identifies a tension within clinics between skills training and social justice in her analysis of public interest law in China. *Transmission of Public Interest Law: A Chinese Case Study*, 13 *UCLA J. Int’l L. & Foreign Aff.* 263, 281–84 (2008) (“On the whole, the law school clinic programs have developed to focus on professional training, making it difficult for clinical legal education to achieve any norm-setting potential.”).
9. See Duncan Kennedy, *Three Globalizations of Law and Legal Thought: 1850–2000*, in *The New Law and Economic Development*, *supra* note 7, at 19–73.
10. See Robert C. Hockett, *Institutional Fixes Versus Fixed Institutions*, 39 *Cornell Int’l L.J.* 537 (2006).
11. See *generally* Law and Globalization from Below: Towards a Cosmopolitan Legality (Boaventura de Sousa Santos & Cesar A. Rodriguez-Garavito eds., Cambridge Univ. Press 2005).

initiates this inquiry but does not complete it. It sets up an important agenda for the future documentation of the work of law school clinics.

### **Justice Education and Social Movements**

It is certainly true that the spread of clinical legal education results in more social justice, especially for individual poor clients who would not otherwise have access to legal advocacy. But the deeper spillover effects of law school clinics on legal education, legal profession, and civil society and nation are highly contingent and uncertain. It is thought that bringing law students “face-to-face with the society that the law serves” alters legal education in a fundamental way (272). The “direct and meaningful personal experience of addressing pressing local social needs” leads law students toward a commitment to similarly situated clients and the tackling of social problems over the course of their careers (272). “Clinical programs based in legal aid clinics encourage students to examine how the legal system works to disempower certain groups and to become involved in law reform activities” (163–64). Although the systemized, direct, and personal experience of law students with poor and marginal clients is undoubtedly a social good, I question whether such interaction leads to the transformation of legal education and lasting social justice.

For Bloch and Menon, an education in legal skills training and professional responsibility fits alongside experiential education for social justice (268–69). They propose two spillover effects: from the clinical curriculum—defined by the actual work that law students do in clinics—to clinical methodology, so that the transmission of professional skills leads to a commitment “to provide legal services to the poor, marginalized, and disadvantaged” (270). The second spillover effect is from law school clinics to the rest of the curriculum: “[a] key element of clinical legal education is its commitment to shifting the focus of student learning from the classroom to the real world, particularly when students are required to deal with real-life situations in a legal aid clinic.... Interests are cultivated, attitudes are developed, skills are imparted, value clarification is provided, ethical decisions are made, and confidence and responsibility are experienced” (271). This passive rendering of the transmission of normative commitments through law school clinics calls into question the presumptions embedded in the spillover thesis. In light of the worsening crisis of inequality in the U.S. in the 40 years since the founding of modern clinical legal education and the continued growth of the number of those without access to legal advocacy, it is challenging to feel assured about our ability to steal progressive values into legal education and the legal profession, beyond the actual work undertaken by law school clinics.

In a different but highly relevant context, Matthew Stephenson labels these kinds of efforts “Trojan horse” strategies.<sup>12</sup> In the case of U.S. efforts to stimulate the spread of the rule of law in China (including, presumably, clinical legal

12. A Trojan Horse in China?, *in* Promoting The Rule Of Law Abroad: In Search Of Knowledge 191 (Thomas Carothers ed., Carnegie Endowment for International Peace 2006).

education), he shows that academic and foundation proponents believe that “legality will prove, like the [I]nternet, uncontrollable” and that “legal reforms will spread throughout the system,” hidden from the government.<sup>13</sup> The problem is that authoritarian regimes, such as modern China and fascist Spain, have been quite adept at co-opting legalism so as to protect property and contract rights without reaching the human rights issues that are the core concern of many in the sending countries.<sup>14</sup> The Chinese government is able to “cordon off and control politically salient sections of the legal system.”<sup>15</sup> In the end, the Trojan horse may be turned back on the sending forces in a double switch that weakens long-term efforts to alleviate suffering and elevate human rights enforcement.

A theory of justice education espoused by progressive clinicians relies upon the following suppositions:

<u>Cause</u>		<u>Spillover effect</u>
Professional skills training	→	Commitment to individual clients
Commitment to individual clients	→	Commitment to solve social problems
Commitment to solve social problems	→	Transformation of legal education
Transformation of legal education	→	Transformation of the legal profession
Transformation of the legal profession	→	Transformation of civil society/nation

To be fair, Bloch and his collaborators make a more limited case for the link between law school clinics and justice education in *The Global Clinical Movement*. Their aspiration for clinical education is that it will alter the trajectory of legal education, a spillover effect that has been felt widely at law schools within the United States. My broader concern is that there are too many “double switches” that may turn back the Trojan horse on clinicians seeking to advance justice education. A focus on professional skills, particularly in the context of a contracted job market, may cause students to forgo social justice concerns in favor of their own individual development.<sup>16</sup> Service to individual clients

13. *Id.* at 203.

14. *Id.*

15. *Id.* at 206.

16. On the basis of data from the After the J.D. longitudinal study of the professional lives of lawyers in the United States, Rebecca L. Sandefur and Jeffrey Selbin do not find support for the proposition that enrollment in law school clinics leads to higher levels of pro bono service or civic participation. *The Clinic Effect*, 16 *Clinical L. Rev.* 57, 93-97 (2009). They do find limited support for the idea that clinics are an “accelerant” for civic-minded students to obtain public service employment after law school, but it is unclear whether this relationship is causative or correlative. *Id.* at 97-100. The delinking of clinics from justice initiatives is particularly likely in stratified systems of legal education, such as in the United States and India (48). Elite schools may support extensive clinical programs and provide privileged students with opportunities to engage in social justice work. Other schools may differentiate themselves by dispensing with justice education initiatives and promoting skills training for law students underrepresented in the profession and with less academic preparation.

under prevailing interpretations of the rules of professional responsibility may discourage lawyers from representing grassroots organizations and groups of poor or marginalized clients.<sup>17</sup> Social justice values may be promoted by law schools in the hothouse of their clinics without altering the focus of the rest of the curriculum on the representation of relatively powerful private interests (76).<sup>18</sup> Pro bono efforts to serve clients and undertake public policy initiatives may preserve and strengthen elements of the legal profession that protect private interests of wealthy individuals and corporations.<sup>19</sup> Clinical legal education may be the Trojan horse that fails to disturb and sometimes even promotes subordination through law.

Daniela Ikawa calls for more complexity in the horizontal relationships between law students and clients and putting law students in the role of social engineers “with responsibilities that go beyond interpreting the text of the law and beyond the search for favorable judicial decisions to encompass the search for deeper knowledge about reality—and for social change” (201). The Latin American PIL proponents argue that the clinics they describe “tried to avoid a naïve belief on swift transformation of legal education and also assumed the limited—although not less important—possibilities of structural social change via legal activism” (70). Collaborations with social movements and grassroots political organizers encourage deep critique of oppressive systems and the development of skills that characterize democratic lawyering.<sup>20</sup> It is vital for the preservation of the justice education ideal that clinics bring social movements into the center of the law school experience. This is even more emphatically the case in many of the regions profiled in *The Global Clinical Movement*, where social movements have a rich history and have made a great impact on societies. It is only when movement activity is as significant as market participation in law school curricula that justice education might stand a chance of altering the trajectory of profession, society, nation and world.

17. See Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 *Clinical L. Rev.* 355 (2008).

18. As Erika Castro-Buitrago and her co-authors note, “In this respect, [legal clinics in Chile] have tended to be both conceived and implemented as a way to exhibit—to the legal community and the public in general—some sort of educational method that may add symbolic value to the program offered by law schools. Legal clinics have not, however, become a fundamental part—not even a significant one—within the process of legal education reform.”

19. See Scott Cummings, *The Politics of Pro Bono*, 52 *UCLA L. Rev.* 1 (2004).

20. See Ascanio Piomelli, *The Challenge of Democratic Lawyering*, 77 *Fordham L. Rev.* 1383 (2009).

