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## Reflections on US Involvement in the Promotion of Clinical Legal Education in Europe

Philip Genty  
*Columbia Law School*, [pgenty@law.columbia.edu](mailto:pgenty@law.columbia.edu)

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## Reflections on US Involvement in the Promotion of Clinical Legal Education in Europe

*Philip M. Genty*

What is the influence of the United States on European clinical legal education? The first reaction of many would be that this is not a particularly difficult question to answer. After all, clinical legal education is largely a US invention. Although one can find early examples of clinics in European law schools,<sup>1</sup> the large-scale development of law school clinical education happened in the United States beginning in the 1960s.<sup>2</sup> At present, there are clinical programs in each of the 207<sup>3</sup> American Bar Association (ABA)-approved US law schools. The Clinical Legal Education Association now lists 1,325 clinical teachers in its membership directory.<sup>4</sup> So how could the United States *not* be a major influence on clinical legal education in Europe and elsewhere?

This chapter will suggest, however, that the story is more complicated than it might at first appear: in the most visible areas – especially funding – the US contributions have had less of an impact than commonly thought. But, at the same time, the USA has contributed in ways that are both subtler and more enduring.

The chapter proceeds as follows. Section I recounts some of the history of US support for European clinical legal education, particularly in Central and Eastern Europe. Section II describes the failure of many US-supported programs to achieve sustainability and the ensuing temporary decline of clinical legal education in Europe. Section III describes the “rebirth” of European clinical education in Central and Eastern Europe and discusses its spread to Western Europe, which has

<sup>1</sup> For example, the University of Tilburg in the Netherlands had a version of a law clinic as early as 1969. See Richard J. Wilson, *Clinical Legal Education in Dutch Legal Culture: Clashes of Tradition, Tolerance and Progress in Global Law’s Capital*. Digital Commons@American University Washington College of Law, Working Paper 1–1-2010, p. 29. In addition, Edwin Rekosh cites even earlier examples in Copenhagen, Denmark, and Rostock, Germany. See Edwin Rekosh, *Constructing Public Interest Law: Transnational Collaboration and Exchange in Central and Eastern Europe* (hereinafter “Rekosh, *Constructing Public Interest Law*”), 13 *UCLA J. INT’L L. & FOREIGN AFF.* 56, 84 (2008).

<sup>2</sup> See J. P. “Sandy” Ogilvy, *CLEPR’s 40th Anniversary: Papers and Speeches from the AALS-ABA-CLEA Celebration of CLEPR: Celebrating CLEPR’s 40th Anniversary: The Early Development of Clinical Legal Education and Legal Ethics Instruction in US Law Schools*, 16 *CLINICAL L. REV.* 1, 9–18 (Fall 2009).

<sup>3</sup> See [www.americanbar.org/groups/legal\\_education/resources/aba\\_approved\\_law\\_schools.html](http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools.html).

<sup>4</sup> See [www.cleaweb.org/ClinicianLocator](http://www.cleaweb.org/ClinicianLocator).

been due, at least in part, to the delayed, indirect effects of earlier US efforts. Section IV concludes with reflections about the value of US contributions, past and future.

#### THE “UNITED STATES INVASION”: US SUPPORT FOR EUROPEAN CLINICAL LEGAL EDUCATION IN THE LAST YEARS OF THE TWENTIETH CENTURY

The years after the fall of the Berlin Wall brought a flood of US funding and academic visits. The Ford Foundation, the American Bar Association Central and East European Law Initiative<sup>5</sup> (ABA-CEELI), and the Soros-funded foundations provided significant funding. The support was not limited to clinical legal education but extended to legal education more broadly. The Chair of the ABA Section of International Law during this period describes CEELI’s contributions:

By the end of 1992, CEELI had:

- conducted 27 technical assistance workshops in Bulgaria, Romania, the Czech and Slovak Republics, Poland, Hungary, Yugoslavia, Albania, Lithuania, Armenia, Russia, Ukraine, Belarus, and Kazakhstan;
- held 4 legal training seminars;
- assessed over 120 draft laws from 17 different countries;
- placed 21 long-term Liaisons and 25 Legal Specialists in the field, from Brno to Bishkek;
- hosted 41 law school deans from Central and Eastern Europe at 120 US “sister law schools”;
- coordinated with the Soros Foundation in placing 27 students from the former Soviet Union in LLM programs in the United States; and
- employed over 600 American lawyers and judges as CEELI volunteers.<sup>6</sup>

A significant portion of the support went to clinical legal education programs. Edwin Rekosh, founder and former Executive Director of PILnet (which was then the Public Interest Law Initiative in Transitional Societies, or PILI) summarizes the combined work of these funders: “Collectively, the clinical programs supported by these three donors numbered well over one hundred in the roughly 25 post-communist countries. The Soros network alone supported the development of 75 university-based clinics in Central and Eastern Europe and the former Soviet Union between 1997 and 2002.”<sup>7</sup>

In addition to funding clinical programs, these donors hosted a number of academic conferences focusing on clinical legal education. PILnet was particularly

<sup>5</sup> This name was later changed to reflect a shift in geographical focus. See *infra* note 18.

<sup>6</sup> James R. Silkenat, *The American Bar Association and the Rule of Law*, 67 SMU L. REV. 745, 751–52 (2014) (citations omitted).

<sup>7</sup> See Rekosh, *Constructing Public Interest Law*, *supra* note 1, at 88 n. 101.

active. In collaboration with the Constitutional and Legal Policy Institute (COLPI) of the Soros Foundation, PILnet organized a series of annual colloquia in the US (1998), Poland (1999), Bulgaria (2000), and Latvia (2001).<sup>8</sup> These were wonderfully well-attended – for example, the 2000 colloquium in Sofia and Varna, Bulgaria, drew fifty-seven participants from nineteen countries, in addition to the American facilitators.<sup>9</sup> PILnet also organized a number of smaller regional conferences and training sessions. I participated in many of these,<sup>10</sup> as did other US clinical law teachers. In addition to these formal gatherings, there was a literal invasion of American academics, both clinical and doctrinal, spending their sabbaticals in Europe or doing study visits there. Upon their return, many wrote about their interactions with European faculty members and students.<sup>11</sup> Indeed, a survey of clinical teachers lists 50 faculty members from 35 different law schools who have taught in Central and Eastern Europe.<sup>12</sup>

<sup>8</sup> See Leah Wortham, *Aiding Clinical Education Abroad: What Can Be Gained and the Learning Curve on How to Do So Effectively* (hereinafter “Wortham, *Aiding Clinical Education Abroad*”), 12 *CLINICAL L. REV.* 615, 621 n. 20 (2006).

<sup>9</sup> See Colloquium Program, on file with the author.

<sup>10</sup> Workshop and Meetings on Clinical Legal Education, Tbilisi State University, Faculty of Law, Tbilisi, Georgia, April 2009; Skopje Conference on Clinical Education, Republic of Macedonia, November 2008; “Developing University-Based Legal Clinics in Serbia and Montenegro: Workshop for Clinical Teachers,” University of Belgrade Faculty of Law, April 2006; “2004 Intensive Teacher Training for New Clinical Educators: Pedagogical Challenges of Supervision,” Faculty of Law Justinianus Primus, Ss. Cyril and Methodius University, Skopje, Republic of Macedonia, November 2004; Intensive teacher training: “Developing Live-Client Clinics: Challenges and Strategies,” Belgrade, Serbia and Montenegro, April 2004; “2003 Intensive Teacher Training: Incorporating Practical Experience into the Clinical Classroom and Techniques of Self-Critique,” Prague, Czech Republic, November 2003; Clinical Legal Education Interactive Teaching Methods Training, Belgrade, Serbia, and Montenegro, May 2003; “Reforming Legal Education with Special Emphasis on Legal Clinics,” Osijek, Croatia, May 2003; Workshop on Clinical Legal Education, Tirana Law School Legal Clinic, Tirana, Albania, March 2001; Meeting on Clinical Legal Education for the Countries of the Former Yugoslavia, Ohrid, Macedonia, November 2000.

<sup>11</sup> See, e.g., John Burman, Teaching in Russia: You Don’t Know What You’ve Got Till It’s Gone, *WYOMING LAWYER* (June 1999); George A. Critchlow, *Teaching Law in Transylvania: Notes on Romanian Legal Education*, 44 *J. LEGAL EDUC.* 157 (1994); Lawrence M. Grosberg, *Clinical Education in Russia: “Da and Nyet”*, 7 *CLINICAL L. REV.* 469 (Spring 2001); Jeremy T. Harrison, *Legal Education in an Eastern European Law School*, 7 *JOURNAL OF INTERNATIONAL LAW AND PRACTICE* 263 (1998); Katalin Kolláth and Robert Laurence, *Teaching Abroad: Or, “What Would That Be in Hungarian?”* 43 *J. LEGAL EDUC.* 85 (1993); James C. May, Creating Russia’s First Law School Legal Clinic, *VERMONT BAR JOURNAL & LAW DIGEST*, August 1997; William D. Meyer, *Remnants of Eastern Europe’s Totalitarian Past: The Example of Legal Education in Bulgaria*, 43 *J. LEGAL EDUC.* 228 (1993); C. Nicholas Revelos, *Teaching Law in Transylvania: Notes from a Different Planet*, 45 *J. LEGAL EDUC.* 597 (December 1995); Lee Dexter Schnasi, *Globalizing: Clinical Legal Education: Successful Under-Developed Country Experiences*, 6 *T.M. COOLEY J. PRAC. & CLINICAL L.* 129 (2003); Rodney J. Uphoff, *Why In-House Live Client Clinics Won’t Work in Romania: Confessions of a Clinical Educator*, 6 *CLINICAL L. REV.* 315 (Fall 1999).

<sup>12</sup> See Compilation of Clinical Law Teachers with International Teaching or Consulting Experience, compiled by J. P. “Sandy” Ogilvy, Columbus School of Law, The Catholic University of America (originally compiled by Roy T. Stuckey, Faculty Emeritus, University of South Carolina). Updated: February 27, 2012, [www.law.edu/tes/docs/INTERNATIONAL\\_TEACHING\\_Survey\\_revo8-23-12.pdf](http://www.law.edu/tes/docs/INTERNATIONAL_TEACHING_Survey_revo8-23-12.pdf).

A particularly fruitful international collaboration is the partnership between Columbus School of Law of the Catholic University of America and the Jagiellonian University in Kraków, Poland. The collaboration began in 1992 and expanded in 1997, with the help of a Ford Foundation grant.<sup>13</sup> The two schools now cooperate in American law certificate and LL.M. programs taught by Catholic University faculty, primarily in Jagiellonian University's facilities in Poland.<sup>14</sup>

With the support of funding and American consultants, many clinical programs were established in Central and Eastern European countries. In Chapter 2, Katarzyna Ważyńska-Finck describes this history in detail.<sup>15</sup> This growth of clinical education was largely confined to Eastern Europe, however, with the exception of the United Kingdom. Western (Continental) European countries were much slower to adopt clinical education as part of their curricula.<sup>16</sup>

The late 1990s and early 2000s were therefore a boom period for the infusion of US resources into clinical legal education programs in Central and Eastern Europe. But as in any “boom-and-bust” cycle, everything changed very suddenly. Funding priorities shifted, and the money began to move to other regions, including Asia,<sup>17</sup> Africa, and Latin America.

The Soros-funded Open Society Institute announced this shift in its 2002 annual report:

The Open Society Institute and the Soros foundations network in 2002 pushed forward with geographic diversification and intensified efforts in public policy advocacy. Increased diversification and advocacy were accompanied by significant funding cutbacks in certain regions, namely, the Central European countries that are candidates for accession to the European Union (EU) in 2004 and Russia. . . . Cutbacks in these regions . . . were made because we believe that our efforts have largely found fertile ground.<sup>18</sup>

The 2002 report also described the launch of the Open Society Justice Initiative, “a legal program with global reach that replaces the regional legal reform programs

<sup>13</sup> See Wortham, *Aiding Clinical Education Abroad*, *supra* note 8, at 619. <sup>14</sup> See *id.* at 620.

Hereinafter “Ważyńska-Finck, *Poland as the Success Story of Clinical Legal Education*.”

<sup>16</sup> See Richard J. Wilson, *Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education*, 10 GERMAN LAW JOURNAL 825 (2009). For discussions of the reasons for the greater enthusiasm for clinical legal education in the East, see Ważyńska-Finck, *Poland as the Success Story of Clinical Legal Education*, Chapter 2 in this volume; and Dubravka Akšamović and Philip Genty, *An Examination of the Challenges, Successes and Setbacks for Clinical Legal Education in Eastern Europe* (hereinafter “Akšamović and Genty, *Clinical Legal Education in Eastern Europe*”), 20 INT'L J. CLINICAL LEGAL EDUC. 427, 429–30 (2014).

<sup>17</sup> One indication of this shift was that ABA-CEELI, formerly the Central and Eastern European Law Initiative, became the Central European and Eurasian Law Initiative. See Silkenat, *The American Bar Association and the Rule of Law*, *supra* note 6 at 747.

<sup>18</sup> Soros Foundations Network 2002 Report, BUILDING OPEN SOCIETIES, 14, [https://www.opensocietyfoundations.org/sites/default/files/a\\_complete\\_report\\_0.pdf](https://www.opensocietyfoundations.org/sites/default/files/a_complete_report_0.pdf).

of the Constitutional and Legal Policy Institute” [COLPI].<sup>19</sup> The 2002 report included discussions of regional work in Africa, Southeast Asia, and the Americas.<sup>20</sup>

By 2007, the Justice Initiative could boast of having “assisted in the development of university-based legal clinics . . . in more than 50 countries in Africa, Eastern Europe, Latin America, the Middle East, Southeast Asia, and the former Soviet Union.”<sup>21</sup> Among the projects supported by the Open Justice Initiative was the First Southeast Asia Clinical Legal Education Training of Trainers Workshop in 2007.<sup>22</sup> This broader mission, paid for out of the same limited pool of funding, meant that less money was available for the European educational programs that had previously depended on this support.<sup>23</sup>

Like the Open Society Institute, PILnet began to shift its focus away from Europe. Although the organization continues to be involved in Central and Eastern Europe, it expanded to China in 2003 and now has offices in Hong Kong and Beijing.<sup>24</sup>

The immediate effect of this shift in priorities was profound. As discussed in the next section, with the loss of funding, many of the new clinical programs in Central and Eastern European law schools proved to be unsustainable.

#### EARLY PROMISE UNFULFILLED: THE INITIAL DECLINE OF CLINICAL LEGAL EDUCATION AFTER THE WITHDRAWAL OF US FUNDING

A central goal of the US efforts described in Section I was to effect a lasting transformation of European legal education through the creation of sustainable clinics at European law schools. But the loss of outside funding revealed the fragility of the new European clinical “infrastructure.” Many of the clinical programs that had been established in the late 1990s and early 2000s failed to survive.<sup>25</sup> No catalogue of the clinical programs that were started during that period has been created, so it is impossible to document precisely which of the programs ceased to exist. Without these data, it is also impossible to know for certain why many programs failed while others continued to function.

What we do know is that Poland was one country where clinics continued to flourish despite the shifts in funding. In Chapter 2 Katarzyna Ważyńska-Finck

<sup>19</sup> *Id.* at 15. See also Patricia M. Wald, *Launching the Justice Initiative*, OPEN SOCIETY JUSTICE INITIATIVE 2003 ACTIVITIES REPORT 6.

<sup>20</sup> Soros Foundations Network, *supra* note 18.

<sup>21</sup> OPEN SOCIETY JUSTICE INITIATIVE REPORT ON DEVELOPMENTS 2005–2007, 9, [https://www.opensocietyfoundations.org/sites/default/files/developments\\_20071221.pdf](https://www.opensocietyfoundations.org/sites/default/files/developments_20071221.pdf).

<sup>22</sup> See Bruce Avery Lasky and Shuvro Prosun Sarker, *Introduction: Clinical Legal Education and Its Asian Characteristics*, in *CLINICAL LEGAL EDUCATION IN ASIA: ACCESSING JUSTICE FOR THE UNDERPRIVILEGED* 8 (Shuvro Prosun Sarker ed. 2015).

<sup>23</sup> The 2002 annual report explicitly acknowledged as much. See Soros Foundations Network, *supra* note 18.

<sup>24</sup> See [www.pilnet.org/public-interest-lawyers.html](http://www.pilnet.org/public-interest-lawyers.html).

<sup>25</sup> See Rekosh, *Constructing Public Interest Law*, *supra* note 1, at 88.

describes some of the factors for the sustainability of Polish clinical legal education.<sup>26</sup>

For other countries, several reasons may be offered for the failure of many clinics to survive the loss of outside funding. The first and most obvious reason is that many universities proved unwilling to pay for clinical legal education. Once outside resources were withdrawn, universities often declined to assume responsibility for funding and staffing the clinical programs.

Second, many of the clinics were dependent on particular individuals, typically young, junior faculty with a special interest in clinical legal education. These individuals attended the international conferences described in Section I and actively engaged with colleagues from the United States. They were committed to the clinical teaching mission, but this commitment did not necessarily extend to the rest of the law faculty. If these individuals left their positions at the university, there was no guarantee that anyone would take their places in the clinics.<sup>27</sup> In addition, some of the clinical teachers did not have formal academic status, especially those who had come to the universities from nonprofit, nongovernmental organizations (NGOs). Their jobs in the law faculty depended on “soft money” from outside funding sources; when the funding ended, the jobs did as well.

Third, because professors in many European countries are not admitted to practice law, European “live-client” clinics in these countries must hire private attorneys to handle the court proceedings in clinic cases. These lawyers need to be paid, and the universities were likewise unwilling to pick up this expense once the outside funding ended. Thus, these clinics could no longer function. Some were transformed into simulation programs in which students worked in the classroom with materials from actual past cases that were no longer active, but some simply ended.

Fourth, some of the clinics that were created existed in name only. I remember vividly one visit to an Eastern European country where our group was proudly led to the “new clinic.” This consisted of a single, shiny, expensive new room, complete with the latest computers and a large collection of books, but with not a single student or client in sight. Further conversation revealed that the “clinic” was a kind of “Potemkin Village,” designed to impress foreign visitors and attract additional funding that could be diverted for other purposes. Once the funding was no longer available, there was no need to keep such “clinics” open.

<sup>26</sup> See Wazynska-Finck, *Poland as the Success Story of Clinical Legal Education*.

<sup>27</sup> Edwin Rekosh describes the first attempt to establish a law clinic at Palacký University, Olomouc, Czech Republic as one such example. The original clinic was dependent on a supportive dean who passed away, which led to the demise of the clinic. See Rekosh, *Constructing Public Interest Law*, *supra* note 1, at 87–88, n. 98. The story has a happy ending, however, because the clinic was eventually reborn and has continued to thrive. See also Veronika Tomosková and Maxim Tomoszek, *The Clinical Programme at the Law School of Palacký University in Olomouc*, Chapter 4 in this volume; and Akšamović and Genty, *Clinical Legal Education in Eastern Europe*, *supra* note 16, at 433.

Fifth, and perhaps most important, the American models that were “transplanted” failed to take account of the significant structural and cultural differences between the United States and Europe, particularly the distinct common law and civil law traditions in which legal education in the United States and Europe, respectively, is grounded.<sup>28</sup> Beyond legal culture, an important practical difference between the US and European systems is that clinical legal education is not typically part of the formal, doctrinal European law curriculum. This means that law clinics are treated as a kind of extracurricular activity for both professors and students: professors teach clinics on an “overload” basis (i.e. in addition to their already demanding doctrinal classroom responsibilities), and students do not receive academic credit for the clinic. As Edwin Rekosh has observed,

Even where law school administrators appreciate the intensive supervision demands of a clinic, and the pedagogical value associated with it, they generally do not have the resources or are not willing or able to fight the necessary political battles to decrease other demands on the time of the professors involved.<sup>29</sup>

The loss of outside funding made it less likely that supporters of clinical legal education in European universities would have the resources to fight these battles.

In short, on the basis of the experiences just described, one might conclude that the influence of the United States on European clinical legal education has been much less than is commonly believed. The most visible sources of potential US influence – funding and educational consultants – failed to have a direct, lasting impact on European legal education. Much of the early growth of European clinical education that occurred in the 1990s and 2000s was reversed once the outside foundation funding moved to other regions. But, as discussed in Section III, that turned out not to be the end of the story.

#### THE INDIRECT US ROLE IN THE RESURGENCE OF CLINICAL LEGAL EDUCATION IN EUROPE

Just as a fire is not truly extinguished while a few embers continue to glow, the European clinical legal education movement, though diminished, did not actually die with the end of outside US foundation funding. Or, to use another metaphor, seeds had been planted, and these soon began to bear fruit.

<sup>28</sup> For an examination of these differences and the way they play out in the context of clinical legal education, see Philip M. Genty, *Overcoming Cultural Blindness in International Clinical Collaboration: The Divide Between Civil and Common Law Cultures and Its Implications for Clinical Education* (hereinafter “Genty, *Overcoming Cultural Blindness*”), 15 *CLINICAL L. REV.* 131 (Fall 2008). For a discussion of additional differences between the US and European clinical education, see Akšamović and Genty, *Clinical Legal Education in Eastern Europe*, *supra* note 16, at 435–36.

<sup>29</sup> See Rekosh, *Constructing Public Interest Law*, *supra* note 1, at 89.



While the influence of US funding and clinical consultants had failed to have the hoped-for *direct* impact on European legal education, there were at least three *indirect* impacts that were actually more meaningful and lasting. First, while law clinics, especially “live-client” clinics, at first failed to take hold, this was not true of interactive teaching methods. The interactive techniques modeled by clinical teachers and others in international conferences and training sessions excited the European educators who were exposed to them. The European faculty members who had experienced only the lecture as a teaching method saw the potential for a more dynamic classroom experience. They began to experiment with interactive teaching methods in their doctrinal classes, and they saw how engaged the students became. While lecturing surely continued to be an important teaching technique, the more innovative teachers began to mix their lectures with more interactive methods and saw how much the students benefited from this new classroom experience.<sup>30</sup>

The second important indirect US influence was perhaps even more significant. The interactions between US clinical educators and their European counterparts had enduring benefits:

[T]he support provided in the 1990s and 2000s by outside organizations (Ford Foundation, ABA, OSI, PILnet, etc.) planted seeds of “human capital” – the law teachers and *students* who attended the conferences and workshops have become an energetic new generation of clinical educators . . .<sup>31</sup>

A third benefit, which is related to the second, is that the conferences and workshops that the US clinical educators conducted for European teachers enabled the Europeans to meet each other and create their own networks. This was probably most obvious in Poland, which from a very early stage had some clinical programs in schools throughout the country. In Chapter 2, Katarzyna Ważyńska-Finck describes the 20-year history and current vibrant status of clinical legal education in Poland.<sup>32</sup> The international conferences gave the Polish teachers an opportunity to connect with one another, and this led to a strong national community of clinical educators.<sup>33</sup>

I was privileged to be involved in two such Polish conferences. In 2004, along with a number of US colleagues, I participated in the Third International Conference organized by the Global Alliance for Justice Education (GAJE) in Kraków, Poland.<sup>34</sup>

<sup>30</sup> For a discussion of the distinction between “clinical education” and “interactive teaching” and the adoption of the latter in European legal education, see Genty, *Overcoming Cultural Blindness*, *supra* note 28 at 146–49.

<sup>31</sup> Akšamović and Genty, *Clinical Legal Education in Eastern Europe*, *supra* note 16, at 436–37.

<sup>32</sup> See Ważyńska-Finck, *Poland as the Success Story of Clinical Legal Education*, Chapter 2 in this volume.

<sup>33</sup> For a detailed description of the activities of this community, see Ważyńska-Finck, *Poland as the Success Story of Clinical Legal Education*, Chapter 2 in this volume.

<sup>34</sup> See conference report, [www.gaje.org/wp-content/uploads/2011/01/GAJE-Confo4-Report.pdf](http://www.gaje.org/wp-content/uploads/2011/01/GAJE-Confo4-Report.pdf).

Although forty-three countries were represented, the conference brought together educators from law schools throughout Poland. The conference gave them the opportunity to establish or renew acquaintances and, most significantly, created an opportunity for exchanging teaching materials and stimulating the development of additional collaborative projects.

In 2007, two Columbia colleagues and I conducted workshops for the VIIIth Annual Colloquium on Clinical Legal Education in Poland at the University of Białystok.<sup>35</sup> As with the GAJE conference, the colloquium brought together educators from universities throughout Poland. The majority of the participants were Polish, but there were a number of attendees from other European countries, including the Czech Republic, Armenia, Georgia, Kyrgyzstan, Moldova, and Ukraine. Again, I was able to observe the ways in which the gathering created “spaces” (both literally and figuratively) for important professional collaboration, community-building, and spirited social interaction among the Polish educators.

These benefits were not limited to the Poles, however. For teachers from other countries, the cross-national exchanges that occur at these international conferences have had similar value. For example, the relationships that developed at these conferences were probably a significant factor contributing to the eventual birth of the European Network for Clinical Legal Education (ENCLE), which is discussed later. In addition, the international conferences and workshops exposed European educators to the interactive, small-group model that is characteristic of American clinical conferences and gave these educators the experience of working together in intensive exercises and discussions focused on pedagogy. Many of these European educators then went on to host their own national, inter-European, and even international conferences.

For example, through a project co-funded by the EU’s European Social Fund and the state budget of the Czech Republic, the faculty of Palacký University, Olomouc, hosted a series of three conferences on practical legal education, including clinical teaching, legal ethics, and skills training, in 2008, 2011, and 2012. These conferences were primarily for educators from the Czech Republic, as well as some other European participants, but several of my US colleagues and I were also invited to participate.<sup>36</sup> Because of the success of these conferences, Palacký University was ultimately chosen to host the 12th International Journal of Clinical Legal Education Conference in 2014.<sup>37</sup> The history of the clinical program and the impressive array of

<sup>35</sup> See Colloquium Report, [www.fupp.org.pl/en/legal-clinics/conferences/173-viiiith-annual-colloquium-on-clinical-legal-education-in-poland](http://www.fupp.org.pl/en/legal-clinics/conferences/173-viiiith-annual-colloquium-on-clinical-legal-education-in-poland). Some of my US colleagues had participated in earlier colloquia. See, e.g., report on Fifth Annual Colloquium on Clinical Legal Education, Warsaw, Poland, 2002, [www.fupp.org.pl/en/legal-clinics/conferences/172-2002-fifth-annual-colloquium-on-clinical-legal-education-15-16-november-2002-warsaw-poland](http://www.fupp.org.pl/en/legal-clinics/conferences/172-2002-fifth-annual-colloquium-on-clinical-legal-education-15-16-november-2002-warsaw-poland).

<sup>36</sup> See, e.g., description of project and 2012 conference, <http://lawforlife.upol.cz/en/>.

<sup>37</sup> See conference brochure, [http://unn-mlifi.newnumyspace.co.uk/school\\_of\\_law/IJCLE/documents/brochure.pdf](http://unn-mlifi.newnumyspace.co.uk/school_of_law/IJCLE/documents/brochure.pdf).

curricular offerings that are part of that program are discussed in this volume in Chapter 4 by Veronika Tomosková and Maxim Tomoszek.<sup>38</sup>

The indirect influence of the United States in stimulating the development of European clinical legal education has therefore been profound and, it appears, lasting. It is important to note, however, that this was helped along significantly by forces that were purely European.

First and foremost is the “Bologna Process,” which has transformed European legal education. Lusine Hovhannisian has described the Bologna Process as follows:

In June 1999, the European Ministers of Education adopted the Bologna Declaration, in which the signatory countries pledged to reform the structures of higher education systems in a “convergent” way. Since the goal of the Bologna Process is to bring about convergence in higher education, including higher legal education, it has direct implications not only for the structure of legal education but also for its methodology and content. The Declaration seeks to create a “European space for higher education” . . . with three main goals: international competitiveness, mobility and employability. The Declaration and the reforms it promotes focus not on the harmonization of higher education in Europe as such, but rather on the transparency necessary to increase the mobility of students and professors. It places great importance on the need for institutes of higher education in Europe to become more competitive internationally, so as to better rival American universities. It further recognizes the link between education and employment, casting the suggested reforms as a way to increase the labor market for graduates in a “globalized market for a high-grade work force.”<sup>39</sup>

Additional requirements of the Bologna Process are “the introduction of a credit transfer system . . . and other methods of encouraging student mobility, support for the mobility of faculty and staff, emphasis on European cooperation in quality assurance, and promotion of European dimensions in higher education itself.”<sup>40</sup>

Hovhannisian’s description highlights three aspects of the Bologna Process that have contributed to the development of interactive teaching generally and clinical legal education specifically in European law schools. First, linking education to the labor market means that a part of legal education must be focused on preparing students for the legal profession they will be entering. This is, of course, a central mission of clinical legal education.

Second, the adoption of the Bologna reforms, which apply throughout Europe, has stimulated the spread of interactive teaching and clinical education to Western Europe. Western European universities have had to modify their legal education

<sup>38</sup> See Veronika Tomosková and Maxim Tomoszek, *The Clinical Programme at the Law School of Palacký University in Olomouc*, Chapter 4 in this volume.

<sup>39</sup> Lusine Hovhannisian, *Clinical Legal Education and the Bologna Process*, PILI Papers, Number 2, Dec. 2006, at 5 (citations omitted), [www.pilnet.org/public-interest-law-resources/25-clinical-legal-education-and-the-bologna-process.html](http://www.pilnet.org/public-interest-law-resources/25-clinical-legal-education-and-the-bologna-process.html). See also Laurel S. Terry, *The Bologna Process and Its Impact in Europe: It’s So Much More than Degree Changes*, 41 VAND. J. TRANSNAT’L 107 (2008).

<sup>40</sup> See Lusine Hovhannisian, *Clinical Legal Education and the Bologna Process*, *supra* note 39.

programs to remain competitive internationally. This has created an incentive to implement more innovative courses and interactive teaching methods that are designed to engage students and prepare them for global law practice. The past decade has therefore seen a significant growth in the number of clinical programs at Western European law schools.<sup>41</sup>

The third contribution of the Bologna Process is more subtle. The creation of a credit transfer system and the encouragement of student mobility have meant that classes for these “exchange students” must be taught in a common language. That language is typically English, and this makes it more likely that English-language teaching materials from the United States, the United Kingdom, and other common law countries will find their way into the curriculum. This creates a kind of “stealth” infiltration of US and common law approaches to teaching. The wide use of a common language also makes it easier to conduct intra-European teaching conferences.

Paralleling the role of the Bologna Process has been the “Europeanization” of legal systems through membership in the EU. The possibilities of a “European Law School” and a “European Common Law” were discussed in Western Europe as early as 1992,<sup>42</sup> but with the wave of Central and Eastern Europe countries joining or applying for EU membership since 2004, “Europeanization” has extended throughout this region as well.

But beyond the influence of Bologna and the European Union, an exciting development in European legal education has been the birth of a European-based clinical education community. This began in Poland and was initially concentrated in Central and Eastern Europe, but it has now spread throughout Europe.<sup>43</sup> The most visible manifestation of this trend was the founding, in 2012, of ENCLE, which now boasts more than 140 members from 30 countries.<sup>44</sup> ENCLE was built on the successful international networking model of GAJE.

European clinical teachers now host their own conferences, train their own teachers, publish their own resource materials, and develop their own clinical models. The US efforts of the 1990s and 2000s surely contributed in important ways to this process. So what conclusions can be drawn about the overall value of the past involvement of the United States in European clinical legal education? And is there still a role for the United States? These questions are taken up in the concluding section.

<sup>41</sup> The Western European clinical programs profiled in this volume provide vivid illustrations of this.

<sup>42</sup> See Jutta Brunnée, *The Reform of Legal Education in Germany: The Never-Ending Story and European Integration*, 42 J. LEGAL EDUC. 399, 423–26 (1992).

<sup>43</sup> The present volume describes a diverse array of clinical programs in Belgium, the Czech Republic, Finland, France, Germany, Hungary, Italy, the Netherlands, Poland, Spain, Switzerland, and the United Kingdom.

<sup>44</sup> See [www.encle.org/membership-directories/mdir](http://www.encle.org/membership-directories/mdir). See, also, PILnet Welcomes the European Network for Clinical Legal Education, 3 October 2012, [www.pilnet.org/project-updates/166-pilnet-welcomes-the-european-network-for-clinical-education.html](http://www.pilnet.org/project-updates/166-pilnet-welcomes-the-european-network-for-clinical-education.html).

REFLECTIONS ON THE VALUE OF US INVOLVEMENT IN  
EUROPEAN CLINICAL LEGAL EDUCATION,  
PAST AND FUTURE

The foregoing discussion has described the ways in which the extensive US funding and consultative resources that were poured into Central and Eastern European legal education in the 1990s and 2000s yielded fewer *direct* benefits than might have been expected and, perhaps, than is commonly understood. Although clinical programs were established throughout the region, many of these did not survive when the outside funding ended and the consultants left.

What are the lessons from this? For one, those of us who were involved in these efforts probably did not spend enough time preparing ourselves *culturally*. We did not learn enough about the differences between US and European legal education and law practice. As a result, we sometimes focused on subjects that were of limited relevance to our audience. For example, there was an emphasis placed on the value of allowing students to take responsibility for cases even though the countries in which we were working did not have anything like our American student practice orders and were unlikely ever to move in this direction.

In addition, our choices of the specific skills we taught were probably misplaced.<sup>45</sup> The training sessions and exercises we designed focused on the dynamics of the attorney–client relationship, including developing interviewing and counseling skills, achieving an empathetic relationship with clients, and preparing for adversarial proceedings. However, these are *not* the skills at the core of European law practice, where the emphasis is more on presenting a case in writing to a judge who controls the flow of information. We probably should have been concentrating more on research, drafting of documents, and presentation skills, all of which are more relevant to practice in the inquisitorial civil law system.

On a practical level, we also failed to take sufficient account of the structural differences between European and US legal education. As discussed in Section II, in contrast to the United States, the European law curriculum is dominated by required doctrinal courses, which are dictated by the government departments responsible for higher education. This leaves little room for elective clinical courses. In addition, neither faculty nor students necessarily receive any credit for these courses. Furthermore, teaching loads in Europe are typically much heavier than in the United States,<sup>46</sup> and class size, at least in the European public universities, is also much larger. These factors make the highly individualized teaching that is characteristic of US clinical teaching difficult, if not impossible. European clinical education therefore needs to be structured around these practical constraints.

<sup>45</sup> For additional discussion of this point, including a summary of an exchange between the European and American co-authors, see Akšamović and Genty, *Clinical Legal Education in Eastern Europe*, *supra* note 16, at 434–36.

<sup>46</sup> For example, a European friend and colleague recently told me that she is expected to teach fifteen classroom hours *per week*. Most of my US colleagues would find this unimaginable.

Finally, there is no doubt that some of the funds were wasted on unnecessary clinical “infrastructure” (e.g. gleaming new spaces that actually served few, if any, functions). Funders probably paid too much attention to the physical aspects of law clinics and not enough to the development of the less visible “human capital” that has been such a crucial factor in the recent revival and growth of clinical legal education throughout Europe.

On the other hand, the *indirect* benefits show that some of the funds were very well spent indeed. The funds that paid for conferences and workshops exposed European teachers to interactive teaching methods that they were able to introduce in their own classroom teaching. In addition, the conferences and workshops created opportunities for interactions between the US and European educators and among the Europeans themselves. This “planted the seeds” for a new generation of European clinical teachers who had been inspired by what they had experienced in the conferences. Moreover, the interactions among the Europeans created new networks that have subsequently ripened into a vibrant European clinical teaching community. This community continues to thrive and embark on exciting, new – and distinctly European – models of clinics and clinical education.

Two noteworthy examples of such European clinical models are Roma rights clinics and the more recent EU law clinics. These models are distinctive because of their transnational character. Roma rights legal clinics are a type of human rights clinic, and, in that sense, they resemble other human right clinics throughout the world. But their distinctive feature is that they deal with a particular ethnic minority who experience economic and social hardship throughout Europe. Clinics on EU law, which have been initiated more recently, are distinctive in the way they address issues such as the free movement of EU citizens within the EU, the Common European Asylum System, EU human rights law, and EU consumer rights. EU clinics are discussed in Chapter 9.<sup>47</sup>

The European clinical programs have also been resourceful in adapting to some of the practical constraints imposed on them. For example, because of the general lack of student practice orders permitting students to appear and provide representation in judicial and administrative proceedings, European law schools have developed innovative “limited scope” models in which students provide legal advice and possibly draft documents for clients to use in their *pro se* appearances before the tribunals. A second approach is to have students work with NGOs, providing

<sup>47</sup> See the following chapters in this volume: Alberto Alemanno and Lamin Khadar, *The EU Public Interest Clinic and the Case for EU Law Clinics* (Chapter 9); Anthony Valcke, *The EU Rights Clinic at the University of Kent in Brussels* (Chapter 10); and Ulrich Stege and Maurizio Veglio, *On the Front Line of the Migrant Crisis: The Human Rights and Migration Law Clinic (HRMLC) of Turin* (Chapter 7). See also Lamin Khadar, *Why the EU Should Take Note of the Europe’s Newest Legal Clinics*, October 2014, <http://encl.org/news-and-events/news/25-why-the-eu-should-take-note-of-eu-ope-s-newest-legal-clinics>.

assistance on legislation and other matters in which the NGOs are involved.<sup>48</sup> The European programs have also made extensive use of the “street law clinic” model, in which law students teach practical legal concepts in secondary schools and other settings.<sup>49</sup>

Employing these and other approaches, clinical legal education programs have prospered throughout Europe. Much of the credit for this success goes to the Europeans themselves, but it is fair to say that the US efforts served as a catalyst for all that is happening today in European clinical legal education. On balance, then, the past involvement of US funders and clinical consultants had real value.

But what of the future? Is there still a role for the United States in European clinical legal education? The answer relates back to the benefits of the past collaboration between US and European clinical teachers. The Europeans learned from the Americans, but we surely learned from these exchanges as well. The Americans who worked with the Europeans were able to step outside our own environment and see ourselves in a fresh light. In responding to questions or explaining our teaching methods and goals to our European colleagues, we were able to understand ourselves better. And our colleagues often gave *us* ideas about how we might approach our own teaching and supervision differently. The experience was the equivalent of holding up a mirror and seeing one’s own reflection in a new way.

I have experienced these benefits through my contacts with two different groups of clinical educators. The first group consists of legal academics who have added clinical teaching to their doctrinal teaching portfolio. It has been instructive to learn how they connect the theory about which they have written and taught throughout their careers to the practical context of the clinical courses and how they adapt their teaching styles to these different settings. These educators are also able to help the students see the relationships between their doctrinal and clinical courses.

The second group of clinical instructors are lawyers who came to clinical teaching from work in NGOs. I have admired the way they see their teaching as an extension of the activist work to which they have devoted their professional lives. Their approach to clinical pedagogy reflects this sense of mission.

Combining the experiences with these two groups of educators, I have been inspired by the example of people who “planted” new clinical models in an often hostile “soil.” I have learned, or at least been reminded, that it is often necessary to adapt one’s pedagogical goals to the particular environment in which one teaches.

<sup>48</sup> An example is the EU Clinic run jointly by NYU and HEC Paris, which is described in this volume. See Alberto Alemanno and Lamin Khadar, *The EU Public Interest Clinic and the Case for EU Law Clinics* (Chapter 9).

<sup>49</sup> See, e.g., See Veronika Tomosková and Maxim Tomoszek, *The Clinical Programme at the Law School of Palacký University in Olomouc*, Chapter 4 in this volume. See also Felisa Tibbitts, *MANUAL ON STREET LAW-TYPE TEACHING CLINICS AT LAW FACULTIES PREPARED FOR CENTRAL AND EASTERN EUROPE, RUSSIA, THE SOUTH CAUCASUS, CENTRAL ASIA AND MONGOLIA*, COLPI Paper No. 3 (Open Society Institute 2001).

More important, with the right sense of vision and motivation, it is *possible* to do so successfully. Many of my US colleagues have had similarly valuable experiences.<sup>50</sup>

This is why cooperation between clinical teachers in the United States and Europe continues to be so important for both parties. The Europeans have established a dynamic teaching community with a variety of clinical programs in schools throughout both the East and the West. But what they sometimes still lack is a self-conscious awareness of their own pedagogical choices and goals and the tradeoffs among these. And that is something we Americans, as outsiders, can give them. Just as the Americans profited from being able to see ourselves through the eyes of the Europeans and imagine other ways of approaching our work, the Europeans can derive important benefits from having this same experience. Ongoing collaboration is therefore to our great mutual advantage.

<sup>50</sup> See, e.g., Leah Wortham, *Aiding Clinical Education Abroad: What Can Be Gained and the Learning Curve on How to Do So Effectively*, 12 CLINICAL L. REV. 615, 623 n. 30 (2006) (citation omitted) (describing what she learned from working with several European colleagues and citing the similar experience of another US colleague).