

# Clinical Legal Education and Human Rights Values: A Universal Pro Forma for Law Clinics

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## Abstract

This article explores the theoretical foundations for a social justice–centric global law clinic movement. Our starting position is that law clinics, a type of clinical legal education (CLE), are in a unique position to engage in, and potentially promote, social justice issues outside their immediate communities and jurisdictions. To achieve this aim, it is necessary for law clinics to adopt a universal pro forma underpinned by the key concepts of CLE, namely social justice education and promoting access to justice through law reform. We argue that the main features of CLE are aligned with those of the Universal Declaration of Human Rights (UDHR) on issues such as human dignity and social justice. Incorporating UDHR values into CLE serves three purposes. First, it acts as a universal pro forma, which facilitates communication between clinics across jurisdictions, irrespective of their cultural or legal background. Second, it allows clinics to identify sources of global injustices and to share resources and expertise to collectively address injustices. Third, the theoretical approach advocated in this article argues that clinics have a Kantian moral right to engage in transnational law reform.

## Introduction

In an increasingly globalized legal profession, which is required to respond to transboundary challenges, legal education should prepare law students to engage with the world around them and not be simply confined to the ‘law in action’ in their own jurisdiction.<sup>3</sup> This presents two challenges: identifying the legal barriers to transboundary clinic collaborations and the framework through which students can

<sup>3</sup> IRENE ANTONOPOULOS & OMAR MADHLOOM, *Promoting International Human Rights Values Through Reflective Practice in Clinical Legal Education: A Perspective from England and Wales*, 37 in INTERNATIONAL PERSPECTIVES IN SOCIAL JUSTICE PROGRAMS AT THE INSTITUTIONAL AND COMMUNITY LEVELS 109–127 (ENAKSHI SENGUPTA & PATRICK BLESSINGER eds., 2021), <https://doi.org/10.1108/S2055-364120210000037008> (accessed 7 May 2021).

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respond to them. This framework should consist of a universal pro forma, which facilitates the collaboration of clinics in addressing injustices outside their communities and legal jurisdictions. To facilitate collaboration between law clinics, students must be able to communicate through a common ‘language’. Hurwitz identifies international human rights law as this common ‘language’, which enables students to engage with human rights problems caused by globalization such as trafficking and transboundary environmental harms.<sup>4</sup> This article argues for a universal pro forma to assist clinics to respond to global challenges by connecting human rights as values to the moral duties of law clinics. This pro forma combines the principles of human rights education (HRE) and clinical legal education (CLE), and is underpinned by three main elements: human rights, *sensus communis* and social justice.

This article consists of three parts. Following the introduction, the first section will examine the relationship between HRE and CLE. The second section will argue that the professional codes of conduct for lawyers are generally not fit for the purposes of CLE, especially in relation to transnational or global clinic collaborations. This section argues for a universal pro forma, which is underpinned by the Universal Declaration of Human Rights (UDHR), theories of social justice and Kant’s *sensus communis*. The third section will discuss the application of the proposed universal pro forma in the context of reflective practice.

## The Relationship Between Human Rights and Clinical Legal Education

As a form of experiential learning, CLE can promote intellectual inquiry by teaching ‘reflective lawyering, professional judgement and problem-solving skills, ethical lawyering, social justice, a sense of public obligation, and collaboration’.<sup>5</sup> To this list, a global obligation can be added. However, a universal pro forma is required to facilitate this global obligation. CLE, therefore, consists of four tenets: the acquisition of personal skills and values; providing access to justice; promoting social justice; and developing reflective lawyering. Students gain both hard and soft skills such as drafting, negotiation, advocacy, empathy and resilience.<sup>6</sup> Incorporating values into CLE, and legal education, generally, helps foster a mature moral identity among students, which is considered to be necessary for effective citizenship.<sup>7</sup> According to May ‘the self matures by becoming committed to certain values and beliefs as a result of critical reflection, not merely as a result of being socialized to accept certain values and beliefs’.<sup>8</sup>

Bellow<sup>9</sup> and Kosuri<sup>10</sup> report that CLE can build on the students’ experience in the clinic to facilitate intellectual inquiry. Within this premise, the assimilation of pedagogies in fulfilling a universal pro

<sup>4</sup> Deena R. Hurwitz, *Lawyering for Justice and the Inevitability of International Human Rights Clinics*, 28 YALE J. INT’L L. 505 (2003).

<sup>5</sup> Margaret Martin Barry et al., *Teaching Social Justice Lawyering: Systematically including Community Legal Education in Law School Clinics*, 18 CLIN. L. REV. 401–458, 401 (2011).

<sup>6</sup> RANDALL KISER, *SOFT SKILLS FOR THE EFFECTIVE LAWYER* 5 (2017).

<sup>7</sup> Stephen Wizner, *Is Learning to Think like a Lawyer Enough*, 17 YALE L. & POL’Y REV. 583 (1998); Tamara Walsh, *Putting justice back into legal education*, 17 LEGAL EDUC. REV. 119 (2007).

<sup>8</sup> Larry May and W. Alton Jones, Professor of Philosophy, Professor of Law and Professor of Political Science, Vanderbilt University. LARRY MAY, *THE SOCIALLY RESPONSIVE SELF: SOCIAL THEORY AND PROFESSIONAL ETHICS* 20 (1996).

<sup>9</sup> Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology in Clinical Education for the Law Student* 374, in WORKING PAPERS PREPARED FOR THE COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY [CLEPR] NATIONAL CONFERENCE (1973).

<sup>10</sup> Praveen Kosuri, *Losing My Religion: The Place of Social Justice in Clinical Legal Education The Way to Carnegie: Practice, Practice, Practice—Pedagogy, Social Justice, and Cost in Experiential Legal Education*, 32 B. C. J. L. SOC. JUST. 331–344, 338 (2012).

forma serves a global outlook concerning challenges that require an innovative collaboration resolution.<sup>11</sup> Viewed as a methodology, CLE can be used to teach not only any of the substantive subjects in the curriculum but also as a vehicle for teaching normative values.<sup>12</sup> HRE, on the other hand, facilitates the ‘shaping of values and advocacy’ by providing students with a conceptual lens to critically analyse their own attitudes.<sup>13</sup>

### *Law Clinics, Human Rights and Positive Obligations*

The creation of a universal law clinic pro forma requires the identification of a single source of values that is codified and recognized at an international level. Free from the challenges of attempting to impose legally binding obligations on states, the UDHR carries significant historical importance.<sup>14</sup> According to Cho, ‘the Universal Declaration of Human Rights should be understood, first and foremost, to be an international political consensus on the moral imperative for a life with dignity for all persons’.<sup>15</sup> From an HRE’s perspective, Hurwitz contends that ‘We have begun to speak a language of global morality. And whether or not one agrees that this morality is universal, the concern for justice inevitably implicates international human rights and international law’.<sup>16</sup> Therefore, the significance of embedding human rights language within teaching methodologies is becoming more evident as human rights problems increase.

University law clinics are, generally, not emanations of the state and, therefore, carry no obligations under human rights law. Consequently, UDHR’s lack of legally binding status allows for a deeper exploration of those duties of individuals towards others. For example, Article 1 of the UDHR presupposes a set of duties held by individuals in ensuring the protection of the rights of another.<sup>17</sup> The commitment to fulfilling the moral duties envisioned by the UDHR is based on the following assumption:

Each agent logically must admit that the sufficient reason or ground on which he or she claims positive rights is that he or she is a prospective purposive agent so that he must accept the generalization that all prospective purposive agents have positive rights to basic well-being. Therefore, he or she must also accept that he or she has positive duties to help other persons attain basic wellbeing when they cannot do so by their own efforts and when he or she can give such help without comparable cost to him or her. When such help is needed by large number of persons, and especially when their needs have institutional roots, such help often requires a context of institutional rules, including the supportive state ... in this way, the duty to act in accord with the positive rights of other persons is rationally justified, so that it is morally right and indeed mandatory to provide help to basic well-being for other persons when they need this help and they cannot achieve their basic well-being by their own efforts, and it can be given without comparable cost to the agent.<sup>18</sup>

<sup>11</sup> MAY, *supra* note 8 at 20.

<sup>12</sup> Omar Madhloom, *A normative approach to developing reflective legal practitioners: Kant and clinical legal education*, 53 L. TEACH. 416–430 (2019).

<sup>13</sup> Sarita Cargas, *Fortifying the future of human rights with human rights education*, 18 J. HUM. RIGHTS 293–307, 297 (2019).

<sup>14</sup> Hyo-Je Cho, *Rethinking democracy and human rights education on the seventieth anniversary of the Universal Declaration of Human Rights*, 20 ASIA PAC. EDUC. REV. 171–180 (2019).

<sup>15</sup> *Id.* at 172.

<sup>16</sup> Hurwitz, *supra* note 4 at 508.

<sup>17</sup> Article 1 states that ‘All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood’.

<sup>18</sup> Alan Gewirth, *Moral Foundations of Civil Rights Law*, 5 J. L. RELIG. 125, 139–140 (1987).

This commitment to duties towards others echoes the deontological approach of Immanuel Kant. Kant distinguishes between two types of duties: perfect and imperfect. The former proscribe specific types of actions, such as lying, while imperfect duties stipulate only a general law or policy, but not the specific type of action required to implement that policy. On perfect duties, Kant claims, ‘I recognise among *perfect duties*, not only outer ones, but also inner’.<sup>19</sup> He also distinguishes between ‘duties towards self and duties towards others’.<sup>20</sup> Outer or external perfect duties are duties of right, in that they are coercive duties that apply in a system of laws.<sup>21</sup> Inner or internal perfect duties are duties to the person and concern an individual’s maxims and behaviours.<sup>22</sup> Imperfect duties are relevant for developing a global clinical movement because these duties have wide latitude in terms of their implementation and, as such, afford clinics’ discretion regarding how they fulfil their duty towards helping those in need.

In addition to applying Kant’s concept of duties to CLE,<sup>23</sup> his philosophy provides a moral right in relation to clinics’ engagement in law reform. While Kant advocated the non-anarchic reform of governments, he argues that citizens have the right to inform their governments of any injustices.<sup>24</sup> This moral right can be extended to a global collaborative clinic movement in relation to policy reform and human rights advocacy. To promote transnational collaboration, the next section seeks to construct a universal pro forma for CLE.

## The Need for a Universal Pro Forma

Regulatory bodies such as the American Bar Association (ABA) and the Solicitors Regulation Authority (SRA) (England and Wales) introduce codes of professional conduct for a number of reasons. A code of conduct may be viewed as an exercise in enhancing the profession’s status and gaining the trust of the general public. A code of conduct is also useful in safeguarding members of a profession by outlining the responsibilities owed to clients. In general terms, a code of conduct provides a set of principles of actions, which must be complied with by members of that profession.<sup>25</sup>

However, there are various reasons as to why lawyers’ professional codes of conduct are inadequate for the purposes of CLE and promoting international clinic collaborations. First, professional regulatory bodies produce codes of conduct to assist their members in identifying the desirable norms and principles of action.<sup>26</sup> In other words, the codes are drafted with a specific professional in mind and are not designed for pedagogic purposes. Second, unauthorized persons, such as clinic students, are generally restricted, by statute, regarding the scope of legal assistance they are permitted to offer clients. For example, law clinics in the Republic of Croatia (or Croatia), when offering free legal aid, are only permitted to provide ‘primary legal aid’, which includes general legal information, legal advice and legal assistance in out-of-court peaceful dispute settlement.<sup>27</sup> Third, professional codes apply only to the members of that specific

<sup>19</sup> IMMANUEL KANT, *THE MORAL LAW: KANT’S GROUNDWORK OF THE METAPHYSICS OF MORALS* 422 (1969).

<sup>20</sup> *Id.* at 421.

<sup>21</sup> JAMES SCOTT JOHNSTON, *KANT’S PHILOSOPHY: A STUDY FOR EDUCATORS* 124 (2014).

<sup>22</sup> *Id.* at 124.

<sup>23</sup> Omar Madhloom, *Unregulated Immigration Law Clinics and Kant’s Cosmopolitan Right: Challenging the Political Status Quo*, 28 INT’L J. CLIN. LEGAL EDUC. 195–243 (2021).

<sup>24</sup> IMMANUEL KANT, *AN ANSWER TO THE QUESTION: ‘WHAT IS ENLIGHTENMENT?’* (2013); IMMANUEL KANT, *THE CONFLICT OF THE FACULTIES= DER STREIT DER FAKULTÄTEN* (1992).

<sup>25</sup> Nigel G Harris, *Professional Codes and Kantian Duties*, in *ETHICS AND THE PROFESSIONS*, 104 (Ruth F. Chadwick ed., 1994).

<sup>26</sup> For a general discussion on the rationale for the need of professional codes of conduct, see *Id.*

<sup>27</sup> *Free Legal Aid Act 2013*, Articles 9–11, inclusive.

profession and, therefore, are not binding on non-regulated individuals. By way of example, barristers and solicitors, in England and Wales, are bound by a duty of confidentiality. This duty is crystallized in the Bar Standards Board (BSB) Handbook<sup>28</sup> and the Code of Conduct for Solicitors, Registered European Lawyers (RELs) and Registered Foreign Lawyers (RFLs) and of the Code of Conduct for Firms.<sup>29</sup> However, clinic students are not bound by this important principle, which has been described by Lord Scott as a ‘central pillar’ of legal ethics.<sup>30</sup> Fourth, it is debatable whether a single code of conduct can address the myriad types of legal advice.<sup>31</sup> Thus, in the same way that an immigration solicitor’s work is vastly different from the solicitor working in a global law firm that represents large business clients, so too is the pro bono work carried out in law clinics different from the work carried out in law firms. The ethical dilemmas encountered in a law clinic are likely to be very different from the dilemmas envisaged by the regulatory bodies (e.g., ABA and the SRA) such as money laundering and duties to the court. Fifth, unlike regulated legal entities, for example law firms whose primary function is profit-making, law clinics are, inter alia, concerned with promoting access to justice and social justice education.<sup>32</sup> Although university law clinics and CLE have their roots in providing legal assistance to disadvantaged communities and promoting social justice,<sup>33</sup> there is a school of thought that argues that social justice should not be the sole pedagogic aim of CLE. For Kosuri, ‘Clinical legal education is not the province of any one constituency or ideology’.<sup>34</sup> Similarly, Campbell argues that a law clinic is a pedagogic tool to be used to serve not just disadvantaged clients but ‘[i]t also exists to serve the students’.<sup>35</sup> Consequently, the proposed pro forma can also be applied to business law clinics that advise business entities, regarding social corporate responsibility and corporate citizenship.<sup>36</sup> Sixth, professional codes of conduct reduce ethical behaviour to obeying a set of duties. This is viewed as an inferior form of moral deliberation.<sup>37</sup>

Influenced by human rights values, derived from the UDHR, a universal pro forma can facilitate the creation of a global law clinic community. Students are able, through this pro forma, to communicate effectively through a shared ‘language’ and objectives, and thereby overcome obstacles such as pluralism and different legal systems. The theoretical underpinnings of this pro forma, which are examined in the next sections, are human rights, *sensus communis* and social justice. These three elements can enhance ethical behaviour through reflective practice.<sup>38</sup>

<sup>28</sup> The Bar Standards Board, *The BSB Handbook* (2020), Core Duty 6, Rule C5 and Rule C15.5.

<sup>29</sup> Solicitors Regulation Authority, *The SRA Standards and Regulations* (2019), par. 6.3.

<sup>30</sup> *Three Rivers District Council v Governor and Company of the Bank of England* (No. 6), [2005] 1 AC 610 (2005).

<sup>31</sup> JONATHAN HERRING, *LEGAL ETHICS* 94 (2017).

<sup>32</sup> Stephen Wizner, *Is Social Justice Still Relevant The Way to Carnegie: Practice, Practice, Practice—Pedagogy, Social Justice, and Cost in Experiential Legal Education*, 32 B. C. J. L. SOC. JUST. 345–356 (2012); Donald Nicholson, *Our Roots Began in (South) Africa: Modeling Law Clinics to Maximize Social Justice Ends Review Articles*, 23 INT’L J. CLIN. LEGAL EDUC. 87–136 (2016); Ibijoke Patricia Byron, *The Relationship between Social Justice and Clinical Legal Education: A Case Study of the Women’s Law Clinic, Faculty of Law, University of Ibadan, Nigeria*, 20 INT’L J. CLIN. LEGAL EDUC. 563–578 (2014); Anna Cody & Simon Rice, *Teaching social justice in law clinics*, in AUSTRALIAN CLINICAL LEGAL EDUCATION: DESIGNING AND OPERATING A BEST PRACTICE CLINICAL PROGRAM IN AN AUSTRALIAN LAW SCHOOL 97–122 (Adrian Evans et al. eds., 2017).

<sup>33</sup> Frank S. Bloch & Mary Anne Noone, *Legal Aid Origins of Clinical Legal Education*, in THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE 153–166 (Frank S. Bloch ed., 2010); Richard Wilson, *Training for Justice: The Global Reach of Clinical Legal Education*, 22 PENN STATE INT’L L. REV. 421 (2004); Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access To Justice*, 73 FORDHAM L. REV. 997 (2004).

<sup>34</sup> Kosuri, *supra* note 10 at 334.

<sup>35</sup> Elaine Campbell, *A dangerous method? Defending the rise of business law clinics in the UK*, 49 L. TEACH. 165–175, 171 (2015).

<sup>36</sup> Tobore O Okah-avae, *Clinical Legal Education: a paradigm for business entities*, in THINKING ABOUT CLINICAL LEGAL EDUCATION (Omar Madhloom & Hugh McFaul eds., 2021).

<sup>37</sup> Donald Nicholson, *Making lawyers moral? Ethical codes and moral character*, 25 LEGAL STUD. 601–626, 608 (2005).

<sup>38</sup> DONALD A. SCHÖN, *THE REFLECTIVE PRACTITIONER: HOW PROFESSIONALS THINK IN ACTION* (1991).

## Social Justice

Unlike theories of justice<sup>39</sup> found in the works of Aristotle<sup>40</sup> and Aquinas,<sup>41</sup> social justice is a relatively new concept. Some view it as simply an outgrowth of the public interest law work supporting the poor that began in the early part of the twentieth century.<sup>42</sup> Jackson<sup>43</sup> traces the emergence of the term ‘social justice’ to the discovery of the ‘social’ in industrializing Europe that developed out of the social and political landscapes of laissez-faire capitalism. The first book entitled *Social Justice: A Critical Essay*, was not published until 1900.<sup>44</sup> Its author, Willoughby, argues that recognition of the sovereignty of the individual reason initiates critical evaluation of social and political institutions.<sup>45</sup> This critique has, in turn, ‘revealed discrepancies in many places between the ethical ideals currently held, and the social and economic conditions actually existing’.<sup>46</sup> Thus, social justice can be applied to critique social inequalities, but to do so requires identifying those ‘ethics ideals’ or values. One aspect of Willoughby’s work that is shared by other commentators from this period is the view that society exists as a physical organism.<sup>47</sup> According to Hobhouse:

[T]he life of society and the life of an individual do resemble one another in certain respects, and the term “organic” is as justly applicable to the one as to the other. For an organism is a whole consisting of interdependent parts.<sup>48</sup>

The concept of society as an organism is found in the work of Comte and Spencer, who both relied on the ‘social organism’ metaphor. Comte viewed a person’s existence connected to their participation in society and ‘although the individual elements of society appear to be more separable than those of a living being, the social consensus is still closer than the vital’.<sup>49</sup> Spencer, on the other hand, viewed society as an ‘entity’ formed of ‘discrete units’.<sup>50</sup> A necessary element of society, in the sociological sense, is voluntary cooperation with others.<sup>51</sup> Thus, social justice consists of two concepts. The first involves the notions of the common good, the good of the community, which is prior to the good of the individual. The second notion concerns the inviolable rights of each person ‘over against the state-and even the community’.<sup>52</sup> For present purposes, where a conflict occurs between the two concepts, the rights of the individual takes priority and should be protected against actions or omissions that seek to promote collective goals.<sup>53</sup>

In relation to the protection of individual liberty, Spencer states, ‘Every man is free to do that which he wills provided he infringes not the equal freedom of any other man’.<sup>54</sup> Accordingly, an expectation is

<sup>39</sup> Walter Kaufmann, *The origin of justice*, 23 REV. METAPHYS. 209–239 (1969); DAVID JOHNSTON, A BRIEF HISTORY OF JUSTICE (2011).

<sup>40</sup> THE NICOMACHEAN ETHICS (2009).

<sup>41</sup> SUMMA THEOLOGICA II-II 57 (2000).

<sup>42</sup> Julie D. Lawton, *The Imposition of Social Justice Morality in Legal Education*, 4 IND. J. L. SOC. EQUAL. 57, 57 (2016).

<sup>43</sup> Ben Jackson, *The conceptual history of social justice*, 3 POLIT. STUD. REV. 356–373 (2005).

<sup>44</sup> WESTEL WOODBURY WILLOUGHBY, SOCIAL JUSTICE: A CRITICAL ESSAY (1900).

<sup>45</sup> *Id.* at 1.

<sup>46</sup> *Id.* at 7.

<sup>47</sup> DAVID MILLER, PRINCIPLES OF SOCIAL JUSTICE 4 (1999).

<sup>48</sup> LEONARD TRELAWNY HOBHOUSE, SOCIAL EVOLUTION AND POLITICAL THEORY 87 (1911).

<sup>49</sup> LUCIEN LÉVY-BRUHL & FREDERIC HARRISON, THE PHILOSOPHY OF AUGUST COMTE 337 (1903).

<sup>50</sup> HERBERT SPENCER, THE PRINCIPLES OF SOCIOLOGY VOL. 1 448 (1898).

<sup>51</sup> HERBERT SPENCER, THE MAN VERSUS THE STATE 174 (1891).

<sup>52</sup> Michael Novak, *What is social justice*, 21 CAP. U. L. REV. 877, 883 (1992).

<sup>53</sup> For more information on this anti-utilitarian view, see JOHN RAWLS, A THEORY OF JUSTICE: ORIGINAL EDITION (2005); RONALD DWORKIN, TAKING RIGHTS SERIOUSLY (2013).

<sup>54</sup> HERBERT SPENCER, JUSTICE: BEING PART IV OF THE PRINCIPLES OF ETHICS 46 (1891).



placed on professionals and professional institutions to ensure that this form of justice is maintained.<sup>55</sup> Furthermore, a state's responsibility is not confined to protecting citizens 'and punish criminal aggression' against them, it must also 'administer civil justice to the citizen free of cost'.<sup>56</sup> Spencer's appeal for a free administration of civil justice is necessary, especially in relation to those who lack the resources to pay for legal advice because the ability of a person to protect their legal rights and hold others to their legal obligations is not only a prerequisite to the rule of law but also a fundamental element of social justice.<sup>57</sup>

Two moral obligations can be extrapolated from Spencer's notion of social justice. First, if society consists of 'units' or persons, then it follows that a global society is also composed of these 'units'. In other words, on Spencer's terms, a global society is an 'entity' in which cooperation is an essential element. Thus, there is a moral obligation on clinics to engage in transnational cooperation. Second, there are two interpretations of the state's obligation regarding the free administration of civil justice: the state must have either a free legal aid system, which is accessible to all, or free legal aid is only available to those who satisfy the means test criteria. However, in such a legal aid system, there will inevitably be individuals who do not satisfy the legibility criteria for legal aid and, consequently, will be left without adequate legal representation.<sup>58</sup> In such situations, we suggest that regulatory restrictions preventing clinics from assisting such clients should be removed.

Drawing on the Kantian right of citizens to inform their governments of injustices, a third moral obligation is identified: clinics' moral duty to engage in law reform<sup>59</sup> at both the national and global levels. Law clinics provide a 'fertile ground' for the examination, critique and suggestions for reform of legal systems and specific laws and policies.<sup>60</sup> These educational benefits can be enhanced by adopting a client-centric approach to legal ethics.<sup>61</sup> By examining the 'law in action' from the perspective of the client, students can develop an awareness of the impact of the law on a client's autonomy.

Despite the value of social justice, Hayek argues that those who use the word 'social justice' refer to what the state ought to do.<sup>62</sup> In other words, it is used to describe a state of affairs, namely situations of inequality, which may be remedied by redistribution.<sup>63</sup> Social justice in the context of CLE, however, is said to involve:

[T]he assistance of low-income individuals and communities who cannot afford market rate lawyers or have limited access to them. From there, it ranges from individual client representation on "small" matters and "impact" litigation to collective mobilization of disenfranchised constituencies.<sup>64</sup>

<sup>55</sup> Alberto Mingardi, *Herbert Spencer on corporate governance*, 2 *MAN ECON.* 195–214, 195 (2015).

<sup>56</sup> HERBERT SPENCER, *THE PRINCIPLES OF SOCIOLOGY* VOL 2 660–661 (2nd ed. 1891).

<sup>57</sup> N. J. Balmer, *English and Welsh Civil and Social Justice Panel Survey: Wave 2. Summary Findings*, LEGAL SERVICES COMMISSION: LONDON, UK. 1–79 1 (2013), <http://webarchive.nationalarchives.gov.uk/20130403062222/http://www.justice.gov.uk/downloads/publications/research-and-analysis/lsrc/lsrc-report-csjps-wave-2.pdf> (accessed 11 May 2021).

<sup>58</sup> Zvonimir Jelinic, *Legal Clinics and Access to Justice in Croatia: Perspectives and Challenges*, 5 *ASIAN J. LEGAL EDUC.* 99–108, 103 (2018).

<sup>59</sup> See, Liz Curran, *University Law Clinics and Their Value in Undertaking Client-Centered Law Reform to Provide a Voice for Clients' Experiences*, *INT'L J. CLIN. LEGAL EDUC.* 105 (2007).

<sup>60</sup> *Id.* at 105.

<sup>61</sup> Liz Curran, Judith Dickson & Mary Anne Noone, *Pushing the boundaries or preserving the status quo*, 8 *INT'L J. CLIN. LEGAL EDUC.* 104 (2005).

<sup>62</sup> VOLUME 2: THE MIRAGE OF SOCIAL JUSTICE IN LAW, LEGISLATION AND LIBERTY: A NEW STATEMENT OF THE LIBERAL PRINCIPLES OF JUSTICE AND POLITICAL ECONOMY (2012).

<sup>63</sup> Novak, *supra* note 52 at 882.

<sup>64</sup> Kosuri, *supra* note 10 at 331.

Therefore, social justice in CLE is both a virtue, to be practised by students, and describes a state of affairs in society. Applying this description of social justice globally requires a normative framework that permits clinics, in various jurisdictions, to adopt a similar set of moral values to collaborate with each other in addressing injustices in different communities. Global justice, which can be contrasted with international justice, involves duties towards persons beyond the nation state.<sup>65</sup> International justice, on the other hand, involves justice between nation states.<sup>66</sup> For present purposes, global social justice involves assisting persons, irrespective of their nationality, citizenship, religion, gender or any other characteristic, to address injustices inflicted on them by positive or customary laws or policies, directly or indirectly, which conflict with the values contained in the UDHR. Global justice also involves clinics collaborating to establish conditions that promote social change and economic justice. The implied assumption in this framework is that law clinic students adopt a collaborative role with their clients, as equal partners.

Acting as equal partners with their global clients avoids a value-neutral approach and allows students to be mindful of their clients' values and beliefs. Consequently, this method for global justice is composed of two limbs. First, clinics owe a moral duty, which transcends the nation state, to assist persons suffering injustices. Second, this duty consists of respecting and understanding the client's values and perspectives, and assisting them in arriving at the most reasonable choice for that particular client or community. The second element also involves recognition of the fact that injustice can stem from the denial of a person's lived experience, identity and culture.<sup>67</sup>

## Access to Justice

A subset of social justice, access to justice, as previously stated, is one of the tenets of CLE.<sup>68</sup> Access to justice:

[E]nables individuals to protect themselves against infringements of their rights, to remedy civil wrongs, to hold executive power accountable and to defend themselves in criminal proceedings.<sup>69</sup>

Thus, it can be viewed as both a process and a goal and is essential for individuals seeking to benefit from procedural and substantive rights.<sup>70</sup> Access to justice can include exposure to legal information and education, as well as less formal methods of dispute resolution such as negotiant and mediation.<sup>71</sup>

Access to justice is integral to legal ethics because it provides a moral justification for students and pro bono lawyers to assist clients who are unable to obtain legal aid.<sup>72</sup> In relation to the ethics of access

<sup>65</sup> HUW L. WILLIAMS & CARL DEATH, *GLOBAL JUSTICE: THE BASICS* 47 (2016).

<sup>66</sup> *Id.* at 47.

<sup>67</sup> Nancy Fraser, *Social Justice in an Age of Identity Politics: Redistribution, Recognition and Participation*, in *REDISTRIBUTION OR RECOGNITION?: A POLITICAL-PHILOSOPHICAL EXCHANGE* (Nancy Fraser & Axel Honneth eds., 2020).

<sup>68</sup> Anna Cody & Frances Gibson, *Teaching Law: The Legal Clinic, The University and Social Justice*, in *AUSTRALIAN CLINICAL LEGAL EDUCATION: DESIGNING AND OPERATING A BEST PRACTICE CLINICAL PROGRAM IN AN AUSTRALIAN LAW SCHOOL* 97 (Adrian Evans et al. eds., 2017).

<sup>69</sup> *HANDBOOK ON EUROPEAN LAW RELATING TO ACCESS TO JUSTICE*, 16 (2016).

<sup>70</sup> *Id.* at 16.

<sup>71</sup> CHRISTINE COUMARELOS ET AL., *LEGAL AUSTRALIA-WIDE SURVEY: LEGAL NEED IN AUSTRALIA* 3 (2012).

<sup>72</sup> Donald Nicholson, *Legal Education, Ethics and Access to Justice: Forging Warriors for Justice in a Neo-liberal World*, 22 *INT'L J. LEGAL PROF.* 51–69, 55 (2015).



to justice, Rawls argues that ‘justice is the first virtue of social institutions’.<sup>73</sup> Reflecting on the scope of access to justice allows students to critique the role of social institutions in the distribution of fundamental rights and duties, and the manner in which they determine the advantages from social cooperation.<sup>74</sup> However, there are two risks associated with law clinics’ altruistic ethos in addressing unmet legal aid needs. First, a reduction in legal funding by the state results in clinics providing assistance to clients who no longer qualify for legal aid. This can result in clinics mitigating the effects of legal aid cuts and potentially encouraging further reduction in legal aid funding. Second, for clients who are no longer eligible for legal aid funding, law clinics are an avenue for access to justice. Empirical evidence suggests that the number of clients accessing law clinics, in England and Wales, is increasing.<sup>75</sup> This could result in clinics shifting from focusing on the pedagogic aims of CLE to acting as providers of pro bono legal services.<sup>76</sup>

Access to justice, in creating a moral obligation to assist those who are unable to enforce their rights, allows students to reflect on injustices inflicted on individuals. However, focusing on ‘justice’ risks limiting students’ thinking about the conceptions of justice only in terms of formal or procedural conceptions and omitting from their inquiry the harm and suffering caused around the world.<sup>77</sup> An unjust law can be defined as a valid law, which conflicts with the values by which it is judged.<sup>78</sup> This idea of applying values to locating injustices is not limited to condemning individual laws, but it can be equally applied to the entire legal system, such as where it is being directed solely to benefitting and furthering the interests of a particular group or repressive towards others.<sup>79</sup> To locate and address injustice, we need to identify these human rights values.

## Human Rights

The underlying principle of HRE, that of ensuring a culture of human rights, can be misconstrued as an attempt to align personal values with universal human rights values.<sup>80</sup> The criticisms over the breadth of HRE relied on the assumption that it is attempting to make education ‘value neutral’.<sup>81</sup> This is a flawed notion that exists within the law school and has created an inhospitable environment for a discussion over values and morality.<sup>82</sup> Violations of human rights are now able to affect every member of the global community, and globalization facilitates human rights problems. Therefore, there is a global language of

<sup>73</sup> RAWLS, *supra* note 53 at 3.

<sup>74</sup> *Id.* at 7.

<sup>75</sup> The LawWorks Law School Pro Bono and Clinics Report 2020 | LawWorks, <https://www.lawworks.org.uk/solicitors-and-volunteers/resources/lawworks-law-school-pro-bono-and-clinics-report-2020> (accessed 7 August 2021).

<sup>76</sup> Orla Drummond & Grainne McKeever, *Access to Justice through University Law Clinics* (2015), <https://pure.ulster.ac.uk/en/publications/access-to-justice-through-university-law-clinics-3> (accessed 7 August 2021).

<sup>77</sup> Fiona Robinson, *Global care ethics: Beyond distribution, beyond justice*, 9 J. GLOB. ETHICS 131–143, 131 (2013).

<sup>78</sup> DENNIS LLOYD, *THE IDEA OF LAW* 131 (1991).

<sup>79</sup> *Id.* at 131.

<sup>80</sup> Kayum Ahmed, *Bridging the ‘Values Gap’: Human Rights Education, Ideology and the Global-Local Nexus*, in *CRITICAL HUMAN RIGHTS, CITIZENSHIP, AND DEMOCRACY EDUCATION: ENTANGLEMENTS AND REGENERATIONS* (Michalinos Zembylas & André Keet eds., 2018).

<sup>81</sup> GEORGE J. ANDREPOULOS & RICHARD PIERRE CLAUDE, *HUMAN RIGHTS EDUCATION FOR THE TWENTY-FIRST CENTURY* (1997).

<sup>82</sup> Julian Webb, *Taking Values Seriously: The Democratic Intellect and the Place of Values in the Law School Curriculum*, in *THE ETHICS PROJECT IN LEGAL EDUCATION* 9–32 (Michael Robertson et al. eds., 2010).

morality, which includes the ‘concern for justice, which inevitably extends to a discussion over protection of human rights’.<sup>83</sup>

Article 8 of the UDHR provides that ‘Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law’. The notion of ‘justice’ within human rights language is conceived differently across various jurisdictions.<sup>84</sup> Similarly, ‘access to justice’ falls within a spectrum, ranging from access to a court or tribunal to the ability to pursue effectively remedies through the national justice system in line with human rights standards<sup>85</sup>:

Access to justice means access to a fair, respectful and efficient legal process ... it involves legal protection, legal awareness, legal aid, counsel adjudication and enforcement. There is no access to justice where members of a society (especially marginalised groups) fear the system, see it as alien and do not access it, where the justice system is financially inaccessible, where individuals have no lawyers, where they do not have information or knowledge regarding rights, or where there is a weak justice system.<sup>86</sup>

Within a law clinic setting, the principle of access to justice is aligned with the altruistic and philanthropic objectives of education towards a facilitation of access to justice, in particular, for vulnerable groups.<sup>87</sup> Kingston argues that alignment of human rights education with clinical legal education can ‘create socially responsible citizens’.<sup>88</sup>

Empirical evidence suggests that there is scope for the inclusion of value-based theories within law school pedagogy settings. Moorhead et al.<sup>89</sup> provide a detailed examination of the ethical identity of students, relying on measurable indicators of values and moral outlook. Moorhead et al. reached significant conclusions, regarding the development of the ethical identity of students, and recognized the parameters that seem to influence this development (e.g., gender and career aspirations). More importantly, their findings highlight that law schools promote the development of ethical identity, specifically acknowledging the contributing factors of participation in clinical programmes.<sup>90</sup>

The ability of education to develop one’s ethical identity was predicted by the UDHR. Article 26 stipulates that ‘education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms’. The existence of these universal values that should be promoted through education, among other means, is present in the liberal ideas that flourished post-World War II, of a new legal order that aimed at ensuring equality and dignity for all, ignited the development of the instruments necessary to achieve it. Within these instruments, the role of education towards achieving these goals becomes prominent and prescriptive. For example, the United Nations Declaration on Human Rights Education and Training highlights, through Article 2, the significance of human rights education to ‘Education for human rights, which includes empowering persons to enjoy and exercise their rights and to respect and uphold the rights of others’.<sup>91</sup> Education in

<sup>83</sup> Hurwitz, *supra* note 4 at 508.

<sup>84</sup> See, Olujemisi Bamgbose, *Access to Justice Through Clinical Legal Education: A Way Forward for Good Governance and Development*, 15 AFR. HUM. RIGHTS L. J. 378–396 (2015).

<sup>85</sup> *Id.* at 382.

<sup>86</sup> *Id.* at 382.

<sup>87</sup> Madhloom, *supra* note 23.

<sup>88</sup> L. N. Kingston, *Creating a ‘Human Rights Campus’*, 24 PEACE REV. 78–83, 79 (2012).

<sup>89</sup> R. Moorhead, *The ethical identity of law students*, 23 INT’L J. LEGAL PROF. 235–275 (2016).

<sup>90</sup> *Id.*

<sup>91</sup> UNITED NATIONS DECLARATION ON HUMAN RIGHTS EDUCATION AND TRAINING (2011).

these formulations is shifted from being a right (right to education) towards becoming the means by which to ensure the protection of human rights.

In a similarly prescriptive way, the United Nations Decade for Human Rights Education reaffirmed that ‘education shall be directed to the full development of the human personality and to the strengthening of respect of human rights and fundamental freedoms’ declared the decade for Human Rights Education.<sup>92</sup> The Plan for Action for the United Nations Decade for Human Rights Education, 1995–2004 defined human rights education ‘as training, dissemination and information efforts aimed at the building of a universal culture of human rights’.<sup>93</sup> Beyond the overarching aims of respecting human rights and safeguarding the ‘sense of dignity’ the Plan also asks for ‘the enabling of all persons to participate effectively in a free society’ through the imparting of knowledge and skills.<sup>94</sup> Within CLE, the identity of law clinic work is aligned with the assertion made in the Guidelines for National Plans of Action for Human Rights Education, namely that ‘human rights are promoted through three dimensions of education campaigns’, including ‘values, beliefs and attitudes: promotion of a human rights culture through the development of values, beliefs and attitudes which uphold human rights’.<sup>95</sup>

The United Nations General Assembly suggested the introduction of ‘students of all disciplines’ to human rights through teaching styles that are ‘coherent with human rights’ and the empowerment of students by supporting ‘exploration of alternative perspectives and critical reflection’, through experiential learning and practical application of human rights concepts.<sup>96</sup> Ultimately, embedding HRE within CLE can foster a universal culture of human rights, in which everyone is aware of their own rights and responsibilities in respect of the rights of others, and promoting the development of the individual as a responsible member of a free, peaceful, pluralist and inclusive society.<sup>97</sup>

### *Sensus Communis*

In the *Critique of the Power of Judgment*, Kant presents ‘sensus communis’ as a general faculty for judgement that individuals possess, and where they can relate their own thinking to the potential thinking of others.<sup>98</sup> Kant contends that there must be a ground for universal communicability, a common sense that operates intersubjectively.<sup>99</sup> The aim of the *sensus communis* is to underpin the necessity of there being a universally communicable disposition of taste.<sup>100</sup> In relation to transnational law clinic collaborations, intersubjectivity can be facilitated through the values found in the UDHR.

The *sensus communis* is considered coterminous with ‘common human understanding’.<sup>101</sup> According to Kant, to develop the faculties of understanding, judgement and reason requires obeying the three

<sup>92</sup> UNITED NATIONS DECADE FOR HUMAN RIGHTS EDUCATION, A/RES/49/184 (1994).

<sup>93</sup> REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS ON THE IMPLEMENTATION OF THE PLAN OF ACTION FOR THE UNITED NATIONS DECADE FOR HUMAN RIGHTS EDUCATION (1996).

<sup>94</sup> *Id.* at 5.

<sup>95</sup> GUIDELINES FOR NATIONAL PLANS OF ACTION FOR HUMAN RIGHTS EDUCATION (1997).

<sup>96</sup> DRAFT PLAN OF ACTION FOR THE SECOND PHASE (2010–2014) OF THE WORLD PROGRAMME FOR HUMAN RIGHTS EDUCATION—NOTE BY THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS (2010).

<sup>97</sup> UNITED NATIONS DECLARATION ON HUMAN RIGHTS EDUCATION AND TRAINING, *supra* note 91, Article 4.

<sup>98</sup> IMMANUEL KANT, *CRITIQUE OF THE POWER OF JUDGMENT* 5: 293–294 (2002).

<sup>99</sup> *Id.* at 5:93.

<sup>100</sup> *Id.* at 5:239.

<sup>101</sup> *Id.* at 5:293.

maxims of the common human understanding,<sup>102</sup> which together form the conduct of thought: ‘1. To think for oneself; 2. To think in the position of everyone else; 3. Always to think in accord with oneself’.<sup>103</sup> Kant describes each of these maxims in the following way: ‘The first is the maxim of the unprejudiced way of thinking, the second of the broad-minded way, the third that of the consistent way’.<sup>104</sup> Thinking in an unprejudiced way requires thinking autonomously; thinking in a broad-minded manner involves thinking universally of others in terms of them as ends rather than simply as means; the third maxim involves thinking consistently.<sup>105</sup> The second maxim is to be followed only after we have thought matters through for ourselves. The reason for taking into consideration the views of other achieves two goals. First, it lends one’s deliberation/reflection a pluralistic dimension. Kant defines pluralism, which he distinguishes from egoism, as ‘the way of thinking in which one is not concerned with oneself as the whole world, but rather regards and conducts oneself as a mere citizen of the world’.<sup>106</sup> This cosmopolitan approach is found in Freire’s philosophy of critical pedagogy, which holds that ‘[t]o be human is to engage in relationships with others and with the world’.<sup>107</sup> Second, by taking into consideration the views of others, students can strive to achieve correct or error-free judgement.

To think consistently is a combination of the first two maxims and is only achieved after long and deliberate practice.<sup>108</sup> The third rule of common sense functions to admonish inconsistent thinking if a student were to follow the first two rules but, nevertheless, decided to act inconsistently. A reason for failing to act consistently could be out of self-interest (egoism). Thus, *sensus communis* can be applied to CLE to develop an epistemology of reflective practice, which is underpinned by the values articulated by the UDHR and notions of social justice and access to justice. Having identified the elements of a universal pro forma to aid clinic collaboration, the third section argues that CLE can be enhanced by embedding the proposed pro forma into reflective practice.

## Reflective Lawyering

There is not one universally accepted definition of reflection. Instead, theorists have put forward their own definitions:

Active, persistent, and careful consideration of any belief or supposed form of knowledge in the light of the grounds that support it and the further conclusions to which it leads.<sup>109</sup>

Reflection is an important human activity in which people recapture their experience, think about it, mull it over and evaluate it.<sup>110</sup>

<sup>102</sup> A maxim is a subjective of action. For any rule of action that is to be followed, we must examine whether we can will others to always follow it.

<sup>103</sup> KANT, *supra* note 98 at 5:293.

<sup>104</sup> *Id.* at 5:293.

<sup>105</sup> JOHNSTON, *supra* note 21 at 191.

<sup>106</sup> ROBERT B. LOUDEN, KANT: ANTHROPOLOGY FROM A PRAGMATIC POINT OF VIEW 130 (Annotated edition ed. 2006).

<sup>107</sup> PAULO FREIRE, EDUCATION, THE PRACTICE OF FREEDOM 4 (1974).

<sup>108</sup> JOHNSTON, *supra* note 21 at 191.

<sup>109</sup> JOHN DEWEY, HOW WE THINK 9 (1933).

<sup>110</sup> DAVID BOUD, ROSEMARY KEOGH & DAVID WALKER, REFLECTION: TURNING EXPERIENCE INTO LEARNING 19 (1985).

Reflection is about linking one increment of learning to the wider perspective of learning—heading towards seeing the bigger picture.<sup>111</sup>

Experience, therefore, is converted into learning through the process of reflection.<sup>112</sup> The value of reflection in CLE is that it allows students ‘to understand how the law is experienced in context and to critique its shortcomings, to support professional identity formation and to develop actionable professional knowledge and expertise’.<sup>113</sup> Professionals encounter a variety of complex and unpredictable situations. Schön relies on the metaphor of a swamp to articulate this fact:

In the varied typography of professional practice, there is a high, hard ground overlooking a swamp. On the high ground, manageable problems lend themselves to solutions through the use of research-based theory and technique. In the swampy lowlands, problems are messy and confusing and incapable of technical solution.<sup>114</sup>

An awareness of complexity, uniqueness and value conflict in professions may result in ‘professional pluralism’: the development of different approaches regarding the core values of the profession, the relevant knowledge and skills acquired and competing images of the professional role.<sup>115</sup> Cultural and professional pluralism can form part of a student’s reflective practice through Kant’s ‘sensus communis’. The multiplicity of views can pose a dilemma for professionals, including clinic students, and they must either decide between different approaches to practice or devise an alternative method.<sup>116</sup>

## Conclusion

In light of a rapidly globalized legal profession and human rights problems, we have argued for the need for communication between law clinics from multiple jurisdictions in order to respond to these human rights issues. Access to justice is identified as a significant human rights concern, to which law clinics can assist through a moral duty to protect the vulnerable in society to achieve global social justice. Seeking inspiration from the wording of the UDHR, this article provides a universal pro forma for law clinics, which embeds the principles of human rights, *sensus communis* and social justice, in facilitating transnational communication and collaboration between law clinics.

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<sup>111</sup> Phil Race, *Evidencing Reflection: Putting the ‘W’ into Reflection*, ESCALATE LEARNING EXCHANGE (2002), <http://escalate.ac.uk/resources/reflection/> (accessed 1 May 2021).

<sup>112</sup> Victoria Murray, *Reflection*, in *A STUDENT GUIDE TO CLINICAL LEGAL EDUCATION AND PRO BONO*, 227 (Kevin Kerrigan & Victoria Murray eds., 2011).

<sup>113</sup> Michele M. Leering, *Perils, Pitfalls and Possibilities: Introducing Reflective Practice Effectively in Legal Education*, 53 L. TEACH. 431–445, 432 (2019).

<sup>114</sup> DONALD A. SCHON, *EDUCATING THE REFLECTIVE PRACTITIONER: TOWARD A NEW DESIGN FOR TEACHING AND LEARNING IN THE PROFESSIONS* 3 (1987).

<sup>115</sup> *Id.* at 3.

<sup>116</sup> DONALD A. SCHÖN, *THE REFLECTIVE PRACTITIONER: HOW PROFESSIONALS THINK IN ACTION* 17 (2017).