

Clinical education and social inclusion: the example of the *Law Clinic for the rights of vulnerable persons* of the University of Geneva

I. Setting the stage: the world of legal clinics

Law clinics are not a new phenomenon – quite the contrary: the first legal clinics date back as far as the late 19th century. In 1893, students of the university of Pennsylvania established a legal aid dispensary, with the idea to make their recently acquired legal knowledge accessible to a wider public, and more specifically to underprivileged segments of the population (Aurey 2015: 8-9). A few years later, at the university of Denver, the arguably first-ever “full” legal clinic was created, combining a legal aid dispensary with legal education. Hence, clinical legal education was born.¹ Over the next decades, several comparable programs were established at other U.S. universities. After the Second World War, their number rocketed, with legal clinics springing up like mushrooms after rain throughout Northern America and parts of the Commonwealth (Bloch 2012; Bloch/Prasad 2006: 166). The development is more tentative in Latin America, where nevertheless various clinics are established in the second half of the 20th century (Aurey 2015: 13-14; Bloch 2012).

What is new, though, is the scale of the phenomenon. Firstly, it has now become truly global, with continental Europe finally joining the party.² Indeed, as late as 2004, one author affirms that “[t]he only area of the World in which clinics have not taken hold is Western Europe” (Wilson 2004: 422). However, over the last fifteen years, Western Europe has been quick to catch up and legal clinics are now a recurring feature of the landscape of legal education. Secondly – and more importantly –, legal clinics are now, in many places, firmly established. Thus, in 2004 already, Wilson writes: “[i]n the United States, clinical legal education has become an integral component of the curriculum at virtually all law schools [...] Clinical teachers can proudly assert that clinical legal education is one of the most significant and successful pedagogical developments since [...] the beginning of the Twentieth Century” (Wilson 2004: 421), a situation that has only been confirmed since, and a similar evolution can be observed in other parts of the

¹ Despite the firmly established U.S.-American roots of clinical education, it has to be noted that one of the first inspirations is of Russian source, namely professor Alexander Lyublinsky, who believed that legal education could – and should – “be modelled on medical training” (Wilson 2004: 421).

² To illustrate this point: the first « durable » Law Clinics, going beyond the occasional clinical experience within an established course, is established in 2007 (Aurey 2015: 17). In the decade that follows, numerous clinics are created throughout France. In Switzerland, the Law Clinic of the University of Geneva, established in 2013, was a lone forerunner for many years. There are now others – especially an Asylum Law Clinic at the University of Bern.

World. European teachers have the privilege of simultaneously participate in what is still seen as a pedagogical innovation and draw on a century of inspiration.

Being part of a global “fashion” undoubtedly has its perks – but also its risks. In the field of clinical education, one of the main risks is that, by moving from the margins to the center of the educational landscape, legal clinics loose touch with one of their two original goals: being actors of social justice (Ashar 2008: 360, 371). Indeed, as legal clinics are integrated into the mainstream curriculum, there is a risk that they, too, serve the reproduction of existing hierarchies instead of questioning and undermining them (Ashar 2008). Some of the educational benefits of clinical teaching – providing students with a real-life, practical professional experience – are very much in line with the current pressures of the market – and politics – to train, in the most efficient way possible, the next generations of lawyers.

Underlining these aspects can help “selling” a clinical programme, especially in an academic setting where resources are rare. However, the educational benefits should not become self-serving: otherwise, clinical education would be little more – if at all – than an immersive internship. Even worse, clinics which focus too much on educational benefits³ risk losing touch with their “target audience”, be it individual clients or communities, therefore dangerously approaching the “practical case exercises” and other real-life simulations. In the “age of clinical teaching”, it is therefore more important than ever to remember the – intrinsically linked – twin goals at the origin of legal clinics: teaching *and* working towards social justice.

In the following, I will shortly present the Law Clinic of the University of Geneva and examine the way this clinic works towards inclusion and social change. Not as a “best practice”-example – being self-critical is a crucial part of the clinical teaching –, but as the case I know best. Indeed, in line with the philosophy of clinical teaching and its “learning by doing”- and grassroots-approach, we can only ever extrapolate from our own experiences.

II. The Law Clinic of the University of Geneva

³ Ashar distinguishes between (individual) case-centered, skills-centered and – much less common – impact-litigation-focused clinics (Ashar 2008: 367-374). To a certain extent, though, he considers them all to be too skills-centered. While acknowledging their differences, he criticizes them all for their too individualistic approach, that isolates the client and does hinder, rather than catalyse, collective mobilization.

The University of Geneva's *Law Clinic of the rights of vulnerable persons* – locally known simply as *Law Clinic* – was created in 2013. A bottom-up initiative by two teaching assistants, the Law Clinic has stemmed from the realisation that even within the rather privileged ambit of the city of Geneva's population, there were many persons in a situation of vulnerability, due to varying combinations of political, socio-economic and legal factors. While certainly not the only one – and probably not even the most pressing –, the *need for legal information* was expressed by various groups of the local population as well as by NGOs and associations working with them and / or representing them (Carron/Lefort 2016: 4). One of the driving forces behind the creation of the Law Clinic was the aim to respond to this demand of legal information.

From its conception, the *Law Clinic* has also tried to answer the students' quest for a more practical learning experience during their curriculum (Carron/Lefort 2016: 4). Since its beginning, it has taken the form of a master-level university course, gratified first by 6, then by 18 ETCS credits. While this may seem well-paid at first glance, these credits are amply justified by the extensive work provided by the students during almost two semesters: legal research and writing of extensive legal reports answering specific questions during the first semester, drafting of condensed 'popularized' answers and dissemination of the obtained information during the second semester, not to count the numerous activities aimed at bringing the students closer to their "target audience".

Since its creation in 2013, the *Law Clinic for the rights of vulnerable persons* of the University of Geneva (*Law Clinic*) has addressed the rights of several groups of persons considered to be in a position of legal vulnerability: the rights of "Roma" persons in precarious situations in Geneva; the rights of persons in pre-trial detention at the local *Champ-Dollon* prison; the rights of women without legal status in Geneva and the rights of LGBT persons in Switzerland; the rights of young unaccompanied minors aged 15 to 25.

Designed as a "Know your rights"-legal clinic, the *Law Clinic* aims mainly to inform specific populations of their rights. This is achieved with booklets and brochures completed by information sessions, workshops and meetings. The *Law Clinic* does not defend individual cases and provides only occasional legal support in individual cases, but tries to work with multipliers (civil society, grassroot organisations, associations, NGOs, sometimes other state institutions) in order to reach its target audience.

III. Clinical teaching, human inclusion, social change

a. A note on terminology

Social inclusion works on many levels: the promotion of equal opportunities; the extent to which individuals, families and communities are able to participate in everyday society and control their own lives; the full participation of persons and groups seen as “excluded” or “disadvantaged” in major social institutions, including those often reserved to a certain elite, and the full realization of their equal citizenship rights.⁴ The term social inclusion is, however, also problematic to a certain extent – speaking of inclusion presupposes that there are excluded members of society. Social exclusion, while frequently used term in the past – in France, especially in the 1990s – has since become “suspect”, mainly for the dichotomy “us – them” that it creates and for its static connotations (Brodiez-Dolino: 2016).

For this reason, in recent years, some have preferred the term “vulnerability”. “Vulnerability” is seen as dynamic, indicating both a risk of exclusion, but also a possibility of inclusion. Understood in this sense, vulnerability is to be paired, not with *invulnerability*, but with resilience (Fineman 2008). However, vulnerability carries its own risk of stigmatisation, which is perhaps most apparent in the use of the term “vulnerable groups”, which re-creates a dichotomy “us-them” of its own (Fineman 2008). From a conceptual perspective, it is thus crucial to remember that we are all, to a certain extent, vulnerable, though on varying degrees.

The Law Clinic of the University of Geneva has been baptised “Law Clinic for the rights of vulnerable persons” in 2013. The idea was to highlight the social justice aspect of the programme, to avoid the pitfall of being too skills-centred. Six years later, the practical experience gives as somewhat contrasted result: while the name “sells well” within the university ambit as well as with legal professionals, it is almost impossible to use with the clinic’s target audience, i.e. “the vulnerable”. We try to avoid stigmatisation by underlining the *legal* aspect of this vulnerability, meaning we address the rights of groups of persons whose rights are not sufficiently respected in practice. Legal research and legal knowledge is therefore seen as a resource for creating *resilience* in the face of vulnerability.

⁴ For a similar definition, see e.g. <https://www.igi-global.com/dictionary/social-inclusion/27360>.

b. The importance of the collective process

Social inclusion happens, first and foremost, by the way a legal clinic operates. Legal clinics should involve the concerned persons as active participants of the clinical experience and give them a forum as experts of their own life-experience and story. The Law Clinic tries, whenever be possible, to include the target audience as fully-fledged co-actors. The idea is to create, as much as possible, a horizontal cooperation, where each participant brings their own expertise, the clinicians' being, most often, limited to legal aspects. This means that clinicians need to be extremely aware of the limits of their own knowledge and competence.

While this theoretical stance is part and parcel of the clinical philosophy, in practice, there are some major obstacles to living it. Within "traditional" client-oriented clinics, there is a risk to reproduce, very quickly, the lawyer-client relationship, with the traditional – and somewhat inevitable – hierarchy that this entails (Ashar 2008). There is a risk that the critical thinking and social awareness gets somewhat reduced to a "therapeutical" lawyer's approach, taking into account the client's social, cultural and personal background, but still in a hierarchical and individualistic manner. By considering them as individual "cases", these clinics are also at risk of isolating their clients, thereby hindering rather than catalysing – or at least supporting – collective mobilization and social change (Ashar 2008).

Conversely, collective clinical approaches – such as the one in Geneva – can actively participate in pre-existing social and political movements, bringing legal knowledge and support to the cause. Indeed, in the context of collective mobilization, legal knowledge is source of resilience and a crucial tool for a bigger struggle. This form of resilience also goes by the name of *legal empowerment*, which can be defined as "a process of systemic change through which the [...] excluded become able to use the law, the legal system and legal services to protect and advance their rights and interests as citizens and economic actors" (Gisselquist 2019: 333).

However, even within the collective form, there are some dangers inherent in clinical teaching. The very concept of a "know your rights"-law clinic is to *teach* laypersons about their rights, a concept that is undeniably – and perhaps inherently – somewhat paternalistic. There is, even in the collective form, a risk of creating a hierarchy where twenty-year old students "explain the world" to persons that are much older and much more experienced than themselves. Any clinic – and every clinician – should therefore be extremely aware of the limits of their own expertise. This is actually one of the valuable teachings of clinical education: to learn the potential – but also the limits – of

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legal knowledge and of one's own competences and expertise as a legal expert. In Geneva, this is especially apparent during the initial phase, where we collect information and try to determine, with primarily affected persons and civil society organisations, the legal questions that need to be answered. It is a phase where the only expertise comes from the "ground", completely reversing the usual power dynamics between university and "the public" (Vallier 2018). It is however also true for the whole process.

Ashar defines three essential questions that all legal clinics – but especially the collectively oriented – and public interest lawyers should ask themselves: "(1) whether it fits into a broader campaign for reform with other similarly situated clients; (2) whether the representation will help create or sustain some form of collective resistance; and (3) who will stand for (or work with) the population and its cause when students graduate and clinics move on to new cases and causes." (Ashar 2008). In Geneva, we try to be mindful of these three elements, first and foremost by creating lasting partnerships with primarily affected persons and civil society organisations. It is, however, a work in progress and continuing challenge. Especially the third point – sustainability of the clinical work – is not easy to address, mainly due to limited resources. A slightly different, but not less important question, is that of the real impact of legal knowledge : does it always further the cause?

c. Social change

Legal empowerment captures the idea that the knowledge of one's rights can empower individuals – knowing their rights being the first step towards vindicating them –, but can also favour and sustain political and social movements. During its existence, the Law Clinic has had the occasion to witness numerous situations where the simple knowledge of a legal situation in and of itself has been an agent of change. There have however also been other cases, where an increased legal knowledge has led to new confrontations, especially with the police. In my presentation, I will discuss both elements with specific practical examples. More generally, it is important to be mindful of the inherent limits of a "know your rights"- legal clinic. Indeed, in some cases, legal knowledge can also be a setback for a collective mobilization, especially since the law is, more often than not, designed to uphold existing power structure. It is therefore important to find ways to complete this approach by a more normative one, working more directly towards active legal and societal change. However, this also begs the question of the role and limits of clinical activity. The Genevan Law Clinic has recently been involved in a law project, which has been an interesting, but also challenging project, raising many questions about the limits of legal expertise and the beginnings of policy-making.

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Law reform is certainly a way to obtain social change. It is, however, not sufficient. Indeed, a recurring critique within scholarship is that law reforms, by constructing the law itself as the social injustice, are excessively narrow (Carolin 2014: 107). Two major pitfalls are first, the neglect of the underlying social and political context at the origin of the law, and the need for a broader societal transformation and second, the fact that law reforms give an excessively important role to lawyers, by positioning them as agents for social change (Carolin 2014: 107). This is why the aforementioned partnerships and the integration of clinical work into existing social and political movements is crucial, because it contributes to movement-building and social empowerment.

In this context, it is important to stress that the participation in a collective process also helps to empower the clinicians – students as well as facilitators/supervisors – by integrating them in a collective mobilization (Ashar 2008). It is also a golden opportunity to learn – and re-learn – to critically reflect the role and limits of law and lawyers (Quigley 1995; Hughes 2008). To cite a prominent critical clinician: “After going through [such] a clinic [...], students often rethink their own roles as social change lawyers, from that proverbial ‘hired gun’ to that of a ‘subject’ and an ‘ally’ in multidimensional practices of transformation.” (White 1997: 606).

IV. Conclusion

Teaching and working towards social justice are sometimes seen as two antagonistic goals within clinical pedagogy, with some going as far as advocating the separation of the two with the creation of extracurricular legal clinics (Nicolson 2006). However, this is largely due to a shift in the focus of *what* we teach in legal clinics. There has been a tendency in recent years to focus on the usefulness of clinical teaching with the training of future lawyers in mind – think: practical experience, client relationship, answer specific legal questions, represent clients, formulate claims etc. However, the pedagogical benefits of clinical teaching are much wider. During a clinical programme, students should learn to question the role of lawyers and be aware of their own limits; learn more about the “mechanics”/dynamics of collective mobilization, including the power struggles within those movements; participate within social movements; be aware of their own limits and critically question the role of lawyers, but also of the university; critically question social dynamics of power, and get ideas on how to oppose or break them; and, hopefully, acquire a “hunger” for more.

Seen this way, the acquisition of clinical legal education skills for the students and actions pursuing social justice are not antagonistic, but are on the contrary mutually reinforcing and – perhaps more importantly, both goals are directed towards social

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justice in the longer run. Core clinical education skills include awareness-raising to questions of social (in-)justice, the encouragement of critical thinking and, more generally, the familiarisation with a more inclusive way of thinking and working that provides a centre stage for groups usually positioned at society's margins. Educating new generations of "social justice lawyers" is, therefore, another way clinical education can work towards social and human inclusion. Outside the immediate pedagogical benefits, clinical programmes can also help to reshape the role of universities, and build bridges between the "street" and the "ivory tower". This is very much in line with the recently developed concept of university social responsibility that has gained momentum within the Council of Europe's ambit (Ollard/Baumgartner 2017; Council of Europe 2015).

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