Great Britain vs. Little England & Teamgeist vs. Indifference

Clinical Legal Education in the UK and in Germany amidst Brexit and right-wing populism

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Abstract

Since the Seventies, there has been a gradual rise in Clinical Legal Education (CLE) in the United Kingdom. In contrast, CLE in Germany developed only after 2008, when the relevant law, the Rechtsberatungsgesetz, was transformed into Rechtsdienstleistungsgesetz.

Law clinics focus on questions of social justice and on providing legal advice to those who are not wealthy enough to make use of legal practitioners. Within the UK, severe cuts in legal aid reforms prior to the Brexit referendum have already brought about evidence that access to justice has become a matter for the wealthier in the UK. In Germany, legal aid is provided to low or no income clients, when a number of criteria are met.

The areas where advice is given within CLE ranges from employment law and family law (including domestic violence) to housing, welfare benefits, general civil litigation, commercial law, environmental and criminal law. In both countries, cyber law clinics are also on the rise. They deal with advice in the area of social media, fake news, cyber bullying, liability, data protection and online purchases.

This paper aims to give a short overview over the pattern of clinical legal education in Britain and Germany as of today. Case studies of law schools where the author has studied and worked / works are used to analyze the pedagogical, intrinsic and charitable values that clinical legal education provides. The paper, by analyzing the data gained through the case studies, illustrates how those student-led advice centers have responded to two current issues in the two countries: Brexit and the refugee crisis. The paper will show that in the wake of the Brexit referendum result of 23 June 2016 and the peak of the refugee crisis in Germany in 2015, there has been a significant increase in advice sought regarding all aspects of immigration law such as permanent residency, indefinite leave to remain, and eligibility criteria for obtaining citizenship. The paper highlights the sharp contrast between the referendum result and the right-wing populist reaction to refugees which bear evidence of political polarization on the one hand and, on the other hand, very motivated young students with a huge social conscience and potential in achieving social justice which is proof of generation Y’s commitment to voluntary and pro bono work for the common good. The paper shows that there is a vast potential and that the often bemoaned missing of generation Y in the voluntary sector is an assumption that needs a closer look and to some extent - challenging. The paper concludes that the engagement by students in pro bono work and legal advice will make a substantial contribution to fostering cohesion in the post-Brexit EU.

Key words: Clinical legal education (CLE); Generation Y; legal aid; access to justice; professional ethical standards.
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A. Introduction

The third sector has always played a pivotal role in giving legal advice to those in need. From legal aid centers to pro bono debt counseling services and legal aid associations, the need for pro bono legal advice has risen in recent years. In the UK, this has occurred in particular since the severe cuts that were made in publicly funded legal aid through the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). In Germany, the costs of litigation deter many socially and financially underprivileged people from going to court. Recent reforms of the legal aid scheme have significantly changed the eligibility criteria for legal aid, while, simultaneously, the number of court proceedings relating to social welfare issues rose in the wake of Agenda 2010. In both countries, there is an increasing difference between equality before the law that formally exists and equal access to the law. This development endangers access to justice and, in the long run, the rule of law. In recent years, there has been a constant rise in clinical legal education (CLE) caused both by the need to respond to cuts in legal aid and by the understanding of CLE’s pedagogic and didactic benefits to law students. This paper looks at the status of CLE in the UK and Germany. It provides a short overview of the development of law clinics in the two countries and compares the respective legal frameworks. It analyzes how, amidst the Brexit process and the rise of right-wing populism, students are engaging in pro bono legal advice; it questions the lack of involvement of Generation Y² in voluntary work. The paper uses cases studies from four different law schools (Sheffield, London, Berlin, Cologne) at which the author has worked and studied, and interviews that were conducted with students who participated in CLE, as well as interviews with solicitors and academics who supervise law clinics. The paper concludes that, despite the general privilege with which law students are vested, the increasing number of students who want to engage with CLE both in the UK and in Germany demonstrates a commitment to social justice and the rule of law.

Key words: Clinical legal education (CLE); Generation Y; legal aid; access to justice; professional ethical standards.

B. CLE in the UK and in Germany—development, organization and student participation

Part I of this section provides a brief overview of the development of the CLE movement amidst severe cuts and changes to the legal aid schemes in both countries; it shows that the rise of CLE in numbers is linked to these

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¹ Agenda 2010 refers to a series of measures by the Social Democratic/Green Schröder government that led to unprecedented cuts in the welfare system in the period 2003–2005.

² Generation Y refers to people born between the 1980s and 1990s until 2000. They are also referred to as Millennials, echo boomers, (inter)net generation or iGen.
reforms. Part II discusses scholarship on the pedagogic and didactic scope of CLE. Part III moves on to illustrate the legal framework for CLE and demonstrates that legal aid and, consequently, CLE are embedded both in the Charter of Fundamental Rights of the European Union and in the European Convention on Human Rights, which will serve as a 'back-up' when the UK leaves the European Union in the near future. Part IV consists of case studies from University College London, the University of Sheffield, Cologne University, and Humboldt University. Part V puts the CLE engagement of law students in the context of Generation Y. The final section of the paper contains concluding remarks, with eight theses put forward.

I. Development of law clinics in the UK and Germany

The pattern of CLE in both the UK and Germany is complex, with sometimes patchy, sometimes well-established clinics, with different legal forms and different foci. Some clinics provide general advice and some concentrate on subject-specialist advice. In the UK, the majority of law clinics deal with employment issues, housing, welfare benefits, family law and debt, while the majority of—relatively new—German specialist law clinics are refugee law clinics (RLCs). The number of RLCs continues to rise. Over one third of German law clinics provide general advice. While England has made use of law clinics since the 1970s, German CLE has only developed over the past ten years following a change in the law governing legal advice in 2008 that made this possible.

But what exactly is CLE? The European Network for Clinical Legal Education defines it in the following words:

Clinical legal education is a legal teaching method based on experiential learning, which fosters the growth of knowledge, personal skills and values as well as promoting social justice at the same time. As a broad term, it encompasses varieties of formal, non-formal and informal educational programs and projects, which use practical-oriented, student-centered, problem-based, interactive learning methods, including, but not limited to, the practical work of students on real cases and social issues supervised by academics and professionals. These educational activities aim to develop professional attitudes and foster the growth of the practical skills of students with regard to the modern understanding of the role of the socially oriented professional in promoting the rule of law, providing access to justice and peaceful conflict resolutions, and solving social problems.

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By this definition, it becomes clear that CLE is multifaceted in both its design and its operational integration into universities’ law schools. CLE certainly provides pedagogic and didactic means to enhance problem-based learning. It is, furthermore, a method for combining research and practice in order to prepare students for the legal profession, as it trains all skills that a legal professional should possess: Teamwork, responsibility, reflective learning, the ability to engage with clients, and, last but not least, the ability to turn a set of random facts into its legal context. A solicitor from CLE at Sheffield law school highlighted the impact CLE has on the employability of graduates and reported that in job interviews, students were predominantly asked about their CLE involvement instead of being asked about “isolated” subject knowledge. Both solicitors and academics reported that CLE has a transformative effect on students in terms of their ability to analyze, to work independently, and to work continuously on a case over the course of an academic year. It goes without saying that CLE is, nevertheless, not a replacement for the trained and qualified legal profession. In line with the debate about the complementary function of the third sector, CLE is certainly not a substitute for publicly funded legal aid that each state is obliged to provide if the adherence to access to justice and the rule of law is more than merely lip service. De facto, however, legal aid cuts have led to a rising demand for pro bono legal advice, and it cannot be denied that a large percentage of clients would never seek legal advice if CLE and other pro bono work was not available. In the UK, the cuts introduced by LASPO led to a dramatic decrease in eligibility for legal aid in all welfare benefit matters, debt and employment issues (apart from discrimination cases), and housing. Post-LASPO, the Law Centre Network,7 which represents approximately 50 independent law centers in England and Northern Ireland, has reported an alarming decline in legal aid eligibility.8 Even though CLE has existed in the UK since the 1970s, the demand for advice has risen dramatically since LASPO, and law schools have responded to it. As of 2018, 40% of all clinics in the UK are law-school-based clinics, and in 2016/2017 they dealt with over 18,000 enquiries.9 There are 50 law schools in England and Wales10 and more than 70 percent of them provide CLE. In 2016/2017, 3,150 students volunteered in law school clinics, an increase of 22% on the previous year.11 The rising numbers of CLE students in the wake of the Brexit referendum on June 23, 2016, represents a remarkable contrast to the proclaimed inertia among young voters. While in the 1970s and early 1980s only a handful of law schools hosted or ran clinics, the 1990s saw a gradual rise to 15% of law schools offering CLE, alongside cuts in state-funded legal services, which increased the demand for legal advice elsewhere.12 As of 2018, law schools have also responded to the Brexit result and to a notable anti-immigrant atmosphere in a number of parts of the UK13 by setting up law clinics for immigration law and/or citizenship, or by expanding existing clinics to advise on questions of immigration as well.

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7 The law centers have existed since the 1970s and can be found throughout England and Northern Ireland. They advise on law and represent individuals and groups, mainly in areas of social welfare. Alongside these law centers is Citizen Advice, which consists of almost 400 charities in more than 3,700 community locations which offer free advice and signpost to legal aid and pro bono solicitors. Advice UK is a charity that supports advice centers within the UK.
10 In comparison, Germany has 43 law faculties.
In Germany, the first clinics appeared only in 2008, as the relevant act, the 
Rechtsberatungsgesetz, prohibited anyone not fully qualified as a lawyer from giving legal advice. There were, however, two reasons to demand 
new rules. First, the Rechtsberatungsgesetz came into force in 1935 and was originally passed by the National Socialists to ban Jewish lawyers from practicing their profession. Second, it was deemed that the 
Rechtsberatungsgesetz was not in line with a modern consumer-oriented approach to legal advice. Consequently, the German Constitutional Court declared the Rechtsberatungsgesetz unconstitutional and 
paved the way for a new act, which was passed in 2008 as Rechtsdienstleistungsgesetz.

The first law clinic in Germany was established at Giessen University in 2007/2008 as a refugee law clinic; 
Humboldt Law Clinic at Humboldt University of Berlin followed in 2010. In 2011, Friedrich-Schiller-University 
Jena established the PARAlegal clinic and in 2012, both Hamburg law schools, at Hamburg University (Cyber Law 
Clinic) and Bucerius Law School followed, the latter in cooperation with the local charitable organization 
Diakonie Hamburg. These clinics were launched by students. Academics sometimes supported the process, 
advised on funding, and opened doors, but the origin was student-led. By 2013, there were 28 clinics and in 
2018, there are some 80 clinics, with 50–60 of them being of a permanent nature.

The German Constitutional Court, has, in two widely recognized decisions, 
established the concepts of Rechtsschutzgleichheit (equal legal protection) and Rechtswahrnehmungsgleichheit 
(equal legal cognition). The highest German court held that free legal advice through law clinics, legal aid 
centers, charities, or pro bono initiatives is not only reasonable, but also necessary in order to fulfill Article 3 of 
the German Grundgesetz (GG), which stipulates equality before the law and non-discrimination; and to 
furthermore fulfill Articles 20 I and III GG, which state the constitutional principles, such as democracy and social federalism (paragraph 1), and which bind the legislature to the constitutional order and the executive and 
judiciary to law and justice. The constitutional court sees it as an imperative to provide free legal aid, and 
instead of looking at the provider, argues for the very provision of this service to maintain access to justice in 
the first place and adherence to the rule of law in the medium term. This means that almost 100 years after the 
Rechtsfriedensbewegung started in Germany, a movement that formulated the notion that access to justice is 
a precondition for equality before the law, the Bundesverfassungsgericht supported this view. The two cases 
concerned the denial of legal aid in relation to child benefit and in relation to a common type of unemployment 
benefit (Arbeitslosengeld II). It should be noted that in both decisions, the Bundesverfassungsgericht 
emphasized the violation of Articles 3 and 20 I, III of the constitution and the principle of equality of arms. The 
Bundesverfassungsgericht thereby not only strengthened the claimants but also implied the order for the

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17 Rechtsfriedensbewegung was an early 20th century movement which sought to give legal advice to underprivileged groups by supporting "Rechtsauskunftsstellen", which advised the growing working class. The Rechtsfriedensbewegung was closely connected to "Arbeitersekretariate"—interest groups for workers that were linked to trade unions. For a detailed study, see Hiroki Kawamura, Die Geschichte der Rechtsberatungshilfe in Deutschland (Berlin: Wissenschafts-Verlag, Berlin, 2014); as well as Udo Reifner & Irmela Gorges, Alternativen der Rechtsberatung: Dienstleistung, Fürsorge und kollektive Selbsthilfe, in Blankenburg et al. (eds.) Alternative Rechtsformen und Alternativen zum Recht 233–262 (Westdeutscher Verlag GmbH, Opladen, 1980).
legislature to reform the eligibility criteria within the legal aid regime, for legal aid both in court proceedings and in pre-/post-court proceedings.

II. The didactic scope and pedagogic benefit of CLE

CLE, both in the UK and in Germany, has a dual purpose. It is undoubtedly a way of improving students’ skills and preparing them for the legal profession. Campbell\(^{18}\) describes it as a tool that allows students to engage in the complexity of legislative and practice aspects. As early as 1996, Grimes, Klaff, and Smith\(^{19}\) pursued a study in 79 UK-based law schools and found that the value of live-client work had been widely recognized. They also showed that there was a strong link between clinical programs and acquiring skills needed for the profession. Hall and Kerrigan,\(^{20}\) who analyzed their students’ feedback on CLE, found that one of the advantages of CLE is that it provides students with a different perspective on the meaning, the operating, and the consequences of a normative framework and of the doctrine, and that this variety results in a positive response from students and an active learning process, which is thus more sustainable. This sustainability is certainly also caused by the fact that learning within a clinic offers a deeper insight into the law than would be gained by just studying it. Nowadays, law schools’ curricula—both in the UK and in Germany—tend to be overloaded, with students understandably struggling to manage what they are presented as main/core and essential reading. The clinical methodology—the application of the law known from text books, journal articles and cases—influences students’ learning process cognitively. In other words, experiencing the law in a live-client contact provides for lasting and profound knowledge, compared with going through yet another chapter in a book.\(^{21}\)

Wilson\(^{22}\) criticizes the use of CLE in Germany for several reasons. First, he assumes that CLE is unnecessary, as the legal traineeship in Germany (Referendariat) provides enough practical training on the job. While it is true that the Referendariat is a two-year training period for law graduates to qualify, trainees are thrown into practical work as a public prosecutor, a judge, or a solicitor with very little guidance or supervision; thus, becoming accustomed to live-client work before the start of the Referendariat does no harm at all. Second, Wilson stresses that owing to the size of law schools in Germany, there are too many undergraduates to participate in CLE. There are frequently more applicants for CLE modules and programs than law schools can accommodate, as will be illustrated in the case studies. As unfortunate as it is that not all students who would like to are able to participate in CLE, this is not a strong argument against CLE, but rather one in favor of it. It suggests that CLE elements should be integrated into other law modules, as in both the UK and Germany, the majority of graduates eventually work in practice. Lastly, Wilson points out that CLE endangers the profession

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by poaching clients from it and by promoting big law firms rather than individual solicitors or small firms. He also identifies the risk of students being exploited in quasi-precarious work relationships.

These arguments cannot be endorsed. As will be illustrated with the Refugee Law Clinic Cologne, there is intensive cooperation between students and the profession. Students do not do the work that a fully qualified lawyer with professional liability insurance is allowed to do. At neither the two German clinics nor the two UK clinics do students give legal advice that results in immediate force and effect. Rather, they signpost and explain what the law is in a particular setting. As students prepare letters or briefs, they are not taking away work from the profession. On the contrary, the clinic work leads to lawyers being able to concentrate on the proceedings instead of spending their time on the miscellaneous tasks of gathering documents and communicating with authorities. Students also fulfill an important socio-emotional role toward clients as they spend a great deal of time with them. This allows the emotional dimension that always exists when someone needs legal advice to be seized as well. The exploitation argument, finally, does not apply for a number of reasons. Most CLE programs run for one academic year and combine lectures and/or tutorials and casework. The lectures and tutorials or seminars are credit-bearing. The practical work is limited to half a day or a few hours a week. In the UK case studies, students only worked on the cases from late autumn until spring. Across the UK, some clinics are closed altogether during the summer months. In Germany, the clinics are student-led and -managed, and there is a clear understanding that the clinical work complements their studies, but under no circumstances impedes them. Time management and prioritizing is, after all, something that undergraduate students are expected to learn during their studies. As Giddings 23 rightly points out, CLE involves active and reflective learning, and the organization of dealing with cases is certainly part of that. Hannemann and Dietlein 24 admit that CLE has limits. They argue that CLE does not replace legal aid, but that the current system results in a large percentage of vulnerable people who are in need of advice and assistance—such as homeless and disabled people, single parents, and asylum seekers—being left without help, and that CLE therefore contributes to the constitutional requirement of access to justice and equality. This interpretation of CLE is closely linked to the other aim of CLE, which is deeply rooted in the social justice mission as described by Bloch. 25 Bloch asserts that there is an ethical obligation on current and future lawyers to fill the justice gap. This justice gap is caused both by austerity programs 26 and by non-financial obstacles such as a complex language in the forms that individuals need to fill in to apply for legal aid. 27 From the foregoing considerations, it derives that the benefits of CLE outweigh the disadvantages identified. A final aspect that reflects both the social justice mission and the pedagogic benefits is the development of professional ethical standards that CLE achieves. As Drummond and Mc Keever and

23 Jeff Giddings, Promoting Justice through Clinical Legal Education 14 (Justice Press, 2013).
26 Austerity programs have been implemented in the UK since the 1990s, and with regard to legal aid in particular in 2012. In Germany, Agenda 2010, a series of measures by the Social Democratic/Green Schröder government, led to unprecedented cuts in the welfare system between 2003 and 2005.
27 An example of this can be found in a nine-page document that applicants for legal aid have to fill in in North Rhine-Westphalia. It is available at the following link: http://www.justiz.nrw.de/BS/formulare/prozesskostenhilfe/erkl_zp1a.pdf (last accessed 19.10.2018).
Nicolson\textsuperscript{28} have underlined, engaging with professional ethics on or after entering the profession is far too late. This is rather a \textit{conditio sine qua non} for the legal profession, and CLE offers a much more direct confrontation with it than any lecture on ethical standards in the profession could.

\textbf{III. Normative framework for CLE}

The normative framework for CLE stems from both countries’ domestic law but also from the European acquis. The following paragraph gives a short overview that illustrates how the legal regimes are intertwined.

\textbf{1. The European normative framework}

The European normative framework derives from both the European Convention on Human Rights (ECHR) from 1950, which currently has 47 signatories, and from European Union law, which binds its 28 (27 after the UK leaves the EU) member states.

\textbf{1.1. Articles 6 and 13 ECHR}

In the ECHR, Articles 6 and 13 provide the normative framework for free legal advice. Article 6 stipulates the right to a fair trial in both criminal and civil proceedings and specifies the aspects that this right carries with it, such as the right to a public hearing, the public announcement of judgments, and in criminal cases the presumption of innocence until proven guilty. Article 6 assumes a functioning court system that comprises access to justice and to legal assistance or representation in court. As Choudhry and Herring\textsuperscript{29} rightly comment, Article 6 I does not enshrine the right to \textit{free} legal aid. If, however, a litigant is de facto hindered from seeking justice because this would involve costs that the person cannot be expected to meet, this right is rendered void and a different interpretation of the Article is needed.

Article 13 guarantees the right to an effective remedy, which makes it the article that provides genuine access to justice within the Convention.

\begin{quote}
\textbf{Article 13}

\textbf{Right to an effective remedy}

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority.
\end{quote}

\textsuperscript{28} Orla Drummond & Grainne Mc Keever, \textit{Access to justice through university law clinics}, Ulster University Law School 12 (2015); Donald Nicolson, \textit{Calling, character and clinical legal education: A cradle to grave approach to inculcating a love for justice}, 16(1) Legal Ethics 36-56, 40 (2013).

notwithstanding that the violation has been committed by persons acting in an official capacity.

When LASPO came into force, the government explicitly stated that legal aid was still available to those whose rights under the ECHR had been violated.

1.2. Article 47 EU Charter

The Charter of Fundamental Rights of the European Union was ratified in 2000 but did not enter into force until 2009 (Treaty of Lisbon). It enshrines political, social, and economic rights for EU citizens. It binds the institutions of the Union and its member states. Article 47 of the Charter stipulates the right to an effective remedy:

**Article 47**

**Right to an effective remedy and to a fair trial**

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

**Legal aid** shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Because of the consonance of Convention and Charter provisions, as mentioned in Article 52 III of the Charter, one would assume that the Charter provision does not go beyond what is stipulated in the Convention. As Holopainen et al.\(^\text{30}\) rightly argue, however, the Charter provision implies a procedural principle, whereas in the Convention, legal aid is seen in the socio-economic context of a signatory state. As a procedural principle, there is less flexibility in altering the scope of it and amending its interpretation.

2. The domestic regime

The legal bases for law clinics in the UK and Germany reveal some differences, but also have some common features, such as the professional liability insurance for the solicitor supervising the students. The major difference is that while Germany started to regulate legal clinics by inserting their activity into its legal service

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act (Rechtsdienstleistungsgesetz) in 2008, the UK law clinics appear to be in what Thomas\textsuperscript{31} describes as “a regulatory black hole.” There is consensus in the UK that the Practice Framework Rules of the Solicitors’ Regulation Authority (SRA) apply, but there remain questions about which of its provisions apply to CLE.

2.1. UK

The legal framework for the UK consists of the SRA Practice Framework Rules and the Legal Service Act 2007, which allows non-lawyers to provide legal advice under certain circumstances. The supervising solicitors are classed as “in-house” solicitors within the university’s structure. They must have professional indemnity insurance as laid out in the SRA Practice Framework Rules and provide advice free of charge.

a) The legal base for law clinics

In the UK, unlike in Germany, the legal form for law clinics is unspecified. Some law clinics are an integral part of the law school in which they are located, while some are seen as a student society. A less popular option is the Alternative Business Structure (ABS),\textsuperscript{32} which was introduced via the Legal Service Act 2007. The practitioners who are involved in CLE are regulated by the SRA, which regulates all solicitors and law firms in England and Wales. The SRA was established by the Legal Service Act 2007 with the aim of separating the independent regulation of solicitors from their professional representation. The representation remains with the Law Society.

b) The LASPO effects

Legal aid in England and Wales is a publicly funded mechanism for meeting the costs of legal advice, representation in a court or tribunal, and, to some extent, mediation.\textsuperscript{33} There are eligibility criteria, and those applying for legal aid must be unable to cover the cost themselves. Legal aid was established by the Legal Aid and Advice Act 1949. From its inception through to the mid-1980s, the legal aid system in England and Wales developed into one of the world’s most comprehensive schemes, as it covered advice and representation for most civil and criminal cases in all courts. In the 1990s, the legal aid system expanded and also included law centers, charitable organizations, and advice agencies.\textsuperscript{34} LASPO dramatically reduced the eligibility criteria. Legal aid is now only available in a limited number of civil law cases involving family law and child protection, in asylum and human trafficking cases, in discrimination cases, and where an individual has been arrested and charged by the police; it also covers criminal law cases, and cases which relate to an infringement of rights under the ECHR and rights granted by EU law.\textsuperscript{35}

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\textsuperscript{32} As of today, only Nottingham Law School has chosen the ABS model.

\textsuperscript{33} This applies predominantly to family cases.

\textsuperscript{34} Hazel Genn, \textit{Legal System and Method} 123 (University of London, 2016).

\textsuperscript{35} For an online eligibility check, the government has set up the page https://www.gov.uk/check-legal-aid
In 2013, when LASPO took effect, there was a 90% decline in the number of cases. Studies have revealed that approximately 600,000 people a year are no longer able to access legal advice and/or representation as a result of LASPO. Some studies suggest that the numbers are even higher. The Law Centre Network reports that in 2015/2016—according to the Ministry of Justice’s own figures—over 846,000 people who would have been eligible before LASPO entered into force have been denied legal aid.36 The cuts also affect charitable organizations and third-sector groups that provide legal advice, to an extent that threatens their very existence.37 a situation that prompted Flynn and Hodgson38 to talk of “legal advice deserts” in some parts of England and Wales. In addition to LASPO, the Brexit referendum result has exposed the entire third sector to a number of risks. As a result of a weak and/or fluctuating pound, general uncertainty, and economic volatility, there is a threat to the voluntary sector both on the fundraising side and on the spending side. The sustainability of legal clinics, charities, and law centers is dependent on both public and private funding and has been made more precarious by the Brexit referendum result. Charities alone will lose out on an estimated €250 million.39 There are three further alarming effects of LASPO. First, there has been a significant rise in litigants in person (LiPs), who are unrepresented individuals in court proceedings. Second, there is an increased use of alternative dispute resolution (ADR), which relates to out-of-court settlement of a dispute. While ADR has benefits in some areas of law, it is not suitable for all cases, as it does not create a binding precedence. In the long run, the rise of LiPs and ADR will lead to a lack of clarity in the law and endanger the development of the common law. Lastly, LASPO has led to a directing of resources away from preventative services; this is short-sighted, as it will lead to the marginalization, disadvantaging, and exclusion of vulnerable groups, and to injustice and unfairness. An increasingly rudimentary access to justice has huge repercussions on the rule of law and societal peace. As Genn40 has asserted: “Substantive legal rights are of little value to citizens if they do not know their rights and feel unable to use the justice system.” In this situation, students, academics, and solicitors offering legal advice via clinics play a pivotal role for clients and for access to justice. It goes without saying that the cuts that have led to a rise in the number of LiPs are undesirable and negative for the justice system. CLE is not a substitute for a properly functioning and publicly funded legal aid system. As much as the third sector rightly denies its complementary function to stand in for a disappearing welfare state, law clinics are not a replacement for tasks that remain a public duty. Given the current situation and the adverse effects of LASPO, they are nevertheless a sheet anchor for those who desperately need advice and assistance.

2.2. Germany

The legal base for German law clinics is the Rechtsdienstleistungsgesetz 2008 (Legal Service Act 2008) and the two acts on legal aid both prior to legal proceedings and in court, Prozesskostenhilfegesetz and

40 Hazel Genn, Legal System and Method 123 (University of London, 2016).
Beratungshilfegesetz. CLE in Germany takes one of two forms. Some is organized by law schools, as part of the curriculum and credit-bearing for a non-core law subject. Alternatively, it is organized by students themselves through a registered club according to §21 Bürgerliches Gesetzbuch (BGB) (German civil code), which can be granted charitable status as laid out in §51 Abgabenordnung (German fiscal code). Even when CLE is organized by students or when it stems from a student initiative, legal advice given to clients is always supervised by a fully qualified lawyer, and students are not allowed to represent clients in court. Typical tasks for students in CLE comprise collecting information and sorting out documents, communicating with administrative authorities, and, most importantly, analyzing the facts presented by the client and turning these facts into the legal context. Finally, and after discussion with the academic and/or practicing supervisor, students advise the client on the law.

a) The Rechtsdienstleistungsgesetz

The Rechtsdienstleistungsgesetz (RDG) (Legal Service Act) from 2008 replaced the Rechtsberatungsgesetz from 1935, which contained a clear ban on legal advice by non-lawyers. The new provision is §6 II RDG, which stipulates that free legal advice that does not occur within family bonds or neighborly or other personal contacts must be supervised by a fully trained and qualified lawyer.\(^41\) The legislature’s motivation for drafting §6 II RDG was undoubtedly to strengthen civil society’s involvement in legal advice.\(^42\) It is important to stress that this provision does not relate to representation in court. The advice must be free, and only material expenses such as postal charges and printing costs can be charged to the client. The hours of work carried out by students cannot be reimbursed. The supervision by a practitioner can be done in several ways, for example within the law schools’ module structure (lectures, tutorials) or through case-by-case supervision.\(^43\)

b) Prozesskostenhilfe and Beratungshilfe

Prozesskostenhilfe and Beratungshilfe cover public legal aid for both court proceedings and advice prior to court proceedings. The preconditions for legal aid in court proceedings are laid out in §§114–127a of the civil procedure act (Zivilprozessordnung, ZPO). Both claimant and respondent who are in need of financial support for court proceedings can apply for such support in a written application to the court’s registrar. There are forms that can be downloaded online on which applicants must declare their financial situation, with evidence such as pay slips, tax declaration, or evidence of social benefits instead of income. If the applicant’s indigence is sufficiently demonstrated, the court must further assume that court proceedings may result in a judgment in favor of the applicant. The court checks this in a summary test without going into a detailed analysis. It thereby tries to exclude arbitrary cases. This summary test has led to much criticism. Recent reforms of the legal aid schemes have also changed the threshold for eligibility, while at the same time German austerity programs

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\(^{41}\) § 1 Deutsches Richtergesetz (DRiG) defines what a fully qualified lawyer is: Someone who is qualified to serve as a judge, which means having passed the first and second state law exams.

\(^{42}\) BT-Drs. 16/3655, 1.

\(^{43}\) Jakob Horn, Studentische Rechtsberatung in Deutschland, Juristische Ausbildung 644-650, 647 (2013).
since 2003 have led to an increased number of litigants in social welfare benefit cases. As a consequence, the
German legal aid regime has led to an increased number of LiPs and to people not going to court at all.

The provisions of §§144–127a ZPO apply to all civil law proceedings, administrative cases, employment
disputes, tax and social welfare cases, patent cases, and constitutional proceedings. In criminal proceedings, the
defendant has—in some cases—the right to a duty solicitor. Victims of criminal offenses can apply for legal aid.
Until 2019, Germany will have to comply with EU Directive 2016/1919 on legal aid for defendants in criminal
proceedings and also provide legal aid in those cases.

If an application is successful, the costs of the court proceedings and legal representation costs are covered. 
Beratungshilfe, which covers all legal advice and representation other than within court proceedings, is granted
according to Beratungshilfegesetz. The preconditions for being granted legal aid are laid out in §1 I no.1
Beratungshilfegesetz and mirror those in legal aid for court proceedings. §1 I no. 2 states explicitly that when
the preconditions for legal aid for court proceedings are met, legal aid for advice prior and after court
proceedings shall also be granted. This rule applies unless the applicants can obtain legal advice through legal
protection insurance, consumer advice centers, debt counseling groups, charities, or pro bono lawyer schemes.

As the legal advice given by students within CLE is restricted and can under no circumstances cover
representation in court, many law clinics in Germany have established a mechanism by which clients can
instruct a lawyer who works in cooperation with the clinic as a supervisor to take their cases to court
eventually. CLE students are allowed to, and frequently do, prepare the written submissions for court, both
complaints and answers to complaints. The supervising solicitor gives feedback and goes through the briefings
with students. In Cologne University’s Refugee Law Clinic, for instance, these meetings between students and
supervising solicitors happen regularly and form an integral part of the CLE. The Refugee Law Clinic Cologne
serves as one of the German case studies as it provides an illustration of CLE being flexible and adjustable.

IV. How law clinics operate

In order to illustrate how CLE operates, four case studies are undertaken with law schools where the author
works, or has worked and/or studied. The analysis and description of CLE at the University of Sheffield,
University College London, Cologne University and Humboldt University derive from the author’s own
observations and experience, and from interviews both with present students enrolled in CLE and with
supervising solicitors and academics.

1. UK case studies: University College London and Sheffield University

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persons in criminal proceedings and for requested persons in European arrest warrant proceedings.
For the UK case studies, CLE at a London university and at a university in the north of England, Sheffield, have been chosen to illustrate the functioning and operation of CLE. Law clinics at universities follow largely the same pattern and there are only differences in nuance.

1.1. Centre for Access to Justice at University College London

The Centre for Access to Justice (CAJ)\(^\text{45}\) is part of the law faculty (and consequently, the university, which has charitable status) and combines problem-based and research-based learning with the provision of pro bono legal advice to local communities. It runs an integrated legal advice clinic (UCL iLAC) based in Stratford, initiates and monitors several pro bono initiatives, offers the Access to Justice Summer School and delivers the one-year undergraduate Access to Justice and Community Engagement module. The module is open to final-year LLB students and attracts far more applications than the approximately 25 spaces that can be provided. Alongside this module, students are placed in the clinic from November until March. Voluntary work in the clinic without enrolling into the credit-bearing module is open to all undergraduate and postgraduate law students who wish to participate. The areas in which the clinic advises clients cover welfare benefits (employment and support allowance, personal independence allowance, and disability allowance for children), housing and homelessness, community care law,\(^\text{46}\) education law,\(^\text{47}\) and, to a lesser extent, family and employment advice. Some of the law areas, such as welfare, are seen as providing a particularly qualitative educational benefit as they are highly evidence based and students can work with the clients and their documents in a very focused way. The supervisors, who are staff of the CAJ, remain in charge of the cases; students assist and support for five months during the academic year. There is a gradual increase in the responsibility given to students, according to CAJ staff. Students might start by attending a meeting with a client to take notes. They might then be in charge of phoning a client to ask for additional information or documents and, finally, they might draft an advice letter or even lead an appointment with a client. The clinic staff are in-house solicitors who are, individually, regulated by the SRA; the clinic itself is not regulated by the SRA, as the advice given relates to unregulated activity. In order to allow students to engage in the entire process and also attend court proceedings for “their” cases, the clinic applies for legal aid contracts with the Legal Aid Agency, which will expand the clinic’s activity to court. CAJ staff emphasize that apart from the benefits for clients, who would otherwise be left without advice, the students benefit by realizing their potential as future lawyers. While some develop their professional skills considerably and recognize that this profession is the right one for them, others decide that they wish to take up a different legal profession or get to know the practical insights of legal areas that are not represented within the clinic. The transformative effect that CLE has on students is thereby flanked by a strong orientation element.

1.2. The law school at the University of Sheffield

\(^{45}\)https://www.ucl.ac.uk/access-to-justice/ (last accessed 19.10.2018).

\(^{46}\)Within UCL iLAC, this can relate to adaption of homes for families with sick children, and care for elderly people.

\(^{47}\)Education law cases at UCL iLAC range from special support for children in school to challenging school exclusions.
Moving up from the south to the north of England, the city of Sheffield in Yorkshire has more than 500,000 residents and has successfully transformed from a steel and coal area into a city of arts, tourism, and education. It has two universities, the University of Sheffield, founded in 1905, and Sheffield Hallam University, founded in 1922, and numerous arts and music colleges. While Sheffield Hallam has a strong focus on third-sector research, with an inter-faculty Centre for Voluntary Sector Research, the University of Sheffield is well known across the UK for its outstanding law clinic, located at the law school. CLE at the University of Sheffield has recently celebrated its 10th anniversary. Set up in 2008, it has advised hundreds of clients on different areas and aspects of law. At Sheffield, CLE is offered both as an extra-curricular activity and as a final-year credit-bearing module to undergraduate, GDL (Graduate Diploma in Law), and LPC (Legal Practice Course) students. There has been a steady rise in demand since 2013, and supervising academics and solicitors report that an estimated 70% of students who are eligible to get involved in CLE choose to do so. Some 200 final-year undergraduate LLB students take a pro bono law module. Students’ desire to choose CLE at Sheffield law school has risen in particular since the Brexit referendum result and since the refugee crisis. The CLE subjects are not strictly related to those occurrences. There is no clinic on asylum or citizenship at Sheffield. CLE comprises three strands. FreeLaw with about 80 students is the general pro bono clinic that advises clients mainly on housing, such as neighbor and tenancy disputes. The next biggest category is consumer cases that involve, for instance, booking holidays and purchasing. The third area in which people seek advice through FreeLaw is family cases, including advice about child contact or information about divorce grounds. According to both students and staff, family law enquiries have risen dramatically since the introduction of LASPO 2012. Employment is also an area in which FreeLaw offers advice. The other two strands of CLE at Sheffield are a commercial law clinic and the award-winning Miscarriages of Justice Review Centre (MJRC), which investigates cases of people convicted of serious crimes who claim they are innocent but who have exhausted the initial appeals process. The commercial law clinic is relatively new and demonstrates a novel understanding of social justice in a clinical context.

The clinics at Sheffield are run by two student managers and colleagues who practice. The clinical volunteers do not represent clients in court, but see their first and foremost task as giving advice, providing the right information, and signposting—to legal aid in cases where clients are eligible or to charities and non-profit organizations that might provide legal assistance. The clinics also signpost and cooperate closely with local law firms that run pro bono schemes. From autumn 2017 to March 2018, the clinics at Sheffield had to turn down approximately 45 cases, either because they concerned subjects that the clinics do not deal with, such as immigration and citizenship, or because of time constraints when clients were facing immediate hearings at court; cases were also turned down because they involved high-risk financial issues and liability. In cases that are accepted, students advise clients on the legal principles, on time limits, and on cost issues, but they give no merits advice. They would, for instance, in an employment law dispute after dismissal, explain what constitutes

unfair dismissal and advise on the short time limit of six months to argue that unfair dismissal has occurred. As in Cologne, there is a case management system that should be operated by students themselves. In practice, the supervising academics and solicitors do about half of the documentation on the client system to ensure consistency and completeness.

Reflecting the theoretical educational reasons for offering CLE, both students and supervisors report the increasing significance of CLE in graduates’ job interviews. The vast majority of graduates with CLE in their CV or references are asked about it in job interviews, and CLE therefore plays a huge role in employability. Setting aside the marketization and consumerization of higher education in general, it is demonstrated by Grimes, Klaff, and Smith52 and Hall and Kerrigan53 that what are often referred to as “soft” skills (teamwork, responsibility, ability to engage with people, time management, organizational skills) do enhance the job chances of graduates upon leaving university. Most of all, the ability to turn a set of random facts into a legal setting is a skill which all lawyers need. This shows that CLE provides is an ideal combination of problem-based learning and research-led teaching.

2. German case studies: Cologne University and Humboldt University Berlin

Case studies in Germany are provided by Refugee Law Clinic Cologne at Cologne University, established in 2013, and Humboldt Law Clinic Grund- und Menschenrechte (fundamental rights and human rights) at Humboldt University Berlin, established in 2010. Both clinics were established upon student initiative and both deal with asylum, immigration, human rights, and anti-discrimination. These clinics illustrate that the alleged generation differentiation between established civil society and ad hoc civil society is not at all proven. Students commit for at least one academic year. Both clinics integrate their training into the ordinary law curriculum and offer modules that are credit-bearing. Students could obtain these credits in a much less time-consuming way by choosing a module that is taught in a very traditional way, e.g. lectures, associated tutorials, followed by an end-of-term exam.

2.1. Refugee Law Clinic Cologne

At Refugee Law Clinic Cologne, student demand has been greater than the clinic could sensibly respond to given its resources, in particular following summer 2015, when thousands of refugees came to Germany. The clinic now operates as a charitable organization and has limited the number of new student starters to 30 per year. They are trained for a year alongside their law studies and attend both weekly lectures in immigration and asylum law and practical training for one academic year. At the end of each term, students have to sit an exam. When students pass, they are fully qualified members of the Refugee Law Clinic Cologne and are allowed to work on cases, under the supervision of a qualified lawyer. In principle, students always work in pairs on one

case. One student must have completed the one-year cycle and the second one must have started it. Case allocation operates through the clinic’s online platform, which presents cases in an anonymized way. Students who have completed the one-year training can apply to be in charge of a particular case. Once they have been allocated a case, they meet regularly with their co-student and the client(s). The first meetings are set up to collect facts, sort out documents, and determine the legal problem behind the set of facts the client has presented. Students meet once a week with their supervising solicitor. They often prepare letters or enquiries to agencies, and communicate with clients’ family members in other countries. If the case reaches the stage where legally significant applications are made, the solicitors take over. If, for instance, an asylum application is made, this is done through a fully qualified solicitor. Students have, however, often built up a good working relationship with the client and are free to join court proceedings if a negative answer is given to an asylum application or to engage in further communication with the client, such as advising on life in Germany as a recognized asylum seeker.

2.2. Humboldt Law Clinic Grund- und Menschenrechte

Humboldt Law Clinic works in a comparable way to Refugee Law Clinic Cologne, but is open to more students and provides 60 places. Students work in 12 teams, three of which are in charge of open office hours for clients and nine of which work directly in emergency accommodation for refugees. Once a month, students have legal and psychological supervisory sessions. Within the one-year program, there is a foundational course for one term that equips students with the relevant knowledge in a problem-based learning setting. Cases that students work on throughout the year are used to train them in client interaction, liaising with advice centers and authorities, strategic litigation, and writing briefs. A four-week internship with a non-governmental organization (NGO), a human rights/anti-discrimination lawyer, or a public authority completes the first term. In the second term, students work on their cases and are supervised in a colloquium. They write reports or briefs that are used in court proceedings or prior to trial. After completing the one-year program, students remain involved in their cases and in the clinic, for instance as part of a study group. Among the partners of Humboldt Law Clinic are the Federal Anti-Discrimination Office, the German Institute for Human Rights, the European Centre for Constitutional and Human Rights, the Open Society Justice Initiative, the Lesbian and Gay Federation in Germany, and many more institutions and associations that deal with human rights and discrimination on a daily basis. While the teams that work in emergency accommodation often advise on the German asylum procedures and asylum applications, the open office hours deal predominantly with questions from clients who have been recognized as refugees and who need advice on welfare issues such as housing, eligibility to work, and benefits. In 2017, Humboldt Law Clinic was awarded the first prize (endowed with €10,000) by the Ministry of Education and Research and the German Academic Exchange Service (DAAD) for its outstanding contribution to Germany’s Welcome Culture toward refugees.54 During the award ceremony, the jury emphasized the impact the clinic had on peoples’ lives and wellbeing. It stressed the significance of the clinic in educating law graduates who act responsibly and in an ethical way.

V. Student participation amidst Brexit and right-wing populism

The clinics in all four case studies regularly have many more applicants than they can take. Students’ demand to enroll in CLE modules and their wish to work on cases cannot simply be explained by their desire to enhance their employability. As previously illustrated, the overwhelming majority of all clinics in the UK and Germany derive from a social justice mission and to a large extent deal with the unmet legal needs of underprivileged groups. CLE is, however, time-consuming for the students. Even if CLE is flanked by a credit-bearing module, the case work is an additional time factor in students’ packed curricula. The unmet demand reinforces the claim that at least some CLE elements should be an integral part of future law curricula. Students’ involvement in CLE is also evidence of the engagement of Generation Y in civil society. In fact, CLE is one way of not only preparing professionally ethical lawyers but also binding representatives of Generation Y to civil society’s themes of participation, agency, and solidarity. Moreover, CLE can have a multiplier effect, both in university education and beyond. The Brexit referendum and the hate crimes it has fueled and the rise of a right-wing populist party in Germany are in sharp contrast to many young peoples’ conception of a fair future society. UK universities are believed to be, in general, pro-EU, for a number of reasons (percentage of staff with an EU background, funding and collaboration possibilities), and many of them have offered citizenship clinics on a university-wide scale where they update their staff and students on the latest developments, such as the newly introduced “settled status” and, prior to its announcement, on advice about the application for British citizenship. In the wake of the Brexit referendum, law clinics were swamped with citizenship and immigration enquiries, which they often had to redirect, refer, and signpost. Some clinics at law schools, however, run immigration clinics or have introduced them after the Brexit referendum; an example is Sussex Law School.

Alongside students’ involvement in CLE, an increasing number of students are engaging in pro bono initiatives and are mobilizing their peers to join them. One example is the “Our Future Our Choice” (OFOC) campaign, which was launched by both Remainers and Leavers and is run by Generation Y representatives. OFOC’s membership and support has grown considerably over recent months as it has emerged how unprepared the British government is and how much it is sticking to Brexit as a matter of principle, despite the fact that it has become crystal clear that Brexit is damaging the UK in every respect: Public health, financial services, security and the fight against terrorism, consumer protection, human rights, higher education, and the British science landscape. Nobel laureate economist Paul Krugman has iterated that there is “zero chance” that leaving the

57 The latest offer of “settled status” for EU citizens who have been in the UK for five continuous years in December 2020 is far from being a clear provision. Moreover, the Brexit negotiation team from the EU side has already rejected UK plans to develop two classes of rights for EU citizens within the UK. Further details from the UK side: https://www.gov.uk/guidance/status-of-eu-nationals-in-the-uk-what-you-need-to-know (last accessed 19.10.2018).
58 Twitter: @OFOCBrexit; webpage: https://www.ofoc.co.uk/about-us/ (last accessed 19.10.2018).
European Union will make Britons better off.\textsuperscript{59} The OFOC campaigners, who include more than 100 leaders at universities throughout the UK, strongly advocate another peoples’ vote on Brexit. A very narrow majority of 52% to 48% decided in favor of leaving the EU. In the age group 18–34 years, 71% voted to remain and only 29% to leave. The asserted claim that only 36% of voters in the age group 18–24 voted in the referendum at all was proved wrong in more reliable polls in the wake of the referendum, and was corrected to the figure of 64%.\textsuperscript{60}

In Germany, where the last general election saw a right-wing populist party, Alternative für Deutschland (AfD), enter the Bundestag for the first time with a 12.6%\textsuperscript{61} share of the vote, 8% of Generation Y voters voted for the AfD, while the party attracted 12.8% and 15.5% of votes by middle-aged and older voters, respectively. There is also a clear male dominance with AfD voters, as the representative statistics on voters at the 2017 general election illustrates.\textsuperscript{62} Thus, while the tendency to follow, to support, or to vote for a right-wing populist party is not as common among Generation Y as it is among middle-aged or older voters, there is, at the same time, no tendency to be passive or indifferent.\textsuperscript{63} Throughout Germany, almost 50% of Generation Y spends a considerable amount of time on pro bono work and in charitable organizations or initiatives.\textsuperscript{64} CLE students are therefore in good company.

C. Conclusions

1. Law clinics in the UK and Germany are either specialist clinics, such as refugee law clinics, or general law clinics that deal with a range of issues ranging from welfare, housing, community care, education, and family law to cyber and commercial law. Free legal advice through legal clinics has both an important socio-political and a significant educational function. As the number of applicants for CLE regularly exceeds the number of places, it is time to integrate CLE elements into all curricula.

2. Law clinics at universities in both the UK and Germany make a small but very significant contribution to unmet legal needs. They very often serve as a first port of call, not only advising clients on the law but also supporting and encouraging them. They point out ways to get funding for legal representation via charities or public means and they signpost and hence contribute in an invaluable way to preserving access to justice for underprivileged groups. CLE is, however, not a replacement for publicly funded legal aid. It is an adjunct with

\textsuperscript{59} Accessible from The Independent online: http://www.independent.co.uk/news/business/brexit‐paul‐krugman‐zero‐chance‐britain‐better‐off‐eu‐leave‐single‐market‐custom‐union‐exports‐trade‐a7965871.html (last accessed 19.10.2018).
\textsuperscript{60} Toby Helm: EU referendum: youth turnout almost twice as high as first thought, The Guardian online: https://www.theguardian.com/politics/2016/jul/09/young‐people‐referendum‐turnout‐brexit‐twice‐as‐high (last accessed 19.10.2018).
\textsuperscript{61} 12.6% amounts to 94 out of the 709 seats. After a coalition between Conservatives and Social Democrats was formed in spring 2018, this leaves the AfD as the largest opposition in the German parliament, the Bundestag.
\textsuperscript{64} http://www.change-magazin.de/de/engagement-deutschland-statistik/ (last accessed 19.10.2018).
both an educational and an inclusivity purpose. It teaches students law in practice, but also professional ethical standards, and it serves to protect vulnerable and excluded groups.

3. The right to access to court remains a fundamental human right in common law.65 The effects of LASPO mean that going to court is, and will increasingly become, a matter for the wealthy. In the medium term, the increased use of ADR will have repercussions on access to justice and the rule of law (index). In the long run, this will result in a hindrance to the development of common law and in decreased societal peace. In Germany, bureaucracy, costs, and language often hinder vulnerable groups defending their rights. CLE works as a connector between the legal system and vulnerable groups and thereby contributes to access to justice.

4. While in Germany, CLE is in its infancy and only became possible in 2008 with the enactment of Rechtsdienstleistungsgesetz, replacing Rechtsberatungsgesetz, the UK established its first clinic in the 1990s. The number of clinics gradually increased and saw a peak in the 1990s and another climax post-LASPO in 2013 until today. When German students started to initiate clinics, they looked at both their US and UK counterparts. As of 2018, CLE in Germany is strongly regulated by clear provisions in the Rechtsdienstleistungsgesetz, while in the UK, there is ongoing debate about the foundations of CLE in relation to the SRA Practice Framework Rule and the Legal Service Act 2007. The fear in both countries that CLE is taking away work from the legal profession is unfounded. CLE is an adjunct to legal aid and not a replacement. Neither in the UK nor in Germany are students allowed to work in the regulated area of a practicing solicitor.

5. The critique of CLE that states it is part of the neo-liberal consumerization and marketization of legal education misses the point about the value that CLE has for all of us as individuals, clients, and litigants. It would be wrong to assume that all pro bono student work relates to neo-liberal “brushing up one’s CV”: Students are generally involved in community work, and for a large percentage of these students, the motivation to study law is that they want to help others to realize their rights. Of course, law students are, in general, privileged. The fact that they also want a return on their investment after graduation is understandable, especially in the UK, where the cost for an ordinary bachelor’s degree has become exorbitant. But the very fact that students wish to enhance their employability by participating in CLE or other pro bono projects does not exclude a commitment to social justice. Students seem to act both out of an intrinsic motivation and out of calculation that the skills acquired through work in a law clinic will be beneficial for the rest of their professional life.

6. As the German Constitutional Court rightly emphasized in its 2008 decisions, there is an imperative for Rechtsschutzgleichheit and Rechtswahrnehmungsgleichheit in democratic and liberal societies. It would be cynical to deny those who cannot afford legal advice or legal representation the free option by reference to the complementary function that the third sector understandably rejects. This argument is comparable to those arguing that food banks should be forbidden, as wealthy countries such as the UK and Germany should be able
to meet the basic needs of the people who are in their territories. This is a valid point. In practice, however, despite the wealth in both countries, children go to school without breakfast in the morning or without having had a proper dinner the night before, and homeless people search in waste bins for food. In the same way that it is cynical to say that food banks should be abolished in order to remind the welfare state of its task, it is wrong to apply this type of argument to legal aid. For a person who is hungry and a person who desperately needs advice in a crisis situation, a theoretical welfare state discussion does not help. What helps is what is available here and now.

7. Normatively, CLE has foundations in the domestic legal regime and is backed up by both the ECHR and the Charter of Fundamental Rights of the European Union. Even when the UK leaves the EU, it will be bound by the Strasbourg regime. The right to access to justice is a fundamental human right in common law. It requires the awareness of these substantive rights and the awareness of procedures and steps necessary to access redress systems and participate in a process. CLE will continue to serve citizen and vulnerable groups, in particular in what is a justice crisis. The next civil society generation is prepared for it, as clinical students and pro bono lawyers.

8. The four case studies have shown the strengths of CLE: Adaptability and flexibility, responsibility, and the multiplier effect. CLE contributes to the development of law graduates who learn professional ethics and who acquire a skillset that traditional lectures and tutorials cannot provide. Consequently, the future of CLE in both the UK and Germany should see CLE elements being incorporated into all law curricula and even moving beyond law schools. As Singh and Webber have assessed: “The best protection against injustice is good legal advice and, for those who cannot pay, that means good legal advice funded by legal aid. Exclusion from legal aid is exclusion from justice.”66 Thankfully, so many students, their teachers, and their supervisors are stepping in to fill the gap.

66 Anne Singh & Frances Webber, Excluding Migrants from Justice: The legal aid cuts, IRR Briefing paper No. 7 (Institute of Race Relations, 2011).
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