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Clinical Legal Education: A (Brief) Comparison of the Evolving Structures and Pedagogy in Mexico, Canada and the United States

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This Article highlights the development and current state of clinical legal education in Canada, the United States, and Mexico, and examines recent trends in clinical legal education in each country. This is a timely topic. Canadian clinics and, in particular, Ontario-based law school-affiliated clinics are grappling with recently-imposed post-graduation alternatives to traditional articling practices, while Canadian law schools are examining whether additional experiential courses should be offered to law students. U.S. law schools face difficult choices with respect to clinical education in light of sustained lower enrollments and resulting adjusted budget realities, as well as the pressures of meeting the needs of a radically restructured legal marketplace. Mexican legal clinics have a proud and storied history of providing free legal services to local communities and are rapidly evolving into more formal structures, even as the market for a legal education in Mexico is undergoing a transformative change.

The Article has three components and each country's system of clinical legal education is addressed in turn, starting with the United States. First, it describes the history of clinical legal education in each country in terms of how clinical legal education evolved, how many clinical and

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experiential courses are offered and in which topic areas, and how such courses are structured in terms of student activities and faculty supervision. Second, it discusses the current state of clinical legal education in each country and the unique challenges in each context. Third, the Article offers possible means by which institutions, such as law schools and attorney licensing bodies, can learn from the experiences of their counterparts in other jurisdictions to provide the best possible legal instruction for law students within each country's legal, political, and cultural framework.

I. CLINICAL LEGAL EDUCATION IN THE U.S.

A. *Historical Roots*

Clinical legal education in the United States traces its roots back more than a century, to the creation of legal services “clinics” at law schools in the 1920s and 1930s.⁴ In these settings, the goal of housing clinics at law schools was to serve community needs while providing real-world lawyering experiences for law students—a goal that continues today, but one that has deepened considerably in pedagogical and structural complexity. Indeed, in structure, these clinic forerunners more closely resemble today's typical law school pro bono programs, where the school facilitates law students providing important community service, but with minimal faculty involvement and very little—if any—connection to the law school curriculum.

In the 1940s and 1950s, more schools began offering something like a clinic,⁵ but it was only in the 1970s, thanks to intense investment by the Ford Foundation, that clinical legal education as we know it today took hold throughout the legal academy.⁶ The Ford Foundation created the Council on Legal Education for Professional Responsibility (CLEPR), which provided grants and technical assistance to schools for the creation of in-house clinics.⁷ CLEPR's vision for these clinics was to equip law students with the knowledge needed to respond to community needs. This purpose complemented the rise in overall legal services happening through funding from the Office for Economic Opportunity (OEO) led by Sargent Shriver. This intensive period of clinical growth, which led to the creation of 346 clinical courses and seminars at 127 law schools by 1975, had its

4. J. P. “Sandy” Ogilvy, *Celebrating CLEPR's 40th Anniversary: The Early Development of Clinical Legal Education and Legal Ethics Instruction in U.S. Law Schools*, 16 CLINICAL L. REV. 1, 4 (2009). Professor Sandy Ogilvy traces the early roots even further back, to the apprenticeship model that prevailed before the age of Langdell. *Id.*

5. *Id.*

6. Peter A. Joy and Robert R. Kuehn, *The Evolution of ABA Standards for Clinical Faculty*, 75 TENN. L. REV. 183, 187 (2008).

7. *Id.*

roots in the war on poverty and its purpose aimed at addressing both community need and law school pedagogy.⁸

The in-house clinic model that emerged in force in the 1970s had several defining features (and a million variations). Typically, an in-house clinic was a “for-credit curricular offering in which law students represent ‘real clients’ in ‘real situations’ under faculty supervision.”⁹ The nature of the clinic as a curricular offering marked a significant moment of departure from previous clinical iterations, as it compelled clinics to develop thoughtful pedagogies (as discussed below), and marked the start of a rise in status of clinicians as faculty members instead of adjunct instructors—a status issue that continues today.

B. *American Clinics Today*

According to the Center for the Study of Applied Legal Education, as of 2010-11, there were 1,036 clinics at 156 schools.¹⁰ Clinics have clearly proliferated and are seen as a core offering at many schools, increasingly as “capstones” to the legal education curriculum. Although law schools are required to offer clinics for ABA accreditation, the vast majority of schools do not *require* students to take a clinic; only 3.2% of law schools require a clinic¹¹ (the host of this symposium, the University of Detroit Mercy, is one of those schools, and was one of the first in the country to make this a graduation requirement for its students, which it did in 2005).

The range of clinical offerings has expanded, leaving no doctrinal or practice area untouched, from general practice clinics in civil litigation to clinics that specialize in criminal defense, mediation, immigration, intellectual property, tax, domestic violence, landlord-tenant, and many, many other areas.¹² Collectively, these clinics provide 1.38 million hours of civil legal assistance, and 440,000 hours of criminal legal assistance.¹³ Fully 70% of clinics have students actually entering their appearances *as* the lawyer, under student practice rules.¹⁴

8. William Pincus, *Clinical Training in the Law School: A Challenge and a Primer for the Bar and Bar Admission Authorities*, 50 ST. JOHN'S L. REV. 479, 482 (1976).

9. Douglas A. Blaze, *Déjà Vu All Over Again: Reflections on Fifty Years of Clinical Education*, 64 TENN. L. REV. 939, 939 n.2 (1997).

10. DAVID A. SANTACROCE & ROBERT R. KUEHN, CTR. FOR THE STUDY OF APPLIED LEGAL EDUC., THE 2010-11 SURVEY OF APPLIED LEGAL EDUCATION 7 (2012), <http://www.csale.org/files/CSALE.Report.on.2010-11.Survey.5.16.12.Revised.pdf>.

11. *Id.* at 9.

12. *See id.* at 7–8.

13. *Id.* at 20.

14. *Id.* at 19.

The pedagogy of U.S. clinical legal education is as rich and diverse as the clinics themselves.¹⁵ As Carolyn Grose has written, “clinical education has three broad goals: providing learning for transfer; exposing students to issues of social justice; and offering opportunities to practice lawyering skills.”¹⁶ How that happens varies enormously from clinic to clinic, but Grose identifies three themes from clinical methodology: “(1) grounding the teaching in the students’ case/client work; (2) teaching lawyering as ‘process’ composed of various themes; and (3) giving students multiple opportunities to reflect on their experiences.”¹⁷ This pedagogy has been elaborated, refined, challenged, revised, and reinvented through energetic debates at regional and national clinical conferences¹⁸ and through scholarship, particularly in the peer-reviewed *Clinical Law Review*.

As clinics went from extra-curricular to deeply enmeshed in the curriculum, faculty fought for tenure status, and the position of clinical faculty is still evolving. Roughly 30% of clinical faculty members are tenured or tenure-track, and another 30% are on long-term presumptively renewable contracts.¹⁹ New teachers frequently come into clinical teaching through teaching fellowships, which are both entry, apprentice-like programs for teaching (often deploying the same mix of seminars, rounds and supervision that clinical teachers deploy for their students) and a source of lower-cost staffing for clinics.

Clinics exist within a complicated universe. Any given clinical program has a unique relationship with the law school it is part of, but clinical education more generally is shaped by multiple, sometimes overlapping external institutions. Some of that external influence comes from the standards promulgated by the American Bar Association for accreditation. Since 1992’s MacCrate report, those standards have helped ensure clinical education’s place in legal education by requiring that all schools offer “live-client or other real-life experiences,”²⁰ a requirement

15. Carolyn Grose, *Beyond Skills Training, Revisited: The Clinical Education Spiral*, 19 *CLINICAL L. REV.* 489, 491–92 (2013) (“I felt the need to delve deeply into the annals of clinical pedagogy and scholarship in order to excavate a clear description of the goals and methods of clinical pedagogy. . . . Not surprisingly, this research—fun and educational as it was—resulted in no such ‘clear description’ of the goals and methods of clinical pedagogy.”).

16. *Id.* at 493–94.

17. *Id.* at 498.

18. The AALS Clinical Education Section meets annually, there are regional clinical conferences, such as the Midwest Clinical Conference, and the Clinical Legal Education Association (CLEA) sponsors conferences for new clinicians, among others.

19. See SANTACROCE, *supra* note 6, at 11–12.

20. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHS. Standard 302(b)(1) (2013) available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_final_aba_standards_and_rules_of_procedure_for_approval_of_law_schools_body.authcheckdam.pdf.

that could be met with either clinics or other field placements like externships.²¹ The standards, however, allow for experiential education that falls short of the gold standard of live-client in-house clinics directed by tenured faculty. Indeed, recent proposed changes to the standards have been seen as setting back the clinical movement's quest for equal status within the legal academy.

Beyond the ABA, clinicians have drawn upon the support of such external institutions. The American Association of Law Schools has a robust clinical education section, and sponsors a well-attended annual conference where clinical pedagogy is debated and deepened (the most recent conference attracted more than 700 participants). Clinicians also founded and lead the Clinical Legal Education Association (CLEA), which is a source of advocacy for clinical education within the legal academy.²² CLEA's mission is multi-fold, but includes integration of clinical legal education into every law school in the United States.²³

C. Challenges and Opportunities for U.S. Clinical Legal Education

As legal education has come under mounting criticism in the United States, the future of clinics seems both hopeful and perilous. Typical critiques are that the cost of legal education is too high, that too much of the curriculum is outdated and impractical, that law schools are accepting students who are unlikely to ultimately pass the bar, and that law schools are graduating more students than the legal marketplace can employ.

The critiques do show at least some support for clinical education. Typical is one New York Times editorial noting that “[i]nstead of a curriculum taught largely through professors’ grilling of students about appellate cases, some schools are offering more *apprentice-style learning in legal clinics* and more courses that train students for their multiple future roles as advocates and counselors, negotiators and deal-shapers, and problem-solvers.”²⁴ Similarly, in an article discussing firms that play an increasing role in practical training of new associates, clinical education was viewed as a positive exception to the overall lack of practice-focus during law school: “many [law schools] have added or expanded programs that provide practical training through legal clinics. But almost all the cachet in legal academia goes to professors who produce law review

21. Robert MacCrate, *Statement of Fundamental Lawyering Skills and Professional Values, Task Force on Law Schools and the Profession: Narrowing the Gap*, 1992 A.B.A. SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE BAR.

22. *Mission*, CLINICAL LEGAL EDUC. ASS'N (Aug. 2009), <http://www.cleaweb.org/mission>.

23. *Id.*

24. Editorial, *Legal Education Reform*, N.Y. TIMES, Nov. 25, 2011, <http://www.nytimes.com/2011/11/26/opinion/legal-education-reform.html> (emphasis added).

articles.”²⁵ Even President Obama weighed in on the criticisms, noting that the third year of school would be better spent in hands-on training.²⁶

The quest to better prepare law graduates for practice seems to point uniformly toward deepening clinics’ place in the law school curriculum. The changing market for graduates requires them to learn the practice of law in a different way and to be able to strike out on paths other than tracking to big firms. Clinics, with their emphasis on transferable skills, learning how to learn the law, and building or deepening proficiency in such versatile skills as interviewing, counseling, negotiation, and oral and written advocacy, seem ideally suited to be part of such changes.

The impact of the calls for reform, however, is not uniform. As the ABA Standards permit, clinics are merely one of a possible range of experiential education that would meet accreditation standards, and externships may be cheaper for law schools to fulfill the standard.²⁷ A proposed new standard requires six credits of “substantial instruction in professional skills,” but that can be met through a clinic, externship *or* simulation (a broader range than previously existed).²⁸ Calls for reducing the amount of time in law school likewise disfavor clinical education, which largely occurs in the third year for most law students.²⁹

Navigating these competing pressures will require clinicians to continue to demonstrate the value of the clinical model. The prominence and scale of clinical education does help by making it more familiar among the bar more broadly, and the ongoing organizing and advocacy work done through CLEA, as well as through vigorous advocacy within the AALS structure, will also help withstand calls to diminish the place of clinics within the law school curriculum.

25. David Segal, *What They Don't Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 19, 2011, http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html?pagewanted=all&_r=0.

26. Goldie Blumenstyk, *Obama Singles Out For-Profit Colleges and Law Schools for Criticism*, CHRON. HIGHER EDUC. (D.C.), Aug. 24, 2013, <https://chronicle.com/article/Obama-Singles-Out-For-Profit/141253>.

27. A rich debate exists over how externships and clinics compliment each other, and where they differ in goals and methodologies. That debate is well beyond the scope of this brief survey.

28. Memorandum The Hon. Oliver Solomon Oliver, Jr., Council Chairperson and Barry A. Currier, Managing Dir. of Accreditation and Legal Educ., Am. Bar Ass'n: Section of Legal Educ. and Admissions to the Bar Ch. 3 (Sept. 6, 2013) (available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/20130906_notice_comment_chs_1_3_4_s2_03b_s603d.authcheckdam.pdf).

29. Philip G. Schrag, Letter to the Editor, *Should the Third Year of Law School Be Cut?*, N.Y. TIMES, Sept. 3, 2013, nytimes.com/2013/09/03/opinion/should-the-third-year-of-law-school-be-cut.html?_r=0 (“Clinical education, which best prepares students for the real practice of law, is expensive because of its hands-on approach. It is taught mainly in the third year, and it might be the first to go.”).

II. CLINICAL LEGAL EDUCATION IN CANADA

A. *Historical Roots*

The roots of clinical legal education in Canada are not as historically deep as they are in the U.S., but once clinical legal education was established in Canada in the 1960s and 1970s, it spread quickly throughout the academy.³⁰ Furthermore, segmenting clinical legal education in Canada into distinct periods or waves is an inexact endeavor because clinical education evolved relatively quickly over a 10-20 year period. In addition, many of the elements instituted in the early days of clinical legal education continue to bear their imprint upon modern Canadian clinical legal education. Finally, it is clear that clinical legal education in Canada is in a state of considerable flux and will continue to evolve and adapt to the demands of imposed by regulatory bodies as well as the dictates of the legal employment marketplace.

The foundations of clinical legal education in Canada are quite distinct in that the first clinics were almost entirely focused on community-based efforts to provide legal services to underrepresented Canadians.³¹ In order to lend some clarity to a somewhat imprecise evolution, the first wave of Canadian clinical legal education began in the early-1970s.³² The start date corresponds to the opening of community-based organizations to provide legal services to indigent and low-income Canadians.³³ Law students often worked in these clinics but without credit and with very uneven supervision and mentoring.³⁴ In essence, first wave clinics were similar to externships, in which students exercised significant responsibilities in the host organizations, including interviewing potential clients, preparing pleadings and, to a limited extent, representing clients before tribunals and other venues.³⁵ In most cases, clinics were not organized as clinics per se but were, in effect, field placements for law students to hone their legal skills at community-based organizations with no formal or organizational connection to a law school.

The transition to the second wave is signaled by the integration of Parkdale Community Legal Services, which, in all other respects, was a decidedly first wave venture, with Osgoode Hall as its sponsoring law school.³⁶ After the successful integration of Parkdale into Osgoode Hall, the connections between many community-based organizations and law

30. See FRANK S. BLOCH, *THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE 1* (Oxford University Press 2011).

31. *Id.* at 4, 8.

32. *Id.* at 8.

33. *Id.*

34. *Id.* at 7.

35. *See id.*

36. *Id.* at 7-8.

schools became closer. Yet, despite formal connections with law schools, in most instances, there was no assigned faculty to teach in clinical programs nor was there a formal classroom component or standard pedagogy for clinical education. Clinical instructors were drawn from the ranks of attorneys staffing community-based legal service organizations and paid a small stipend to offer some level of instruction to the law students who worked at the host organizations. In most instances, that instruction was tailored to the specific needs of a particular client on whose case a student worked and, as such, instruction more closely resembled mentoring than it did modern clinical instruction, which incorporates client representation with instruction on skills, active case rounds, and reflection regarding the lessons learned from client representation. That is not to suggest that early clinical instructors were not deliberate or serious in their efforts to train law students. Clinical instructors were, by and large, drawn to their work on behalf of underprivileged Canadians and, in that sense, were motivated by a sense of justice that extended to training successive generations of Canadian attorneys in how to serve clients in difficult circumstances with compassion and dignity.

While several Canadian law schools reaped the rewards of well-trained law students who took advantage of placements with community-based legal service providers, many other Canadian law schools did not formally associate with such programs or integrate clinics into the fabric of legal instruction. The host organizations were typically located some distance from law schools and often in more working class neighborhoods than the law school facilities, attorney instructors from such organizations were not on the faculty at the law schools, students were rarely awarded credit for what some law schools regarded as volunteer work, and there was little effort on the part of law school administrators to ensure that students were provided with consistent or relevant instruction.³⁷

Again, while it is difficult to chart waves in terms of the development of Canadian clinical legal education, the evolution of clinical legal education to include formal arrangements with community-based legal service providers and the partial integration of clinical instructors, most of whom remained full-time attorneys at the off-site clinics, signaled a growing acceptance by law school administrations for clinical legal education.

B. Canadian Clinics Today

The current state of Canadian clinical legal education stays true to the uneven evolution of clinics. Clinics associated with Canadian law schools can generally be assigned to three broad categories: (1) full or nearly-full service generalist clinics, (2) specialty clinics, and (3) advice-only clinics.

37. *Id.* at 7.

Examples of full service clinical programs include those at Dalhousie University,³⁸ University of Alberta,³⁹ University of Calgary,⁴⁰ University of Victoria,⁴¹ University of Saskatchewan,⁴² University of Manitoba,⁴³ University of Ottawa,⁴⁴ and the University of Windsor.⁴⁵ The abundance of generalist clinics affiliated with Canadian law schools reflects two realities.

First, many of the host organizations remain legal aid offices, funded with a mix of federal and provincial monies, and are required by law to provide a range of legal services. Legal aid offices most commonly handle low-level criminal matters, landlord-tenant disputes, family law matters (such as divorce, child support and parenting time), and small claims. Second, to a much greater degree than their American counterparts, Canadian attorneys are generalists and, over the arc of their careers, will handle a wide variety of legal matters for clients. To that degree, generalist clinical programs serve the needs of their community, host institutions, and future attorneys.

The following types of specialty clinics are offered at certain law schools: environmental (the Ecojustice Environmental Law Clinic at the University of Ottawa⁴⁶ and the Environmental Law Clinic at the University of Victoria⁴⁷), administrative (University of Calgary⁴⁸), business (the Western Business Law Clinic at the University of Western Ontario,⁴⁹ Osgoode Hall,⁵⁰ and Queen's University⁵¹), intellectual property

38. DALHOUSIE LEGAL AID SERVICE, <http://www.dal.ca/faculty/law/dlas.html> (last visited Feb. 24, 2014).

39. STUDENT LEGAL SERVICES OF EDMONTON, <http://www.slsedmonton.com> (last visited Feb. 24, 2014).

40. STUDENT LEGAL ASSISTANCE SOCIETY (CALGARY), <http://www.slacalgary.com> (last visited Feb. 24, 2014).

41. THE LAW CENTRE, <http://www.thelawcentre.ca> (last visited Feb. 24, 2014).

42. COMMUNITY LEGAL ASSISTANCE SERVICES FOR SASKATOON INNER CITY INC., <http://classiclaw.ca> (last visited Feb. 24, 2014).

43. *Law Centre – Legal Aid Clinic*, U. MANITOBA, <http://law.robsonhall.ca/clinical-learning/legal-aid> (last visited Feb. 24, 2014).

44. *University of Ottawa Community Legal Clinic*, U. OTTAWA, <http://www.uoclc.uottawa.ca/divisions.html> (last visited Feb. 24, 2014).

45. *Community Legal Aid*, U. WINDSOR, <http://www1.uwindsor.ca/law/legalaid> (last visited Feb. 24, 2014).

46. *Ecojustice Environmental Law Clinic*, U. OTTAWA, <http://uoclc.uottawa.ca/index.html> (last visited Jan. 22, 2014).

47. *Our Services*, THE LAW CENTRE, http://www.thelawcentre.ca/our_services (last visited Jan. 23, 2014).

48. *See* STUDENT LEGAL ASSISTANCE SOCIETY (CALGARY), <http://www.slacalgary.com> (last visited Jan. 23, 2014).

49. *Western Business Law Clinic*, U. WESTERN ONTARIO, http://law.uwo.ca/clinics_and_centres/western_business_law_clinic/index.html (last visited Jan. 23, 2014).

50. *Osgoode Business Clinics*, YORK U., <http://www.osgoode.yorku.ca/clinics-experiential/clinics/Osgoode-Business-Clinic-external> (last visited Jan. 23, 2014).

(University of Western Ontario),⁵² health care (Osgoode Hall),⁵³ indigenous legal issues (the First Nations Legal Clinic at the University of British Columbia),⁵⁴ and even legal issues involving professional athletes (the Sport Solution Clinic at the University of Western Ontario).⁵⁵

Several Canadian law schools offer so-called “intensive” clinics, in which students devote an entire academic term to studying and working in a particular field. Osgoode Hall is a leader in offering intensive clinics in criminal, poverty, business, disability and intellectual property law.⁵⁶ In addition, the University of Victoria offers intensive term-long clinical immersion experiences at its affiliated Law Centre and in Criminal Law, in which students devote an entire term to a clinical experience as well as co-requisite courses in the same field.

In addition to more formal clinics offered at Canadian law schools, advice-only clinics are offered at the several law schools across Canada, including the Law Students’ Legal Advice Program at the University of British Columbia,⁵⁷ and the Legal Information Clinic at McGill University.⁵⁸ Finally, any discussion of clinical legal education in Canada, no matter how brief, would be remiss if it failed to mention the extraordinary efforts of Pro Bono Students Canada (PBSC), which provides legal services without charge to nonprofit organizations and individuals throughout Canada.⁵⁹ PBSC is the only national law student program in Canada, the only national pro bono program in Canada, and the only national pro bono service organization anywhere in the world.⁶⁰ PBSC has chapters at all 21 law schools in Canada and each year over 1600 law

51. *Areas of Legal Assistance*, QUEENS U., <http://law.queensu.ca/students/legalAid.html> (last visited Jan. 23, 2014).

52. *Community Legal Services*, U. WESTERN ONTARIO, http://www.law.uwo.ca/clinics_and_centres/community_legal_services/index.html

53. *Clinics*, YORK U., <http://www.osgoode.yorku.ca/clinics-experiential/clinics> (last visited Jan. 23, 2014).

54. *Indigenous Community Legal Clinic*, U. BRITISH COLUMBIA, <http://www.law.ubc.ca/ils/clinic.html> (last visited Jan. 23, 2014).

55. *Sport Solution Clinic*, U. WESTERN ONTARIO, http://law.uwo.ca/clinics_and_centres/sport_solution_clinic/index.html (last visited Jan. 23, 2014).

56. *Clinical and Intensive Programs at Osgoode*, YORK U., <http://www.osgoode.yorku.ca/clinics-experiential/clinical-education> (last visited Jan. 23, 2014).

57. LAW STUDENTS’ LEGAL ADVICE PROGRAM, <http://www.lslap.bc.ca/main> (last updated Jan. 23, 2014).

58. *About the Legal Information Clinic at McGill*, MCGILL U., <http://licm.mcgill.ca/site.php?lang=en> (last visited Jan. 23, 2014).

59. PRO BONO STUDENTS CANADA, <http://www.probonostudents.ca> (last visited Mar. 18, 2014).

60. *Id.*

students serve over 400 organizations from coast to coast.⁶¹ PBSC students do not receive any class credit but are expected to devote at least five hours per week to their service, and volunteer attorneys oversee their work.

Clinical faculty in Canada, compared to their American colleagues, continue to rank as second-class citizens within law school faculties. Very few Canadian clinicians are tenure-track and no clinic directors are even members of the faculty at Canadian law schools.⁶² Clinicians are deemed to be akin to adjunct professors and staff of the wider university, rather than full-fledged members of the law faculty.⁶³ Funding for clinics is similarly tenuous. In Ontario, Legal Aid Ontario funds six law school clinics and, as a result, the clinics are folded into the legal aid system in that province.⁶⁴ Other clinics are supported, in part, by fees charged to university students for legal services and the clinics are then obliged to provide legal services to undergraduate, graduate, and professional students.⁶⁵

C. Challenges and Opportunities for Canadian Clinical Legal Education

Most casual observers of Canadian legal education are aware that Canadian law students are required to “articled” prior to being called to the bar and that articling consists of nearly one year of practice under the tutelage of a more senior attorney. A logical corollary of articling is that it must have an impact on clinical legal education offered by Canadian law schools in that practice skills, to a large extent, are expected to be learned while articling, rather than in law school. While that corollary is somewhat valid, a more nuanced view of Canadian clinical education reveals that law school clinical programs are thriving at many Canadian law schools, albeit in many instances in a quite different framework than is found among law schools in the U.S. In addition, in large measure due to some of the shortcomings of the articling process detailed below, clinical legal education in Canada faces a new challenge from post-graduate attorney training programs being implemented in Ontario and actively considered in other provinces.

The articling system is in a state of crisis. There is an increased demand for articling positions as the number of articling candidates has

61. *Id.*

62. Douglas S. Ferguson, *Canadian Clinical Legal Education Conference and Founding Meeting of the Canadian Association for Clinical Legal Education* (Aug. 2010), http://www.nyls.edu/institute_for_information_law_and_policy/wp-content/uploads/sites/139/2013/07/Ferguson.pdf.

63. *Id.*

64. *Id.*

65. *Id.*

grown from approximately 1,200 in 1998 to 1,700 in 2010.⁶⁶ The rise is attributed to increased numbers of foreign-educated law graduates, most of whom are Canadian, who wish to practice in Canada, as well as a dramatic rise in admissions to Osgoode Hall and the University of Western Ontario.⁶⁷ In addition, fewer large firms are offering articling positions and small- to medium-sized firms have been hit hard by the economic fallout from the global recession and cannot afford the payroll increase caused by hosting an articling law graduate.⁶⁸ On top of the demand and market realities affecting articling, there is also concern that articling is often inconsistently supervised and does not afford recent law graduates the sought-after exposure to practice and professionalism.⁶⁹

A two-track system for developing practice skills will start in 2014 for law graduates who wish to be licensed in Ontario. The current 10-month articling process will remain, but with additional oversight and quality controls, and a new Law Practice Program (LPP) will be instituted.⁷⁰ The broad outlines of the LPP are as follows: the Upper Canada Law Society, which licenses attorneys in Ontario, will contract with legal service providers throughout the province to place law graduates who are not able or do not wish to obtain an articling position in co-op positions, while at the same time instructing law graduates in practical skills and professionalism. Both articling and LPP students will be required to pass a test of transition to practice skills at the completion of their terms.

The fallout from the LPP is uncertain. The LPP will relieve pressure on the demand for articling positions but articling will likely still be seen as preferred path because those students with top grades from higher-ranked law schools will secure the available articling positions and the LPP could be seen as a second-tier option. In addition, law firms which have offered articling positions in the past may have less incentive to do so knowing that other options exist for law graduates. The impact on law school clinics is equally ambiguous. Legal aid offices may now have a financial incentive to take on LPP students rather than place law students. In addition, law students may not see a distinct advantage to enrolling in a clinic during law school if they will be doing similar work and learning the same professional development skills during their LPP. Finally, the LPP may trigger ill will and divisiveness among recent law school graduates because

66. THE LAW SOCIETY OF UPPER CANADA, ARTICLING TASK FORCE, *PATHWAYS TO THE PROFESSION: A ROADMAP FOR THE REFORM OF LAWYER LICENSING IN ONTARIO* 14 (2012), <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147489848>.

67. *Id.*

68. *See id.* at 14-15.

69. *See* Charles Gillis, *Should Articling Be Scrapped?*, *MACLEAN'S* (Toronto), Sept. 13, 2012, <http://www.macleans.ca/news/canada/should-articling-be-scrapped>.

70. THE LAW SOCIETY OF UPPER CANADA, *PATHWAYS PILOT PROJECT*, <http://www.lsuc.on.ca/LPP> (last visited Feb. 26, 2014).

the costs of administering the LPP and skills instruction for LPP students will be shared among all candidates to be called to the bar and, in essence, students who article may perceive that they are paying a surcharge for a program from which they do not derive any benefit.

One other noteworthy distinction among Canadian clinical legal education is that, on average, Canadian clinicians are less likely to participate in professional and affinity organizations than are American clinicians. For example, relatively few Canadian clinicians are members of or active in the Clinical Legal Education Association (CLEA), a U.S.-based forum for conferences and other engagement among clinicians. Canadian clinicians have, however, formed their own association to discuss clinical legal education issues most relevant to their work. The Association for Canadian Clinical Legal Education (ACCLE) recently held its fourth annual conference in Nova Scotia.⁷¹

III. CLINICAL LEGAL EDUCATION IN MEXICO

A. *Historical Roots*

Clinical legal education is a very recent idea in Mexico. However, many law schools have historically played a role in providing legal aid to underprivileged peoples through their students. This mode of legal aid is usually known in Mexico as “bufetes jurídicos gratuitos” or cost-free law school law firms. The first bufetes were established in the 1970s .

Today, a number of law schools maintain a bufete. Generally speaking, the bufete does have some elements of clinical education to the extent that it provides students the opportunity to have contact with real clients in a more or less supervised fashion. However, bufetes usually tend to operate independently from the law school, do not provide students with academic credits, and do not have an intentional pedagogical-academic component. At least 21 law schools today have a bufete. One of them actually has spun off from the law school and constituted itself as an independent nonprofit organization. This is the bufete that originated at the Universidad Panamericana. In fact, that bufete has such an integral, comprehensive, and value-driven approach to assisting clients that it resembles more closely the goals and operations of a clinical legal education program.

B. *Mexican Clinics Today*

There are seven law school or university legal clinical programs in Mexico. The majority have been established very recently. Three of them were established with funds from the United States Agency for

71. 2013 ACCLE Conference, ASSOCIATION FOR CANADIAN CLINICAL EDUCATION, <http://accle.ca/conference>.

International Development (USAID) in order to work on the new adversarial criminal law system that is being gradually implemented in Mexico.⁷² These are the criminal procedural law clinics at La Salle University's campus in Cuernavaca, the Autonomous University of Chihuahua Law School, and the Escuela Libre de Derecho de Monterrey. All of them were established in 2013. Two other recent clinics have been established at the Universidad Nacional Autónoma de México (UNAM). These are the Marisela Escobar Clinic of the Programa Universitario de Estudios de Género (Gender Studies University Program),⁷³ and the Human Rights Clinic of the Programa Universitario de Derechos Humanos (Human Rights University Program).⁷⁴ Both take students from UNAM Law School. The Instituto Tecnológico Autónomo de México (ITAM) has a new clinic that works in support of human trafficking victims, nested within their Justice Access Center, which operates also as a bufete.⁷⁵ Finally, the oldest clinic in Mexico is the CIDE Law School Strategic Litigation Clinic.⁷⁶

It is always arbitrary how to define a clinic in contrast to a bufete. However, in general, clinics have a pedagogical component and a thematic or concrete public interest goal, related to the preparation of lawyers committed to the rule of law and justice. The bufete has primarily a social service goal to provide general legal services to low income people through the assistance of students. Participation in the bufete is usually voluntary and is not formally related to their legal education. However, for example, the bufete of the Escuela Libre de Derecho is closely linked to the Law School, students have course work and gain academic credits for their participation, situating it in the clinical context.

Perhaps the first clinical legal education program as such in Mexico was the public interest Strategic Litigation Clinic at CIDE law school in Mexico City, founded in 2004.⁷⁷ If it was not the first program, it was

72. See *Nuestro trabajo en México* [Our work in Mexico], ABA ROLI MÉXICO, <http://www.abaroli.mx/abaroli/abaroli.html#!untitled/c1n8o> (last visited Mar. 18, 2014).

73. See *Programa Universitario de Estudios de Género*, UNIVERSIDAD NACIONAL AUTÓNOMA DE MÉXICO, http://www.pueg.unam.mx/index.php?option=com_content&view=frontpage&Itemid=92 (last visited October 11, 2013).

74. See *Programa Universidad de Derechos Humanos*, UNIVERSIDAD NACIONAL AUTÓNOMA DE MÉXICO, <http://www.pudh.unam.mx> (last visited October 11, 2013).

75. See generally *Centro de Acceso a la Justicia, Departamento Académico de Derecho*, INSTITUTO TECNOLÓGICO AUTÓNOMO DE MÉXICO, <http://caj.itam.mx/Paginas/index.html> (last visited October 11, 2013).

76. See generally *CENTRO DE INVESTIGACIÓN Y DOCENCIA ECONÓMICAS, A.C.*, www.cide.edu (last visited October 11, 2013).

77. CIDE stands for Centro de Investigación y Docencia Económicas (Center for Economics Research and Teaching). CIDE is a publicly funded research center. It enjoys certain decision-making autonomy, but is not an autonomous university such as the National University (UNAM). CIDE was established in the seventies by the federal government and

certainly the first strategic litigation clinic at a law school in Mexico. The clinic constituted an elective course and students earned academic credits through their participation. The clinic held regular meetings at the law school, although during its first stage it was physically located in the premises of the non-governmental organization, the Oficina de Defensoría de la Infancia (ODI). During its first three years, the CIDE Clinic collaborated with ODI in conducting strategic public interest litigation related to children's and youth rights.⁷⁸ Today, the clinic operates independently from ODI and has its own office space on the CIDE Law School premises.

The CIDE Law Clinic is also the most stable and long-standing clinical education program.⁷⁹ The director of the Clinic, one of the most competent constitutional lawyers today in Mexico, has been its director since its establishment. A board of advisors formed by professors from different disciplines across the Center approves the cases the clinic takes. The Clinic has advanced many significant cases to Mexican federal higher courts, including Mexico's Supreme Court. It has advanced cases related to children's rights as victims in abuse cases, due process of law and the right to a fair trial in criminal cases, military justice, same-sex marriage rights, and decriminalizing abortion, among others.

Perhaps the most complex and public case it has taken was the Acteal Case.⁸⁰ In *Acteal*, the Clinic took on the defense of a number of indigenous people accused of the Acteal massacre, a violent and senseless killing of women and children in the Acteal area in Chiapas, in December 1997.⁸¹ The accused had been in the criminal system for nearly nine years and most

it was originally an academic home to many of the Argentinean and Chilean refugees of the military governments. In the nineties, CIDE was almost completely re-founded.

78. For an account of the collaboration between the CIDE Clinic and ODI see Guadalupe Barrera, *Clínica de litigio de interés público CIDE-ODI: Colaboración estratégica para educar y transformar*, in *EL LITIGIO ESTRATÉGICO EN MÉXICO: LA APLICACIÓN DE LOS DERECHOS HUMANOS A NIVEL PRÁCTICO* 211 (2007), <http://www.hchr.org.mx/files/doctos/Libros/litigioestrategico.pdf>.

79. See generally Centro de Investigación y Docencia Económicas, A.C., www.cide.edu (last visited October 11, 2013).

80. See generally Alejandro Posadas, et al, *Acteal: La Otra Injusticia*, NEXOS (Mexico City), Jun. 1 2006, <http://www.nexos.com.mx/?p=11925> (last visited Mar. 20, 2014); Marc Lacey, *10 Years Later, Chiapas Massacre Still Haunts Mexico*, N.Y. TIMES, Dec. 23, 2007, http://www.nytimes.com/2007/12/23/world/americas/23acteal.html?pagewanted=all&_r=0 (last visited October 12, 2013); Marc Lacey, *Mexico Court Orders 22 Tied to '97 Killings Freed*, N.Y. TIMES, Aug. 12, 2009, <http://www.nytimes.com/2009/08/13/world/americas/13mexico.html> (last visited October 12, 2013).

81. Marc Lacey, *10 Years Later, Chiapas Massacre Still Haunts Mexico*, N.Y. Times, Dec. 23, 2007, http://www.nytimes.com/2007/12/23/world/americas/23acteal.html?pagewanted=all&_r=0 (last visited October 12, 2013).

of them had not received a final sentence. The case was riddled with due process violations and put in question the principles of a fair trial and the presumption of innocence.⁸² Eventually, the Mexican Supreme Court decided the case through a constitutional remedy, establishing a significant precedent regarding the complete dismissal of a case based on evidence illegally fabricated by the prosecutors.⁸³

ITAM Law School also established a strategic litigation clinic around 2004, the Clinica Legal de Interes Publico, but it was closed four or five years later. ITAM kept its bufete through its Access to Justice Center.⁸⁴ The Center conducts other activities in the area of access to justice. Just recently, in early 2013, the Access to Justice Center established a new clinic with the support and collaboration of the Human Trafficking Clinic of the University of Michigan Law School.⁸⁵ The ITAM Clinic provides assistance to human trafficking victims in order to help them reinsert themselves in society, such as assistance with legal residence, migration issues, obtaining official documents and other related work on post-traumatic legal assistance.⁸⁶

The two projects at UNAM were also launched in late 2012 and early 2013. They are independent projects. One is nested in the University's Human Rights Program. The Human Rights Clinic is just developing its caseload, but has plans to focus in the area of discrimination on the basis of disabilities. The clinic nested in the University's Gender Studies Program is opening a new area of litigation in Mexico based on gender equality goals and remedies to gender discrimination. This Clinic works closely with the Mexico City Human Rights Commission and has drawn its first cases out of a collaborative project that the Gender Studies Program maintains with a women's penitentiary in Mexico City.⁸⁷ Both projects at UNAM are coordinated or have been supported by people who worked in or were associated with the CIDE Law Clinic. In fact, one of the first coordinators of the gender clinic was an alumnus of the CIDE Law Clinic. This is very encouraging as it shows signs of a new, although small,

82. Marc Lacey, Mexico Court Orders 22 Tied to '97 Killings Freed, N.Y. Times, Aug. 12, 2009, <http://www.nytimes.com/2009/08/13/world/americas/13mexico.html> (last visited October 12, 2013).

83. *Id.*

84. *See generally* Instituto Tecnológico Autónomo de México, I.T.A.M., <http://www.itam.mx/en/acerca/comunidad/comunidad.php> (last visited April 9, 2014).

85. *See generally* University of Michigan Law School, <http://www.law.umich.edu/FacultyBio/Pages/FacultyBio.aspx?FacID=emfoti> (last visited April 9, 2014).

86. The current coordinator of the clinic is José Miguel Rivera. The clinic has created a course syllabus that will be part of a human trafficking course offered at the Law School to clinic students.

87. It is the Santa Martha Acatitla Rehabilitation Center.

generation of lawyers knowledgeable and committed to clinical legal education.

Other academic institutions have also developed more experiential courses with some clinical components. The Iberoamericana University Law School in Mexico City and UNAM, for example, have a number of courses called a clinic or forensic course. They cover a number of subject areas. Through these courses, students will follow cases brought by the professor and sometimes work on briefs or even in the development of the legal strategy for the cases, although in a more limited manner than what goes on in a clinical legal education program.⁸⁸ FLACSO, a research center offering postgraduate degrees, has also included a clinical component as part of its Human Rights Masters in Law.⁸⁹

C. *Challenges and Opportunities for Mexican Clinical Legal Education*

Clinical legal education is a transformative pedagogical tool. Students gain significant capacities to think critically, constructively, and creatively in ways it is difficult to achieve with only traditional course work. They also gain a clear understanding that the practice of law can have a meaningful purpose for the public good. They develop their own commitment to the rule of law and a sharper attitude to discern the ethical dilemmas of the practice of law. In addition, they develop lawyering skills that would otherwise require a greater investment in innovative problem-based teaching methodologies, given the current traditional pedagogy prevailing in the majority of law schools in Mexico.

This is something that should not be easily disregarded given the opportunities and challenges that legal education, the profession, and the legal system face in Mexico today. Rule of law indicators in Mexico are quite poor for a country that is the twelfth economy in the world.⁹⁰ Poor

88. For a description of some experiential legal education methods implemented in some Mexican Law Schools in the last twenty years, see Jorge Witker, *La enseñanza clínica como recurso de aprendizaje jurídico (Clinical Legal Education as a Learning Resource)*, 5 *ACADEMIA. REVISTA SOBRE ENSEÑANZA DEL DERECHO* 181 (2007), http://www.derecho.uba.ar/publicaciones/rev_academia/revistas/10/la-ensenanza-clinica-como-recurso-de-aprendizaje-juridico.pdf.

89. See Erika Castro-Buitrago et al., *Clinical Legal Education in Latin America: Toward Public Interest*, in *THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE* 69, 82 (Frank S. Bloch ed., 2011).

90. In the World Bank World Wide Governance Indicator System, Mexico scored 34 out of 100 percentile points in the Rule of Law variable in 2009, compared to an also low 35.2 in 1998. *WORLDWIDE GOVERNANCE INDICATORS*, <http://info.worldbank.org/governance/wgi/index.aspx#reports> (last visited Mar. 21, 2014). Collected from a diversity of surveys and indexes, the Rule of Law variable seeks to capture perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence. *WORLDWIDE GOVERNANCE*

enforcement across the board, an unfair and deficient criminal system, crime, corruption, sharp social and economic inequalities, and abuse of power are still acute, recurring problems in Mexican society. These issues persist despite significant progress in macroeconomic stability; public access to information; professionalization of institutions; a quite open, participative, and free civil society; the strengthening of the electoral system; and the growth of political and democratic participation.

It is telling that one in every four Mexican law students chose to study law because of a desire to remedy injustice and to help and protect their families or society.⁹¹ These reasons constitute the main reasons invoked by students, over reasons related for example to encouragement or influence by parents or family, liking their high school law course, and desiring a specific professional path in law or politics. These students confirm the perception of a country affected by inequality, abuse, and injustice. Many of the respondents expressed that they or their families had personally experienced abuse and unfairness.

This, however, is also a great opportunity for clinical legal education and for other initiatives that foster justice-based legal education. A very significant number of students enter law school with the desire to understand how to better use the legal system, how to advance and secure access to justice, the rule of law, and equal treatment under the law. Intuitively, the greatest aspirations of the law are also within the mix of interests and motivations students have when entering law school. What happens in law school during the following four or five years will have an impact on these motivations and aspirations. Are we encouraging, directing, and shaping them? Are we losing potential agents of change? Are we simply ignoring this opportunity and letting the realities of the legal market, the social context, and the economy take care of what these students will end up doing?

The quality of the Mexican legal system is not going to significantly change only through legal reforms. It requires competent and committed operators. We need lawyers that have new skills, that have strong

INDICATORS, <http://info.worldbank.org/governance/wgi/index.aspx#doc> (last visited Mar. 21, 2014).

91. According to the largest survey of law students conducted in Mexico, 17.5% chose to study law because they or their families had directly experienced an injustice, or they perceived injustice in society and wanted to make it right. Many identified lawyers as a part of the injustice issue, either because a lawyer unfairly took advantage of their families or because their perception of lawyers was simply poor. Another 17.4% indicated that they studied law because they wanted to use it to help or protect themselves, their families or society. These two reasons prevailed in percentage over any other, such as studying law because a family member was lawyer, or because they liked the pre-law courses at high school. Interestingly, making money did not show as a statistical preference for studying law in Mexico. Luis Fernando Perez Hurtado, *Transnationalizing Mexican Legal Education: But, What About Students' Expectations*, 10 GER. LAW J. 767, 774-79 (2007).

autonomous critical thinking abilities, and, very importantly, that can maintain their natural aspirations kindled through the development of their own commitment to the strengthening of the rule of law, with real knowledge of how the system works and how it can be gradually improved, and the capacity to discern the ethical issues of the practice of law.

Clinical legal education is one of the most potent vehicles to provide learning opportunities in this direction. It provides the opportunity think about what being a lawyer means, and about what it takes to make things better through hard work, competence, and creative and constructive thinking. In the words of one of the founders of the cognitive sciences, “Learning results from what the student does and thinks and only from what the student does and thinks. The teacher can advance learning only by influencing what the student does to learn.”⁹²

In August 2013, the Centro de Estudios sobre la Enseñanza y Aprendizaje del Derecho (Law Teaching and Learning Research Center; CEEAD)⁹³ invited five of the existing clinics to a meeting to establish a network of clinics and bufetes.⁹⁴ The network was founded and named “REDClinicas Mexico: justice legal education.”⁹⁵ The purpose of the network is to exchange experiences, support each other, and to promote clinical legal education in Mexico. The participants in the network proposed and agreed to meet once every two months, to plan a meeting of their students at least once every semester, to form a database with information about the clinical legal education programs, and to invite other clinics and bufetes to join the network. They also discussed plans to organize an event in 2014 to raise awareness and share information on the work of the clinics with lawyers, opinion makers, and organizations interested in supporting their work. CEEAD also has plans to produce a short video documenting the experiences and views of the clinics’ students and alumni.

This is not the first time that a meeting of clinics and bufetes was held in Mexico City. At least four meetings were held between 2003 and 2009, some with the support of the Open Society Justice Initiative and others with the support of the New York City Bar’s Vance Center. Also during that period, the then-existing Clinica Legal de Interes Publico of ITAM, the CIDE Clinic, and the Universidad Iberoamericana Law School participated in the Latin American Clinical Legal Education Network. It is significant

92. SUSAN A. AMBROSE ET AL., *HOW LEARNING WORKS: 7 RESEARCH-BASED PRINCIPLES FOR SMART TEACHING* (1st ed. 2010) (quoting Herbert A. Simon).

93. See generally CEEAD, www.ceed.org.mx (last visited Oct. 14, 2013).

94. The two clinics at UNAM, the Libre de Derecho de Monterrey Bufete and Clinic, the CIDE Clinic, and the ITAM Clinic participated in this first meeting.

95. *Acuerdan establecer Red de Clínicas y Despachos Jurídicos Gratuitos Universitarios*, CEEAD, <http://www.ceed.org.mx/en/joomla-overview/que-es-el-ceed/noticias/2013/311-red-de-clinicas-juridicas> (last visited Mar. 21, 2014).

that this network originated from the interest of the existing clinics. Also, the participation of CEEAD in facilitating and supporting the network, as an independent organization dedicated to legal education, but without affiliation to any law school, can help in providing continuity to this effort.

Significant recent constitutional and legal reforms not only pose interesting opportunities for clinical legal education work, but also demand operators with a new set of skills and competencies to implement them to their fullest potential. The whole country is undergoing the reform of the criminal system. The Federal and State governments must introduce the adversarial oral criminal system by 2016.⁹⁶ Public defenders in the state of Baja California, one of the leading states having introduced the adversarial criminal system, report that while under the old criminal system they used to represent around 75% of the defendants, they are currently representing close to or above 95% of them. The reason for this increase, despite the fact that under the new system a number of cases do not get to trial because they are disposed of through mediation and other alternative solutions, is that public defenders have received training to prepare their cases and argue them at a public hearing, while most private lawyers have not. There is evidence that people who used to prefer a private defender are now choosing the public defender who has developed a new set of lawyering skills.

Another very relevant reform is the 2011 amendment to the Constitution regarding human rights.⁹⁷ Under this reform, the Constitution has incorporated the human rights established in treaties to which Mexico is a party as part of the Constitution. Overall, the 2011 amendment represents a constitutional paradigm shift in Mexico, which is seeking to make its legal system one firmly based on the respect, guarantee, protection, and promotion of human rights. The new amparo law, published in 2013, adapts remedies to the 2011 Constitutional amendments on the amparo and on human rights, recognizing, among other issues, a more ample definition of standing to bring an amparo, and the possibility of advancing collective amparos.⁹⁸

96. Decreto por el que se reforman y adicionan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos [Decree amending and supplementing various provisions of the Constitution of the United Mexican States], *Diario Oficial de la Federación* [DO], June 18, 2008, http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_180_18jun08.pdf.

97. Decreto por el que se modifica la denominación del Capítulo I del Título Primero y reforma diversos artículos de la Constitución Política de los Estados Unidos Mexicanos [Decree to modify the designation of Title I Chapter I and reform various articles of the Constitution of the United Mexican States], *Diario Oficial de la Federación* [DO], Jun. 10, 2011, http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_194_10jun11.pdf.

98. *Id.* The Constitutional reform on amparo was published on June 6, 2011. The new amparo law was published on April 2, 2013.

Other relevant reforms involve the introduction of class actions for certain subject matters, such as environmental and consumer rights issues, a new law on environmental damages and environmental corporate liability. In addition, the competition and telecommunications laws and institutions have recently being reformed. All of these present significant opportunities. In contrast to the overhaul of the legal system in the nineties, most of these areas are not related to business or corporate law. Most of them have a clear public interest component where non-governmental actors should play an important role in their implementation. This is also an opportunity for law schools and clinical legal education programs.

The Mexico Office of the Rule of Law Initiative of the American Bar Association (ABA ROLI Mexico) recently published a qualitative review of Mexican legal education.⁹⁹ The review follows a standard methodology applied to several emerging countries.¹⁰⁰ The review takes the form of a report called the Legal Education Reform Index.¹⁰¹ The report assigns a qualitative mark of positive, neutral or negative to twenty-two statements or factors concerning legal education.¹⁰² A negative mark means that the statement does not correspond with the reality of the country, a neutral one that it partly does, and a positive one that it does.¹⁰³ Out of the three statements in the Index related to the practice of teaching or teaching methodologies, one received a mark of neutral (teaching of ethical and professional values) and two of negative (teaching of lawyering skills and teaching methodologies).¹⁰⁴

Regarding the teaching of ethical and professional values, the report concludes that while almost all law schools teach a course on ethical and professional values, these courses are in the majority of cases theoretical, are not connected or related to the rest of the courses, and do not prepare the students adequately to address the ethical dilemmas of the practice of law.¹⁰⁵ The conclusion of the report regarding the teaching of lawyering skills was that while a few law schools offer clinical programs, most legal education is predominantly theoretical and students need to develop lawyering skills outside the law school (through professional internships, social service, or employment).¹⁰⁶ Concerning teaching methodologies, the

99. ABA ROLI, LEGAL EDUCATION REFORM INDEX FOR MEXICO (2011), http://www.americanbar.org/content/dam/aba/directories/roli/mexico/mexico_legal_education_reform_index_2011_en.authcheckdam.pdf.

100. *Id.* at i.

101. *Id.*

102. *Id.* at iii.

103. *Id.*

104. *Id.* at 9.

105. *Id.* at 26.

106. *Id.* at 27.

report concludes that lecturing is the predominant legal education methodology.¹⁰⁷ This fosters the perception that the law professor is the source of all relevant knowledge for the student and that the classwork is exclusively to obtain theoretical knowledge.¹⁰⁸ The report further notes that only a few professors introduce different learning methodologies, primarily because most do not know any method other than the lecture method, have not received training on any other method, and have very little time to incorporate other methodologies.¹⁰⁹

Clinical legal education requires institutional commitment and some investment. A clinic requires appropriate office space for meeting clients and for students to work both individually and collaboratively. Having an appropriate office space brings clinic students together, it empowers the clinic, and helps support its identity and mission. Many times a clinical legal education program will need a budget for expenses related to the cases that should include some money for transportation, to obtain evidence, or to request expert evidence if necessary. Some of these resources may be obtained through fundraising or by reaching out to pro bono support from law firms. The Clinical Network also seeks to support clinics in these efforts. The Clinical Network will be collaborating with the Pro Bono Network established by Appleseed Mexico.¹¹⁰ However, law school or university institutional support is key.

Today, especially because of the reform to the criminal system, there is a renewed interest in assessing and discussing the issue of the quality of legal education, and of the relation between legal education and admission to the practice of law. Clinical legal education has much to offer regarding the development of lawyering skills, real or simulated practice of law, and especially ethical attitudes and commitment to the public interest.

IV. CONCLUSION AND SYNTHESIS

This Article seeks to provide a more nuanced view and offer a better understanding of the factors that produced the unique contours of Canadian, American, and Mexican clinical legal education. This Article also attempts to examine some of the challenges facing clinical legal education in these three countries as both a cautionary tale for other jurisdictions and to offer guidance for how clinics in other jurisdictions could adapt or adopt elements of the evolving Canadian and Mexican models. To a certain degree, the experiences of clinics in Mexico, the United States, and Canada each serve as a cautionary tale for each other.

107. *Id.* at 29.

108. *Id.*

109. *Id.*

110. *See generally* ¿Qué es Appleseed?, Red Pro Bono Mexico, <http://probono.org.mx/index.php/quienes-somos/appleseed-mexico/> (last visited Feb. 19, 2014).

U.S. clinics should not retreat from the prominent role they play in most law schools and, in particular, American clinicians should not, after struggling to gain legitimacy among law school faculties, countenance any effort to adopt a Canadian model for treatment of clinicians, with respect to their role within the academy.

And, conversely, perhaps Canadian and Mexican clinics should not idolize the American model with its greater share of in-house clinics but, instead, follow distinctly Mexican and Canadian models of clinical legal education, which factor in the reality that many Canadian and Mexican clinics are community-based and that, for better or worse, practical legal skills in Canada, at least, are expected to be gained largely during the articling or LPP process. No one model is right and each, while imperfect, fits the needs of the context in which they exist. Yet, clinics in the U.S. and Canada are facing extraordinary pressures in the form of imminent budget cuts due to declining enrollment as well as, in Canada, the institution of the LPP in Ontario and perhaps other provinces, which could pose an existential threat to law school-operated clinical programs. Mexican clinics face their own unique pressures, not least of which is a legal education structure still geared almost entirely towards doctrinal learning. To be certain, notwithstanding the need for organic and context-based evolution of clinical legal education, Canadian and Mexican clinicians could nonetheless liberally borrow from the more established clinical pedagogy in the U.S. By the same token, American clinicians could appreciate that Mexican and Canadian clinics are somewhat more historically connected to community-based host organizations than are many U.S. clinics.

These are interesting times in global clinical legal education and in North America and it is a rare moment when three countries, with such close historical, cultural and ethnographic affinity, are moving in both different and similar directions with respect to the education of attorneys. Time may tell which approach, if any, is best but, in the meantime, a worthwhile approach is eternal vigilance that clinical programs in Mexico, the United States, and Canada be strengthened and not weakened. To do otherwise would do a disservice to the attorneys of the future who are entrusted to our care and to the public whose fates, fortunes, and families will be entrusted to those same attorneys.
