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# Unpacking Clinical Scholarship: Why Clinics Start and How They Last

Tribe Mkwебу<sup>1</sup>

## Abstract

This paper provides a critique of a batch of 91 published clinical legal education journal articles systematically selected and analysed. The review was undertaken to identify factors that have been influential in the establishment and sustainability of clinical programmes in different jurisdictions. The review indicated that there were various positive and negative factors influencing the creation and sustainability of clinical programmes. Enabling factors were most frequently related to intervening conditions such as the availability of a healthy financial base upon which a clinical programme was built. Impeding factors were most frequently associated with intervening conditions such as resistance to clinical pedagogy. The systematic review of literature revealed a wealth of knowledge on key aspects to consider while founding a clinical programme. However, there are still critical knowledge gaps requiring our attention. To fill in the knowledge gaps identified through the review, this paper proposes that we consider undertaking empirical research on clinical legal education on a wider scale rather than just limiting our writing on personal experiences. Such an approach would result in writers adopting a more objective stance in narrating the benefits of clinical legal education and in the process help foster more and effective strategies on the creation and sustainability of clinical programmes.

**Keywords** – clinical legal education, the global clinical movement, empirical research

## Introduction

A book, *The Global Clinical Movement: Educating Lawyers for Social Justice*, Oxford University Press (2011) describes a global clinical movement in motion; sweeping across five continents and elucidating the increasingly important role clinical legal education plays in the education of future lawyers. The book's editor, Frank S. Bloch, in providing the reader with relevant information on the development of the movement, states the following:

*...a momentum has begun to develop that has helped sustain existing clinical programs and ease the path toward institutionalizing clinical education. In other words, the global reach of clinical legal education has aided and facilitated its growth and acceptance.<sup>2</sup>*

There is no doubt that many, including myself, firmly believe that the benefits of clinical legal education transcend borders. Clinicians all over the world try to make legal academies and the legal profession more permeable to the advancement of social justice and the preparation of students for law practice. A great deal of clinical scholarship has focused on the importance of

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<sup>2</sup> FRANK S. BLOCH (ed.), THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE, Oxford University Press, xxiii (2011).

clinical legal education in educating future lawyers worldwide. Indeed all authors whose journal articles I reviewed do acknowledge the necessity for the integration of a clinical component within the mainstream legal education curriculum. In addition, the literature has revealed a plethora of certain factors that have been influential in the establishment and sustainability of clinical programmes around the globe. While it *may* true that one needs common sense and familiarity with debates on clinical pedagogies to understand the obstacles in the creation and sustainability of clinics, the explosion in clinical scholarship makes this exercise a futile attempt. I appreciate that there are plenty of books and journal articles out there that address the creation and sustainability of clinics. For a reader and/or researcher interested in clinical legal education going through tens of thousands of journal articles and books is near impossible. Given the pivotal role that research plays in the development of any area of study, trying to unsystematically go through each of the journal articles searching for information that addresses the formation and sustainability of clinical programmes would certainly entail a lifetime of catch up with the ever expanding clinical scholarship. To address this, clinicians and academics must establish ways of evidencing the clinic and the role it plays in society in an objective way. The ever expanding literature on clinical legal education calls for a systematic approach to literature review that goes beyond everyday common sense in understanding the field.

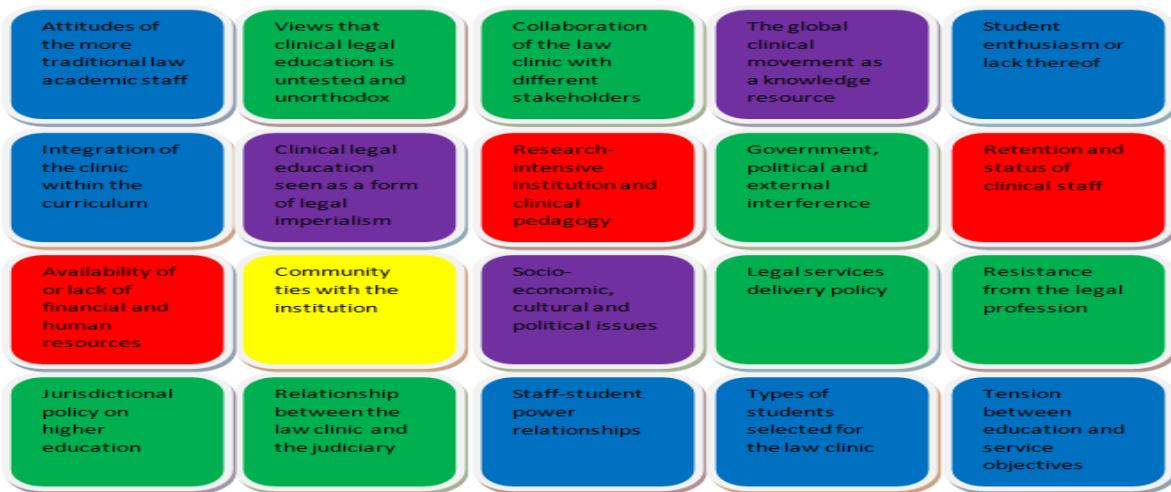
### **Reviewed clinical scholarship: A critique**

Sometimes, it is easy to believe that we understand why clinics are formed and how they last often justifying our understandings by calling it common sense. Consequently, we end up not actually engaging in a systematic way to understand our field and hence the lack of objectivity in the reviewed literature regarding the benefits of clinical legal education. Reviewing clinical scholarship is useful for obtaining a better understanding of why law clinics are created and how they last. Faced with an enormous amount of clinical scholarship and in an effort to locate specific and relevant articles that identify factors that are influential in either promoting or impeding the establishment and sustainability of law clinics, I systematically searched for journal articles by using a strategy that located, appraised and synthesized the best available evidence relating to the research question.<sup>3</sup> In the process 20 themes were identified from literature as follows:

*Figure 1: Themes generated from the reviewed clinical scholarship*

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<sup>3</sup> ANGELA BOLAND, M. GEMMA CHERRY & RUMONA DICKSON, DOING A SYTEMATIC REVIEW: A STUDENT'S GUIDE, London: SAGE Publications, 3 (2014).



For want of space it must here suffice simply to offer a critical discussion of literature based on three main thematic issues, i.e. *relational*, *resource* and *contextual*.

### 1. Relational factors: partnerships and stakeholders

A review of the available literature provided a wealth of examples of authors advocating clinical legal education as an essential tool in educating future lawyers. It has been noted that amongst other factors, judiciary concerns about the quality of advocacy in the courts has been one of the influential factors in marshalling resources towards a clinical pedagogy in the United States.<sup>4</sup> This suggests that sometimes judiciary activism and the inclination towards higher standards of client representation and advocacy at courts can be a causal condition that stimulates debates around the creation of clinical programmes. However, Martinez noted that the legal profession's resistance to clinical legal education in Taiwan was borne out of the profession's view that law clinics poach clients from local practices and also because of the entrenched belief that students offer substandard legal advice and representation.<sup>5</sup> The older the university is and the length of time one has taught at an institution, the bigger the chance of having a faculty that view clinical legal education as untested and unorthodox.<sup>6</sup> The view that clinical programmes are new, untested, expensive<sup>7</sup> and merely money generating projects will undoubtedly impede efforts to create and sustain clinical programmes. Universities will hardly be supportive of such innovative programmes, particularly where traditional academic colleagues perceive the clinical pedagogy as an appendage to the institutional budgets, lacking intellectual rigour, "smacking of the notion of a trade school, and serving as a refugee for the less academically capable who took the clinic in an effort to avoid the difficult courses" within the law school.<sup>8</sup> Clinic creation and sustainability depends on effective integration of the clinical component within the mainstream curriculum. However, where the rationale and the philosophical basis of clinical programmes has little in

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<sup>4</sup> Roy T. Stuckey, *Education for the Practice of Law: The Times They Are-A-Changin*, 75 NEBRASKA LAW REVIEW, 648-683 (1996).

<sup>5</sup> Serge A. Martinez, *Law Clinics in Taiwan: Can Clinical Legal Education Succeed In This Civil Law Jurisdiction With An Undergraduate Legal System*, 7 NATIONAL TAIWAN UNIVERSITY LAW REVIEW, 343-384 (2012).

<sup>6</sup> Haider Ala Hamoudi, *Toward a Rule of Law Society in Iraq: Introducing Clinical Legal Education into Iraq Law Schools*, 23 BERKELY JOURNAL OF INTERNATIONAL LAW, 112-136 (2005).

<sup>7</sup> Mutaz M. Qafisheh, *The Role of Legal Clinics in Leading Legal Education: A Model from the Middle East*, 22 LEGAL EDUCATION REVIEW, 177-198 (2012).

<sup>8</sup> *Id.* at 5.

common with that of the more traditionalist Socratic curriculum<sup>9</sup> efforts in integration will undoubtedly be presented with significant difficulties. For example, the entrenched bureaucratic traditional method of instruction within a legal academy in Nigeria<sup>10</sup> has been viewed as a limitation in the scope and expansion of clinical legal education in that jurisdiction.

Others argue that for as long as we continue to have a clinical faculty that is without the opportunity for a tenure-track status<sup>11</sup> and still confined to the second-class pedestal of academic ranking within a law school, integration will be difficult to achieve. Furthermore, the tension between the more traditionalist law faculty, who see clinical legal education as nothing more than a social justice vehicle and the legal education reformists, who see clinic in its academic development,<sup>12</sup> remains unresolved to this day in some institutions. The view that clinical innovations are mere proxy for a money generating scheme<sup>13</sup> is a typical constraint. Where we have strong views against the clinic because it is viewed as a platform upon which law students are consumers of clinical legal education instead of being active participants in the clinic, our efforts in creating and sustaining clinical programmes will undoubtedly be inhibited. Promoting the integration of clinical insights across the broad sweep of law studies has the potential to enhance law teaching as well as promoting the sustainability of clinical programmes.<sup>14</sup> However, a preference by a law academy for a theoretical and doctrinal teaching rather than an experiential learning in a clinical pedagogy<sup>15</sup> can impede such endeavours. The integration of the university's law clinic with real clients in the education of law students "through the involvement of students in the provision of legal services to real clients remains the cornerstone of the La Trobe programmes" and such efforts at community engagement should be seen as crucial in the creation and sustainability of clinical programmes.<sup>16</sup> In exploring the viability of clinical education, Hall and Kerrigan<sup>17</sup> have noted that there is a general consensus amongst legal educators of the value of engaging law students in clinical programmes.

It appears problematic, therefore to identify exactly how collaboration between different stakeholders within and outside the university can be managed to become an integral part of developing clinical legal education where different stakeholders have different views about the clinic. There seem to be a lack of studies that critically evaluate the need for connection between the clinic and community in deciding cases for the clinic.<sup>18</sup> There still remains a question of

<sup>9</sup> Robert M. Hardaway, *Problems in Clinical Integration: A Case Study of the Integrated Clinical Program of the University of Denver College of Law*, 59 DENVER LAW JOURNAL, 459-484 (1982).

<sup>10</sup> Ada Okoye Ordor, *Constructing a Clinical Legal Education Approach for Large Multicultural Classes: Insights from the Nigerian Law Schools*, 11 INTERNATIONAL JOURNAL OF CLINICAL LEGAL EDUCATION, 65-78 (2007).

<sup>11</sup> Hardaway, *supra* note 9.

<sup>12</sup> Deborah Maranville, Mary Lynch, Susan L. Kay and Phyllis Goldfarb, *Revision Quest: A Law School Guide to Designing Experimental Courses involving Real Lawyering*, 56 NEW YORK LAW SCHOOL LAW REVIEW, 517-560 (2012).

<sup>13</sup> Marta, Skrodzka, Joy Chia and Eddie Bruce-Johns, *The Next Step Forward: The Development of Clinical Legal education in Poland Through a Clinical Pilot Program in Bialystok*, 2 COLUMBIA JOURNAL OF EAST EUROPEAN LAW, 56-93 (2008).

<sup>14</sup> Jeff Giddings, *Contemplating the Future of Clinical Legal Education*, 17 GRIFFITH LAW REVIEW, 1-26 (2008).

<sup>15</sup> Brian K. Landsberg, *Strategies to Increase the Availability of Skills Education in China*, 22 PACIFIC MCGEORGE GLOBAL BUSINESS AND DEVELOPMENT LAW JOURNAL, 41, 45-54 (2010).

<sup>16</sup> Judith Dickson, *25 Years of Clinical Legal Education at La Trobe University: Keeping the Community in Legal Education*, 29 ALTERNATIVE LAW JOURNAL, 41-45 (2004).

<sup>17</sup> Jonny Hall and Kevin Kerrigan, *Clinic and the Wider Law Curriculum*, 16 INTERNATIONAL JOURNAL OF CLINICAL LEGAL EDUCATION, 25-37 (2011).

<sup>18</sup> Sarah Paoletti, *Finding the Pearls When the World Is Your Oyster: Case and Project Selection in Clinic Design*, 1 DREXEL LAW REVIEW, 423-478 (2013).

whether or not a pro-active community involvement will contribute to the sustainability of clinical programmes or the fostering of new ones. It seems that the key requirement of community engagement for the selection of cases for the clinic is not as straightforward as we may have first envisioned. The available literature suggests that it is the mother institutions that first and foremost decide what cases to pick from the community. I suggest therefore that we need to go out into our communities; engage with service users and have more case studies with an appreciate enquiry in order to inform how a community participative approach would be relevant in making legal service delivery more responsive to local needs. Further research should provide a platform for an effective legal education of our students and a framework for successful community involvement. Future clinical programmes need clarity about the purpose and scope of community involvement in selecting cases for the clinic and hence we need papers that evidence such a selection from the perspective of the community in tandem with different stakeholders.

While the global clinical movement is a well established network of clinicians, what remains unresolved is the nature of a satisfactory theoretical explanation of student enthusiasm as a factor relevant in the establishment and sustainability of clinical programmes. Whilst the number of law clinics that have so far been created across jurisdictions; the number of clinicians so far appointed globally and the current explosion of clinical scholarship all reflect a great achievement of the global clinical movement, others have observed that in the last few years “students interest, funding and scholarly attention to the legal profession has faded” unabated.<sup>19</sup> They attribute this change to the mission and ideology of the law school clinical programmes remaining entrenched in the concept of social justice lawyering that is heavily dependent on rights-based strategies at the expense of the education objective. Placing more value on one and less over the other objective creates hurdles in developing stakeholder partnerships which I believe students should be a part of. Student enthusiasm for a clinical pedagogy must be viewed as a crucial factor in the creation and sustainability of clinical programmes. I believe that such enthusiasm can be captivated when we give our students an opportunity to question our teaching methodologies or inherently societal concepts such as, for example, the use of clinic as a vehicle for the advancement of access to social justice and then evidencing this in the papers we write. Otherwise, we end up having to deal with criticisms that the work we do in the clinic is just one part of a process whereby our students come to accept what we tell them.<sup>20</sup>

So much has been said and discussed regarding the benefits which come with a law degree curriculum that includes a clinical component. Yet, an important aspect to consider is the faculty’s ability to assess the commitment of students throughout the process of educating them as future lawyers. Socially active students were responsible for much of the development of clinical legal education<sup>21</sup> therefore proving that student enthusiasm is itself one of the relevant factors we ought to take into consideration in the creation of clinical programmes. However, even where students have been selected to go through a clinical programme as part of their learning, it is still important that they are motivated if the programme is to be sustained. A student who has the desire to get involved with free legal advice and representation in order to meet an unmet legal need is an ideal candidate for selection into clinical programme training.

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<sup>19</sup> Julie Macfarlane, *Bringing the Clinic into the 21<sup>st</sup> Century*, 27 WINDSOR YEARBOOK OF ACCESS TO JUSTICE, 37, 35-52 (2009).

<sup>20</sup> DUNCAN KENNEDY, *Legal Education as Training for Hierarchy*, in THE POLITICS OF LAW (David Kairys ed., Pantheon 1998).

<sup>21</sup> Shelley A. M. Gavigan, *Twenty-Five Years of Dynamic Tension: The Parkdale Community Legal Services Experience*, 35 OSGOODE HALL LAW JOURNAL, 443-474 (1997).

However, little input from students<sup>22</sup> is a tragedy every law school should avoid, particularly when their personal reaction towards clinical pedagogy has not been thoroughly considered throughout their experiential learning process. As clinicians we should not simply draw conclusions based on what we think is best for our students without considering and evidencing what the students themselves think about the clinic as an educational and service tool. Otherwise, we end up being accused of indoctrination. I suggest, therefore, that we start carrying out more case study research to examine student reflection on clinical pedagogies and where possible provide our students with an opportunity to have some say on the selection of cases for the clinic.

In Croatia, students working at Rijeka Law Clinic lacked enthusiasm for the live client work carried out at the clinic because the clinical component was never incorporated into the grading scheme.<sup>23</sup> The introduction of the Problem-Based Learning model into the 3<sup>rd</sup> year of the law degree at the University of Northumbria's School of Law increased law students' autonomy to study cases in their 4<sup>th</sup> year.<sup>24</sup> Empirical work carried out at the university through evaluation questionnaires completed by students showed positive responses to Problem-Based Learning. We therefore need to have more comparative studies of similar and different contexts. Reference to enthusiasm amongst the law student community, trying to meet an unmet legal need gives us hope that our students' reflections upon the meaningful lawyering skills may be transformative to their notions of social justice. However, we simply do not know yet whether or not this is possible because we do not have sufficient evidence to determine the frequency of such change presumably, as a result of lack of empirical research involving our students.<sup>25</sup> Without empirical research that directly uses students as research participants, many questions remain concerning how we measure student enthusiasm or indeed lack of it. Research on how to achieve an efficient evaluation process that involves the input of our students is yet to begin but Problem-Based Learning models have so far provided a useful road map for field-testing of an evaluation process that involves the opinions of our students.<sup>26</sup> Using case studies as a methodology for research, particularly in gauging reflection from our students has a high validity. However, few studies have used this methodology. Therefore, further investigation and evidence of student enthusiasm should be documented to aid a better understanding of what our law students see as beneficial in their experiential learning.

## 2. Resource factors: beyond establishment to sustainability and finances

Despite emphasis on the importance of maximising the benefits accrued through the use of a legal pedagogy that combine theory and practice in the education of students, little has been written on strategies to sustain already existing clinical legal education programmes.<sup>27</sup> It has been widely noted that one of the major challenges facing the establishment and sustainability of

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<sup>22</sup> Mark Lynn, *Student Law Office Conference: A Platform for Student Engagement with Clinical Legal Education*, 19 INTERNATIONAL JOURNAL OF CLINICAL LEGAL EDUCATION, 69-73 (2005).

<sup>23</sup> Steven Austermiller, *ABA/CEELI's Law Clinic Programs in Croatia*, 3 INTERNATIONAL JOURNAL OF CLINICAL LEGAL EDUCATION, 58-66 (2003).

<sup>24</sup> Cath Sylvester, Jonny Hall & Elaine Hall, *Problem Based Learning and Clinical Legal Education: What can Clinical Legal Educators Learn from PBL?* 6 INTERNATIONAL JOURNAL OF CLINICAL LEGAL EDUCATION, 39-63 (2004).

<sup>25</sup> William Wesley Patton, *Getting Back to the Sandbox: Designing a Legal Policy Clinic*, 16 INTERNATIONAL JOURNAL OF CLINICAL LEGAL EDUCATION, 96-129 (2011).

<sup>26</sup> Sylvester, Hall and Hall, *supra* note 24.

<sup>27</sup> Giddings, *supra* note 14.

clinical legal education is lack of financial resources.<sup>28</sup> In Jordan, the creation of clinical programmes has always been hampered by the problems of infrastructure which were exacerbated by lack of expenses necessary for the smooth operation of law clinics.<sup>29</sup> In Ireland, Donnelly has singled out the lack of financial resources as the most notable obstacle.<sup>30</sup> In Nigeria, one of the major obstacles has been the requirement of multiplied input of financial resources.<sup>31</sup> In Fiji, attempts by the University of South Pacific, to construct and develop a regional response to regionally perceived legal education needs were not only affected by the large geographical areas but also by the need to strategize and deal with the prominent issue of lack of financial resources.<sup>32</sup> Therefore, the key challenge to greater use of clinical legal education pedagogy remains its resource-intensive nature.<sup>33</sup> Given their educational focus and social justice mission, law clinics are not profit making entities as they do not charge clients for their services and do not normally get legal aid funding where such funding streams exist. Whilst the benefits of clinical legal education are widely accepted in educational terms, clinical programmes remain firmly on the sidelines due to, among other things, funding restrictions.<sup>34</sup> This does limit the scope of clinic operations as clinical programmes are often the first to bear the brunt of budget cuts where an institution has to prioritize its financial allocation to different university departments. With reference to efforts to implement clinical legal education in Iraqi, Hamoudi noted that in light of the law schools' desperate state of resources, many faculty members wondered more than once during his initial discussions with them whether or not a significant expenditure of funds on a clinical programme was the best way to direct limited funding.<sup>35</sup> In South Africa, the lack of resources to run the law clinics has been compounded by the great inequalities between historically black and white university law faculties including the comparative lack of facilities, faculty, books and other supplies.<sup>36</sup> Therefore, faculty staff's time gets divided between clinical pedagogy and the constant engagement in time consuming fundraising. Inevitably, the potential to create and sustain clinical pedagogy becomes greatly limited as a result.

The challenge is particularly acute in developing countries such as those in Africa. For example, Oke-Samuel noted that the funding of clinical programmes in Nigeria is heavily reliant on donations and grants from foreign friends of goodwill.<sup>37</sup> Stretching a budget on a new programme and on infrastructural development would normally create significant difficulties in the establishment and sustainability of clinical programmes. With reference to funding restrictions in Botswana, Quansah noted that although the legal aid clinic at the University of

<sup>28</sup> Barbara Preloznjak, *Clinical Legal Education in Croatia from Providing Legal Assistance to the Poor to Practical Education of Students*, 19 INTERNATIONAL JOURNAL OF CLINICAL LEGAL EDUCATION, 373-382 (2013); Mutaz M. Qafisheh, *The Role of Legal Clinics in Leading Legal Education: A Model from the Middle East*, 22 LEGAL EDUCATION REVIEW, 177-198 (2012).

<sup>29</sup> Nisreen Mahasneh & Kimberly Thomas, *Learning from the Unique and Common Challenges: Clinical Legal Education in Jordan*, 5 BERKELY JOURNAL OF MIDDLE EASTERN AND ISLAMIC LAW, 1-38 (2012).

<sup>30</sup> Lawrence Donnelly, *Clinical Legal Education in Ireland: Some Transatlantic Musings*, 4 PHONENIX LAW REVIEW, 7-20 (2010).

<sup>31</sup> Ordor, *supra* note 10.

<sup>32</sup> Richard Grimes, *Vocational Legal Education in the South Pacific: Designing and Implementing a Programme for Progress*, 22 COMMONWEALTH LAW BULLETIN, 1193-1208 (1996).

<sup>33</sup> Giddings, *supra* note 14.

<sup>34</sup> Cath Sylvester, *Bridging the Gap? The Effect of Pro Bono Initiatives on Clinical Legal Education in the UK*, 3 INTERNATIONAL JOURNAL OF CLINICAL LEGAL EDUCATION, 29-40 (2003).

<sup>35</sup> Hamoudi, *supra* note 6.

<sup>36</sup> Peggy Maisel, *Expanding and Sustaining Clinical Legal Education in Developing Countries: What We Can Learn from South Africa*, 30 FORDHAM INTERNATIONAL LAW JOURNAL, 374-420 (2007).

<sup>37</sup> Olugbenga Oke-Samuel, *Clinical Legal Education in Nigeria: Developments and Challenges*, 17 GRIFFITH LAW REVIEW, 139-150 (2008).

Botswana provided free legal services to the general public, those services were ancillary to the overall education of the faculty's law students.<sup>38</sup> Where a clinical programme neither benefits from any governmental funding, nor from any financial assistance coming out of the pockets of non-governmental organisations (NGO) but only receives limited funding from the mother institution, the true potential of any efforts in clinic creation would be greatly constrained. In this era of tight budgets and funding cuts, the cost of creating a clinic and sustaining those that are already in place is certainly an impediment<sup>39</sup> and cost cutting strategies will need to be engaged for an ongoing existence of clinical programmes. Those opposed to clinical legal education programmes "often malign its expense and look to clinical budget cuts as the primary means of reducing costs in legal education" consequently making it difficult to sustain clinics.<sup>40</sup> It is such narrow mindedness from academic colleagues that restricts our vision in seeing the value and vitality of clinical programmes in the preparation of law students for future practice. Making assumptions about the importance of channelling financial resources to other educational priorities at the expense of a clinical pedagogy poses significant difficulties in our efforts to create and sustain clinical programmes. Yet costs constraints can possibly be leveraged by a carefully cost-benefit analysis leading to a cost-saving potential.

To appreciate sustainable development as a key objective in the existence of a clinical programme we must examine further and in detail the different strategies we can use to combat against failure of clinical programmes. Maisel suggested the expansion and creative use of membership organisation as one of the many strategies that clinicians around the world may want to use to ameliorate financial problems associated with the establishment and sustainability of clinics.<sup>41</sup> However, we are yet to see evidence of whether or not those strategies apply to other jurisdictions 10 years after the publication of her article. Sometimes I wonder whether we actually read each other's papers. If we do, what do we do about what our colleagues have suggested in their own papers? A good example of an article that many a clinician have cited but not acted upon the issues raised in it as a global clinical movement, 7 years after its publication, is one by Julie MacFarlane.<sup>42</sup> She unpacks the issues earlier clinicians have raised but laments at our collective lack of zeal in resolving them. MacFarlane recalls:

*Looking back at the literature of the 1980's and 1990's – until I sat down to write this paper, I had not revisited this literature in many years – two things strike me forcefully. One is that despite the robust tone of so many of the articles, books, and training materials developed during this time, tensions were already emerging. They are illustrated by arguments over the appropriate "status" of clinical faculty alongside other professors, the physical separation of the clinics from the law school, debates over how far the law school should be providing education in practical skills, and general scepticism over the development of a theoretical foundation for practical skills. These discussions were not resolved and continue to play out today.*

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<sup>38</sup> Emmanuel Quansah, *Legal Aid in Botswana: A Problem in Search of a Solution*, 40 COMPARATIVE AND INTERNATIONAL LAW JOURNAL OF SOUTHERN AFRICA, 509-526 (2007).

<sup>39</sup> Peter T. Hoffman, *Law Schools and the Changing Face of Practice*, 56 NEW YORK LAW SCHOOL LAW REVIEW, 203-232 (2012).

<sup>40</sup> Peter A. Joy, *The Cost of Clinical Legal Education*, 32 BOSTON COLLEGE JOURNAL OF LAW AND SOCIAL JUSTICE, 309, 309-330 (2012).

<sup>41</sup> Maisel, *supra* note 36.

<sup>42</sup> Macfarlane, *supra* note 19.

MacFarlane's quote above encapsulates the essence of reading widely across what colleagues in the field have written. As clinicians we ought to remind ourselves of the importance of reading each other's work around clinical legal education issues. Whilst I appreciate that it is part of human nature to read and ignore information that does not apply to our situations, research papers from colleagues should be our points of reference in our efforts to evidence the work we do in law clinics. A story in Idries Shah's *Caravan of Dreams* comes to mind.<sup>43</sup> One day Ibrahim Ben Adhem a prince who, like the Buddha, gave up the throne of Balkh and left his royal home to seek knowledge found a stone on the ground and picked it up from beside the road. Written on it were the words: - *Turn me over and read.* So he picked it up and looked at the other side. And there was written: - *Why do you seek more knowledge when you pay no heed to what you know already?* It is one thing to know the key ideas about the benefits of clinical legal education so that we can stand up at both local and international conferences to deliver papers detailing our own personal experiences. It is entirely another thing to know deeply what others have written and suggested in their papers about our field, apply those suggestions to practical situations and then evidence it. Others may argue that not heeding and applying what Maisel has suggested as strategies for clinic creation and/or sustainability is because they want to see the clinic in ways that are different from what Maisel saw of the clinic in South Africa. This would be a fair point but I believe we would be contributing more by clarifying and applying such strategies and evidencing whether or not they have actually worked, rather than continuously introducing new information on self-reflection and personal experiences to the already exploded clinical scholarship. Further research must therefore be focussed on evidence based sustainability strategies so that we can ensure that the current overbearing socio-economic situation does not compromise the future of our clinical programmes. The never ending economic meltdown in different parts of the world where there is clinical activity reaffirms the importance of assessing the impact the economy has on sustaining clinical programmes. Such research on strategies will enable the identification of influential factors and the development of a logical framework that recognises the importance of ongoing development of the clinic. I suggest therefore that we come up with cost-benefit studies quantifying the costs of creating a law clinic. We need quantitative reports detailing the amounts a legal academy would normally need to create and sustain a clinical programme.

Whilst clinical scholarship provide valuable information regarding the positive factors that we should consider in the creation and sustainability of clinical programmes, caution needs to be exercised against just focusing on clinics that are flourishing. We should not assume that the results obtained from studies reporting on our own successful personal experiences can be generalized to different contexts. We must also report on the factors that are influential in sustaining those clinical programmes that are already in existence but are struggling.<sup>44</sup> In this crippling economic climate, daunting questions loom large concerning revamping those programmes that are failing. With the current uncertainty facing existing clinical programmes' funding options, it will be precautionary to undertake research and report on current failing clinics in order to keep them going. We therefore need more research papers that would serve as a guide in enabling organisational change in the operation of a failing clinic through a framework of strategic initiatives. To achieve this, I encourage clinicians and clinical writers to adopt a different kind of reflection and report too on failing programmes.

The recognition that lack of financial resources is the main cause of difficulties in our efforts to create and sustain clinical programmes must encourage us to look at other ways of pooling

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<sup>43</sup> IDRIES SHAH, CARAVANS OF DREAMS, Penguin, Baltimore 110 (1968).

<sup>44</sup> Warren H. Binford, *Reconstructing a Clinic*, 15 CLINICAL LAW REVIEW, 283-332 (2009).

resources together for the continuation and development of the clinic. A few studies seek to identify alternatives on leveraging limited resources that can result in improved services for clients in an interdisciplinary clinic, where the different professions working together can address problems more effectively than could be done by the professions working separately.<sup>45</sup> Research on collaborative clinical work requires new study designs to provide us with useful insights into interdisciplinary and multidisciplinary strategies as a sustainability measure in clinical programmes. It has been suggested that integration may be possible if the creation of a clinic is considered from a wider and broader perspective within a university's different disciplines where we have different departments coming together to establish an interdisciplinary law clinic. For example "in South Africa, palliative care was integrated with legal services" where law students came together to work with staff at a hospice association and conducted workshops on wills, debts and family law for hospice caregivers.<sup>46</sup> At the Intellectual Property and Business Formation clinic at Washington University in St Louis, law students combined with students from business, medicine, social work, biomedical engineering, and arts and sciences in a collaboration that focused on intellectual property and business formation. However, we need to acknowledge that cultural differences inherent between different disciplines could impact on the success of interdisciplinary clinic. Examples can include our differing views of responsibilities to the client, duties of confidentiality, and what we see as constituting a conflict of interest. We do of course need to accept that the hallmark of any profession, whether it is in child care, welfare, social work, medicine, health care or law, lies in the ability of each of these frontline services and professions making their own judgements about the service they provide and how they do it. Nevertheless, reaching a compromise as different professions lays a solid foundation for benefits to accrue that outweigh disadvantages of working collaboratively. Law schools are relatively costly due to the low faculty-to-student ratio, financing is the most challenging aspect in persuading a law school to adopt a new clinic<sup>47</sup> and hence interdisciplinary clinic collaboration with other professionals and departments within and outside of the mother institution can ameliorate some of the financial constraints in establishing and sustaining a clinical programme.

### *3. Contextual factors: clinic as social justice vehicle or as pedagogy*

Questions abound on whether we must see clinic as mainly a social justice vehicle or primarily as pedagogy and one of the challenges in creating a clinical programme is trying to balance the inherent conflict between clinical legal education's main objectives of education and service. In South Africa, legal clinics face serious caseload pressures since the majority of the population lives in abject poverty.<sup>48</sup> Giddings argued that "service expectations that will inevitably be linked to external funding need to be balanced with maintaining the focus on student learning" in clinical legal education.<sup>49</sup> Sylvester questioned whether or not a greater emphasis on pro bono initiatives have an adverse impact in establishing and sustaining clinical programmes particularly when clinical programmes in the United Kingdom "have always had, at their forefront, educational priorities" as the bedrock of legal training.<sup>50</sup> Accordingly, Sylvester posit that it is more likely than not that the increasing initiatives in pro bono work with a greater involvement of students in legal practical work may compromise the clinical programmes.

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<sup>45</sup> Mellisa Breger and Theresa Hughes, *Advancing the Future of Family Violence Law Pedagogy: The Founding of a Law School Clinic*, 41 UNIVERSITY OF MICHIGAN JOURNAL OF LAW REFORM, 167-188 (2008).

<sup>46</sup> Paula Galowitz, *The Opportunities and Challenges of an Interdisciplinary Clinic*, 18 INTERNATIONAL JOURNAL OF CLINICAL LEGAL EDUCATION, 166, 165-180 (2012).

<sup>47</sup> Breger and Hughes, *supra* note 45.

<sup>48</sup> Maisel, *supra* note 36.

<sup>49</sup> Giddings, *supra* note 14, at 5

<sup>50</sup> Sylvester, *supra* note 34, at 36.

Government policy on higher education plays a significant role particularly where the legal education curriculum is determined by the government and not by the institution running it. The courses that each student must complete in order to graduate in Iraq are determined by a Curriculum Committee consisting of Deans from each law school.<sup>51</sup> However, their determinations must be approved by a Higher Commission consisting of the Minister of Higher Education and Scientific Research. We can clearly see here that in the event that the Deans do propose a change to the curriculum or a clinical addition to it, the Minister may, in turn disapprove thus limiting the scope of a clinical programme. Reviewed literature describes clinical legal education as a wave profoundly altering the shape and trajectory of legal education in many countries. However, so little seem to have been written on the shape and trajectory of clinical legal education in fragile and/or conflicted states with unstable democracies. The infringement by external forces, of basic academic freedom such as the restriction to content of clinic litigation; the interference with basic litigation decisions and the inability of individual clinical supervisors to teach what they want can inhibit our efforts to create and sustain clinical programmes.<sup>52</sup> In detailing the attacks on a clinical programme and faculty at the University of Mississippi in 1968, Joy argued that when we have external forces limiting the scope of cases that the clinic can handle, we end up having situations which “effectively close the courthouse doors to those unable to find other legal representation” and in the process denying justice to those that most deserve it.<sup>53</sup> In this way, political interference in clinical programmes gets used as a tool designed to subvert the normal processes of the doctrine of the rule of law and respect for basic human rights.

Placing conditions on government funding in such a way that restricts client representation and case selection is also an impediment. Referring to the limitations of the operation of the clinic at the University of Maryland Law School as a result of restrictions imposed by the Governor of Maryland, Joy has noted the requirement that all legal organisations receiving state funds, prior to filing any lawsuits against the state, must notify the state and attempt to resolve the matter without initiating litigation in court. Whilst the above examples may explain interference in the United States, there is still yet no reporting of any external interference with the clinical activity elsewhere, particularly in Africa. I wonder whether or not this lack of evidence is a reflection of there being no interference in the operations of the African clinic. I wonder also if we should attribute this lack of evidence to reluctance amongst clinicians in writing about this interference because of language barriers. Could it be as a result of publication bias by those holding the keys to academic journals that we do not have this evidence? Could it be that our colleagues in Africa fear retribution by those in the corridors of power if they write about interference? I suggest therefore that we come up with studies detailing research methods appropriate for use in conflict settings. We need detailed reports of what sort of interference is inhibiting the scope of clinic in Africa. There is therefore, a need for us to enter into the uncharted waters of some of the conflicted states of Africa, negotiate entry, gain access, research on and record our findings. Richard Grimes has reported on the role played by clinical programmes in Afghanistan; a country which has been ravaged by internal strife and political turmoil.<sup>54</sup> Most recently, we have

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<sup>51</sup> Hamoudi, *supra* note 6.

<sup>52</sup> Elizabeth M. Schneider, *Political Interference in Law School Clinical Programs: Reflections on Outside Interference and Academic Freedom*, 11 JOURNAL OF COLLEGE AND UNIVERSITY LAW, 179-214 (1985).

<sup>53</sup> Peter A. Joy, *Political Interference in Clinical Programs: Lessons from the U.S Experience*, 8 INTERNATIONAL JOURNAL OF CLINICAL LEGAL EDUCATION, 102, 83-103 (2005).

<sup>54</sup> Richard Grimes, *Accessing Justice: The Role of Law School Legal Clinics in Conflict-affected Societies*, 1 (2) ASIAN JOURNAL OF LEGAL EDUCATION, 71-87 (2014).

had Stephen Rosenbaum also reporting on clinical activity in the same jurisdiction.<sup>55</sup> Even where access has been denied, we should not be deterred in our research endeavours. Failing to access research sites is itself a research finding and we ought to be documenting such endeavours. It is therefore imperative that we start writing about techniques for studying clinics that are affected by conflict. Such research is likely to have valuable practical and/or theoretical implications for the future development of the global clinical movement.

In my response to the geographical spread of clinical scholarship, I suggest that further fieldwork needs to be carried out in Africa in order for us to understand the reasons behind the little clinical activity in that region.<sup>56</sup> Even though it is acknowledged that there is clinical activity in Zimbabwe<sup>57</sup> prior to my empirical research in the jurisdiction, it was unknown whether or not those factors identified in other jurisdictions as relevant to setting up and running a law clinic were valid and applicable to a Zimbabwean context. It is, therefore, this gap in knowledge, albeit from a Zimbabwean perspective, that motivated my research on the clinic in Zimbabwe and necessitated a research project which had not been addressed in any given domain before.

## Conclusion

A systematic review of literature achieved a clearer view of what factors have been influential in the creation and sustainability of clinical education abroad. Although the systematic review process did not attempt to manipulate or undermine clinical scholarship, it was used as a method to help understand what evidence we have about the work we do as clinicians. The findings here indicate that there are various factors we ought to take into consideration when we plan to create clinical programmes or indeed sustain those that are already in existence. However, there is a need for us to go beyond establishment and sustainability finances and carry out feasible research on effective strategies in addition to what we already know in the field. Traditionally, clinicians have tended to write on what they have done and what has worked for them. The reporting has taken the form of self-reflection. There is little coming from students themselves to indicate whether or not they are able to understand the real essence of the clinical pedagogy in order to serve the society. Let us endeavour to write less about ourselves and to simply draw personal conclusions as evidence of the good things clinic work can do for our students and society. Instead, let us focus on the student-teacher partnerships that we ought to create with our students to develop their individual judgement and critical minds in forming their personal own opinions on the work they do in the clinic. There is little written on strategies to sustain already existing clinical programmes. More often than not, we talk of partnerships and stakeholders yet we write so little about the critical evaluation of the clinic and community connection in the decisions around selecting cases for the clinic. We talk of clinical legal education as having transcended borders but there is little evidence of research carried out in certain conflicted states that we know there is clinical activity. There is therefore a critical need for us to write more on

<sup>55</sup> Stephen A. Rosenbaum, *A New Day: Prime Time to Advance Afghan Clinical Education*, 3(1) ASIAN JOURNAL OF LEGAL EDUCATION (2016).

<sup>56</sup> Tribe Mkwebu, *A Systematic Review of Literature on Clinical Legal Education: A Tool for Researchers in Responding to an Explosion of Clinical Scholarship*, 22 INTERNATIONAL JOURNAL OF CLINICAL LEGAL EDUCATION, 238-274 (2015).

<sup>57</sup> FRANK SMITH, *The Legal Aid Clinic, University of Zimbabwe, Harare*, in *LEGAL AID LAW CLINICS IN SOUTH AFRICA, UNIVERSITY OF NATAL* (David McQuoid-Mason, ed. 1985); David McQuoid-Mason, Ernest Ojukwu and George Mukundi Wachira, *Clinical Legal Education in Africa: Legal Education and Community Service*, in *THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE*, Oxford University Press (Frank S. Bloch ed., 2011).

the shape and trajectory of clinical legal education in fragile and/or conflicted states with unstable democracies.

With regards to the strengths and limitations of the included journal articles, the observation I made in most selected papers is that the usually trend in presenting the articles seems to be rather descriptive in emphasising the importance of maximising the benefits of clinical legal education programmes. Across the board, there seem to be a lack of objectivity in emphasising the value of clinical programmes. Subjectivity seems to be the norm in presenting clinical scholarship. We tend to write more about ourselves and the good work we do in the clinic. The literature I reviewed is pro-clinic, authors are self-reflective and sometimes too polemic when highlighting and criticising traditional methods of teaching substantive law to students. They describe the lecture/seminar method of teaching substantive law as a hindrance to the establishment and sustainability of clinical programmes.

One process, however, that seem to have been missed in the selected articles is the use of an empirical approach as a methodology in identifying factors that have been influential in the creation and sustainability of law clinics. This area has been surprisingly neglected, as the majority of the literature on clinical legal education has focussed on non-empirical methods. I accept that the case study methodology involving an observational approach is effective too. However, the question of how using other case study research tools, such as interviews, for example, would help towards the identification of key aspects in setting up and running clinical programmes has rarely been considered. Consequently, we have little basis, other than our own experiences of what we have observed as influential factors, from which to develop a deeper understanding of those factors from the perspective of others involved in the creation and sustainability of clinical programmes elsewhere. It is therefore this limitation that influenced my decision to adopt a different approach in my overall research on clinical legal education in Zimbabwe. I followed an empirical research approach where research participants were interviewed to test identified factors from clinical scholarship.

Even though the journal articles included in the review were disparate in terms of their content presentation, design, place and year of publication and presentation tone, generally speaking, all of the reviewed articles had the tendency of reporting results that are positive in emphasising the importance and benefits of clinical legal education programmes within law schools. The richness and the context of the textual data that has been reviewed has revealed a lack of research on clinical legal education from a Zimbabwean context and proved the unavailability of clinical scholarship on the law clinic in that jurisdiction, hence my empirical research journey to Zimbabwe.

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