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A dangerous method? Defending the rise of business law clinics in the UK [5083 words]

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Abstract

In clinical legal education (CLE) circles there is a deep seated belief that all law school clinics must pursue a social justice agenda by helping the poor. Consequently, clinics which assist businesses who can afford to pay for legal services are often met with disapproval. This may account for the scarcity of publications, especially in the United Kingdom, which explore and reflect on business law clinics. Yet they do exist, and they are growing in number and scope. Using the Business & Commercial firms at Northumbria University's Student Law Office as a case study, this paper defends the right of business law clinics to be part of the CLE movement. Firstly, it argues that business law clinics allow law students to pursue a diverse and relevant education. Secondly, it queries why these clinics cannot fulfil a (reconceptualised) social justice mission.

Introduction

During a recent conference paper I was happily waxing lyrical about the free legal services that my students provide to businesses. When I finished and the chair asked for questions, an audience member informed me that they thought that what I was doing was a “danger” to CLE.

This is not the first time that I have faced this view. When speaking at CLE events, I am often met with stony faces, unhappy mumblings, and declarations that what I do goes against the spirit of the CLE movement. Earlier this year, I was delighted to be invited to attend and present at the first meeting of the European network of established and aspiring university-based law clinics for entrepreneurs and start-ups.¹ At the start of my presentation, I told my fellow business law clinic enthusiasts (with my tongue firmly in my cheek) that I was delighted to be in a room where it was unlikely that I would be booed.

The main argument against business law clinics appears to be: why should law schools provide free legal advice to people who can pay for that advice elsewhere? After all, a law school clinic is seen to be “a place where clients who fall in the gap between those ineligible for legal aid and those able to afford a lawyer are offered advice and/or representation”.²

Business law clinics are on the rise in the United Kingdom, following in the footsteps of our American clinical cousins. Yet, outside of the United States these types of clinics are rarely examined in any

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¹iLINC – *Establishing a European Network of Law Incubators that bridge ICT Entrepreneurs and Start-ups with Law Students* is a project funded by the European Commission (under the Seventh Framework Programme of the European Union). It is conducted by Queen Mary University of London, University of Amsterdam, KU Leuven and the Hans Bredow Institute for Media Research. The project's main objective is to support legal training programs in Europe that offer student expertise to entrepreneurs and start-up companies. Best Practice Sharing Events have been held at Queen Mary University of London (May 2014) and University of Amsterdam (October 2014). Northumbria Law School is an iLINC Active Network Partner and I represent the Law School at iLINC events: [http:// http://lincup.eu/](http://http://lincup.eu/).

²M. M. Combe, “Reselling intra-curricular clinical legal education” (2014) 48(3) *The Law Teacher* 281, at p.281.

detail. My intention is that this paper starts the ball rolling and encourages others who supervise clinical work of this nature to write about their experiences. This paper will start with a brief examination of the development of business law clinics in the United States, and then provide a contrast by looking at the current state of play in the UK.³ Finally, it will provide a response to the argument that business clinics have no place in CLE by defending the educational benefits of the work and arguing for the reconceptualisation of the term “social justice”.

Transactional clinics in the United States

The United States has a long history of CLE. The “first wave”⁴ began in the early 20th Century, a consequence of the growing acceptance of the casebook method. As early as the 1930s scholarly articles on the nature and effect of clinic in law schools were being published.⁵ Whilst there were few law schools with in-house legal clinics at this time, clinical programmes continued to grow and by the end of the 1950s more than 25% of law schools had some kind of clinical offering.⁶ This was solidified in the “social ferment” of the 1960s; a consequence of the development of legal rights and the acknowledgement of unmet legal need.⁷

In contrast, the United Kingdom only began to embrace the idea of CLE in the 1970s. The newer Universities and some polytechnics were quick to establish clinical projects, but the growth of CLE in law schools was sporadic during the next few decades.⁸ In 1995, only eight out of 79 universities ran a legal advice clinic.⁹ Nevertheless, slowly but steadily the benefits of offering students a live client experience have been recognised.¹⁰ Latest figures suggest that at least 70% of all law schools in the UK are now involved in pro bono and/or clinical activity.¹¹

As with CLE generally, US law schools have been at the forefront of the development of clinics which deal specifically with businesses, entrepreneurs and social enterprises. The majority of transactional¹² legal clinics emerged during the late 1970s and early 1980s as community economic

³Although, as I later point out, the lack of research in this area means that I am only able to provide some examples of UK business law clinics. Those examples are not meant to be exhaustive.

⁴M. M. Barry, J. C. Dubin, and P. A. Joy, “Clinical Legal Education For This Millenium: The Third Wave” (2000) 7 *Clinical Law Review* 1 at p. 5. See also J. Giddings, R. Burrige, S.A.M Gavigan, and C.F. Klein, “The First Wave of Modern Clinical Legal Education: The United States, Britain, Canada and Australia”, in F.S. Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford University Press, 2011), at pp. 3-22.

⁵J.S. Bradway, “The Nature of a Legal Aid Clinic” (1930) 3 *Southern Californian Law Review* 173.

⁶Giddings *et al.*, *supra* n. 4, at p. 5.

⁷P. G. Schrag and M. Meltsner, *Reflections on Clinical Legal Education* (Northeastern University Press, 1998), at p. 3.

⁸K. Kerrigan and V. Murray (eds), *A student guide to clinical legal education and pro bono* (Basingstoke: Palgrave Macmillan, 2011), at p. 10.

⁹Giddings *et al.*, *supra*, n. 4, at p. 7.

¹⁰In 2010, 111 law schools were asked a range of questions about the extent to which they were involved in pro bono activity. Of those who responded, 91% did pro bono work. 40% ran live law clinics. See R. Grimes and M. Curtis, *LawWorks Student Pro Bono Report 2011*, available at <http://www.lawworks.org.uk/index.php?cID=10&cType=news> (accessed 8 September 2014).

¹¹D. Carney, F. Dignan, R. Grimes, G. Kelly and R. Parker (2014) *The LawWorks Law School Pro Bono and Clinic Report 2014* <http://lawworks.org.uk/index.php?cID=1027&cType=document> (Accessed 19 November 2014).

¹²Clinics dealing with business law matters are known in the US as transactional clinics. This language tends to conjure up images of students being involved in high value mergers and acquisitions, or “deal” work. Schlossberg has noted that it is “not easy to define” transactional law practice (D. Schlossberg, “An Examination of Transactional Law Clinics and Interdisciplinary Education” (2003) 11 *Journal of Law and Policy*

development initiatives.¹³ Take, for example, George Washington University Small Business Clinic (GWUSBU), which opened in 1977. For the last three decades GWUSBU has provided free legal advice to “caterers, retail clothing stores, restaurants, antique dealers and consignment shops, computer consultants, barbers, massage therapists, beauticians [and] book publishers”.¹⁴ Professor Susan Jones, GWUSBU’s director, was the first to write in detail about transactional clinics in the US and continues to publish extensively on community economic development, trends in business law pro bono and transactional lawyering skills acquired through clinic.¹⁵

In 1997 there were a “handful” of transactional clinics in the US.¹⁶ In 2004, there were 30 nationwide.¹⁷ In 2012, due to the steady increase in transactional clinics, the Association of American Law Schools Clinical Section created a Transactional Clinics Committee.¹⁸ Last year there were more than 140 clinics at just over 200 American Bar Association approved law schools.¹⁹ Reflecting on the first year of the D.C Bar Community Economic Development Pro Bono Project in 1999, Professor Jones observed that the D.C Bar had recognised that Community Economic Development was not just about housing production and that projects needed to include the “creation of business incubators and small business loans funds and the development of shopping centers”.²⁰ Although there are still dissenting voices – Lopez argues that specialised clinics “may limit the potential of the clinic in furthering the social justice mission”²¹ - there appears to be an acknowledgement in the US that business work does not necessarily preclude a social justice agenda. Whilst this is not explicitly referred to in the literature, one could put forward an argument that labelling the work as community development went some way to smoothing the path for transactional clinics in the US.

The arrival of business law clinics in the United Kingdom

The development of clinics providing free legal advice to businesses in the United Kingdom has been woefully slow. There is also a dearth of information about the business law clinics that do exist, or

195). However, the examples in the US literature include advice relating to regulatory compliance, choice of business structure and trademark registration. See S.R. Jones and J. Lainez, “Enriching the Law School Curriculum: The Rise of Transactional Legal Clinics in U.S. Law Schools” (2013) 43 *Washington University Journal of Law and Policy* 85, at p. 97.

¹³Jones and Lainez, *supra* n. 12, at pp. 92-96.

¹⁴S. R. Jones, “Promoting Social and Economic Justice Through Interdisciplinary Work in Transactional Law” (2004) 14 *Washington University Journal of Law and Policy* 249, at pp. 267-8.

¹⁵See n. 12, 13 and 20. See also S. R. Jones, “Supporting urban entrepreneurs: law, policy, and the role of lawyers in small business development” (2007) 30 *Western New England Law Review* 71, S. R. Jones, “Transactional Law, Equitable Development, and Clinical Legal Education” (2005) 14 *Journal of Affordable Housing and Community Development Law* 213, and S. R. Jones, “Small business and community economic development: transactional lawyering for social change and economic justice” (1997) 4 *Clinical Law Review* 195.

¹⁶*Supra*, n. 12, at p. 86.

¹⁷*Supra*, n. 14, at p. 260.

¹⁸*Supra*, n. 12, p. 93.

¹⁹*Ibid.*

²⁰S. R. Jones, “Transactional Lawyers Supporting Economic Development in the Nation’s Capitol” (1999) 9 *Journal of Affordable Housing and Community Development Law* 18, at p. 19.

²¹A. Lopez, “Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training” (2001) 7 *Clinical Law Review* 307, at p.317.

have existed in the past. They have been hidden away, or, at the very least, backwards in coming forward.²² This makes it difficult to chart their emergence.

The Student Law Office at Northumbria University, where I work, is an in-house law office supervised by Senior Lecturers who are also qualified solicitors, barristers and clinical caseworkers. It established a specialist business law clinic in 2007. There are other in-house models. York Law School Clinic, which opened in 2011, provides advice on a range of legal matter, including small business set up.²³ The Intellectual Property Advice and Support Service (iPass), at the University of Portsmouth, allows students and graduates starting their own companies access to advice on how best to protect and commercialise their invention, idea or intellectual property.²⁴

Alternative templates exist too. City University London began to offer advice to local start-ups and small businesses in 2011. Known as Start-Ed, the free walk in centre is staffed by City Law School students who are supervised by local professionals.²⁵ A more recent addition is qLegal. Established by the Centre for Commercial Law Studies at Queen Mary, University of London in 2013, qLegal provides legal and regulatory advisory services to early-stage, start-up companies, primarily in the Information and Communication Technologies sector. Postgraduate law students are supervised by partnering law firms and academic staff.²⁶

The Business & Commercial firms at the Student Law Office

At Northumbria University, every student undertaking the four year M Law (Exempting) degree²⁷ works in the Student Law Office throughout their final year. Student Law Office is an assessed 60 credit module at level 7, which accounts for almost 40% of a student's final year mark. In the Student Law Office, students are divided into groups of six, known as firms. Each firm deals with a distinct legal area and has a specialist supervisor. I joined the Law School in 2010 as a Solicitor Tutor, tasked with developing the work of the Business & Commercial firms.²⁸ In the 2013/14 academic year we had four Business & Commercial firms and received 42 business enquiries.²⁹ We do not means test or enquire into our clients' financial position. All of our advice is free.³⁰

The legal work of the Business & Commercial firms can be broken down into three key areas:

²²Over the years I have been to a number of conferences and meetings where I have been the only business clinician in attendance.

²³See [http://www.york.ac.uk/media/law/documents/Annual%20Report%202012-13%20\(Nov%2013\).pdf](http://www.york.ac.uk/media/law/documents/Annual%20Report%202012-13%20(Nov%2013).pdf) (Accessed 30 September 2014)

²⁴ See <http://www.port.ac.uk/careersandrecruitment/startup/resources/intellectualproperty> (Accessed 5 December 2014)

²⁵See <http://www.city.ac.uk/law/careers/pro-bono-professional/information-for-clients/start-ed> (Accessed 30 September 2014).

²⁶Clients attend an appointment with two qLegal student advisors and a qualified solicitor and subsequently receive a letter of advice. Businesses can also access toolkits that are written by the qLegal student advisors and are freely available on the qLegal website. See <http://www.qlegal.qmul.ac.uk/resources/index.html> (accessed 30 September 2014).

²⁷The course is designed so that students can achieve a Masters level qualification and complete the Legal Practice Course competencies in four years. This allows graduates to enter the legal profession at trainee solicitor level.

²⁸Solicitor Tutors teach exclusively in the Student Law Office and have a number of firms.

²⁹ In 2007, there were 28 business enquiries. These figures do not include enquiries received outside of the academic year.

³⁰Clients do have to pay for any disbursements - for example trade mark and company registration fees.

Area of law	Typical issues client require assistance with
Company	<p>Choosing a legal structure – sole trader, partnership, LLP, private limited company, Charitable Incorporated Organisation, Community Interest Company.</p> <p>Corporate governance including understanding directors’ duties, constitutional issues, advice on administrative and filing requirements and penalties for non-compliance.</p>
Commercial	<p>Reviewing and drafting commercial contracts e.g. publishing agreement, music video production agreement.</p> <p>Producing terms and condition of sale and purchase for physical and online retailers. Drafting website terms and conditions, terms of use and privacy policies for e-businesses.</p> <p>Advising on data protection and confidentiality issues.</p>
Intellectual Property	<p>Advising on the subsistence/protection of intellectual property rights including copyright, designs, trade marks and patents.</p> <p>Advising on disputes such as another person copying material from the client’s website, or the client being pursued for infringing a third party’s rights.</p> <p>Brand protection advice and trade mark registration.</p>

Clinic and social justice

I am conscious that, as a relatively new clinician, I am standing on the shoulders of clinical giants who “stormed the academy”³¹, and had to raise funds to ensure that they kept their posts.³² The political and social changes in the 1960s and 1970s in the US and the emerging “struggle”³³ – civil rights, war, equal rights – was the catalyst for law schools to begin to open their doors to clinical education. Modern CLE, throughout the globe, is therefore rooted in a social justice mission.³⁴

Clinic is the succour for the poor and underserved: this is the dominant ideology. It is a philosophy that is fiercely protected by legal academics and clinicians. Quigley, for example, states that it is our duty as clinical staff to explicitly teach the lessons of social justice.³⁵ Without this, he argues,

³¹S. Wizner and J. Aiken, “Teaching and doing: The role of law school clinics in enhancing access to justice” (2004) 73 *Fordham Law Review* 997, at p. 998.

³²*Ibid*, at p. 999.

³³S. Wizner, “Is social justice still relevant?” (2012) 32 *Boston College Journal of Law and Social Justice* 345, at p. 346.

³⁴See P. Kosuri, “Losing my religion: the place of social justice in clinical legal education” (2012) 32 *Boston College Journal of Law and Social Justice* 331; Wizner and Aiken, *supra* n. 31; Wizner, *supra* n. 33; Barry *et al.*, *supra* n. 4; F.S. Bloch and M.A. Noone, “Legal Aid Origins of Clinical Legal Education” in F.S. Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford University Press, 2011).

³⁵F. Quigley, “Seizing The Disorientating Moment: Adult Learning Theory And The Teaching Of Social Justice In Law School Clinics” (1995) 2 *Clinical Law Review* 37, at p. 44.

students cannot have a complete clinical experience³⁶ which will then prepare them for their future role in “shaping public policy and providing pro bono representation”.³⁷ Wizner and Aitken use quasi-religious language in their quest to show that social justice is still relevant in clinic. They say that social justice continues to drive student learning and instil values not taught elsewhere in law schools – clinic *must* remain connected to its roots lest it loses its soul.³⁸ For Wizner this means that clinicians should focus their teaching on the supervised provision of legal services to “low income and other underrepresented clients”.³⁹

There are two issues with this kind of thinking:

- (a) it downgrades the powerful pedagogic value associated with clinical law work; and
- (b) it automatically casts out clinics which help those who could afford to pay for legal work from the social justice gang.

The educational value of business law clinics

Kosuri sees the clinical movement as the church and the clinicians who built it the clergy.⁴⁰ Whilst respectful of the traditions on which the church was built, and those who worship according to those traditions, I, like Kosuri, have lost my religion.⁴¹ In fact, it may be that I never had it in the first place. To me, clinic is an educational tool. It is not in existence purely to serve the poor and the needy. It also exists to serve the students. After all, it is clinical legal *education*, not clinical legal work.

There are some that would say “Ah, but our focus is to educate students to be socially aware”. Why should this be our only goal? What about educating students to have sound analytical skills, to be able to recognise when to take further instructions from a client, to see things from a legal and practical standpoint, to weigh up the information and decide what to do next, to judge when something is not in the client’s best interests, to look at the law and to apply that law to any given, real life, situation with all of its twists and turns and unplanned moments?

Immersive environments such as a law school clinic have powerful pedagogic outcomes. As a supervisor, I have no hesitation in taking instructions from any client which I believe will be of benefit, educationally, to my students even if that means providing free legal advice to those who could afford to pay for that advice privately. My argument is that if I turn away clients who are not deemed to be poor enough then I am denying my students the opportunity to research a range of legal issues and inhibiting their exposure to a diverse array of business people. Opening up the doors means that students don’t lose out on legal enquiries that are intriguing, multifaceted or unusual, all of which adds to the students’ learning experience. How else, I wonder, would my students have come to understand the extent of the power that a publisher has in contractual matters even when the author is nationally renowned? Or how an online retailer has an overwhelming level of legislation – data protection, intellectual property, consumer contracts, privacy, and age restriction – to contend with? Or when directors fall out this will impact on their business and, most importantly, our ability as professionals to provide legal advice to them?

³⁶ *Ibid*, at p. 38.

³⁷ *Ibid*.

³⁸ Wizner and Aiken, *supra* n. 31, at p. 1008 (emphasis added).

³⁹ *Supra*, n. 33 at p. 352.

⁴⁰ Kosuri, *supra*, n. 34, at. p. 335.

⁴¹ *Ibid*.

Business law clinics are an educational good in their own right. They allow students to experience the complex legislative and commercial practices which can affect even the simplest of enterprises. Gouvin fears that law schools looking to provide their students with professional skills and values are “doing it in a way that is skewed towards litigation practice and gives short shrift to transactional practice”.⁴² Litigation “fetishism”⁴³, as he labels it, means that law schools send “ill-prepared graduates into the world”.⁴⁴ Accordingly, “the profession as a whole suffers”.⁴⁵ This argument has merit. The majority of my students tell me that they are interested in working in a commercial law firm. In a 2010 survey, “business affairs work” was the second most common area of work for solicitors⁴⁶, beaten only by “litigation – general”⁴⁷ at 19%. Looking at my region, the North East of England, The Law Society reports that the top three main areas of work for practising certificate holders are business affairs (15.8%), wills and probate (7.7%) and personal injury (6.9%). Little wonder that our students want to gain experience of the world of business and the legal matters which affect today’s entrepreneurs. The law firms want that to happen too. Commercial law firms that know about the Student Law Office have been overwhelmingly positive about the development of our business work. A student recently told me that a leading national law firm and a local firm had both strongly advised her to apply to be in a Business & Commercial firm at the Student Law Office as it would give her the experience she needed before she applied to work with them.⁴⁸

Of course, some law students eschew the legal life altogether. Many of my former students have said that their work in the Student Law Office inspired them to start their own businesses. Others have gone on to be regional managers for leading retailers, business advisors and government officials. Surely this is another reason why all students should be welcome at the church of clinic “regardless of their ideology, background or interest”.⁴⁹

In some cases, the work that we do with other Student Law Office firms only serves to enhance the advice that clients receive. As in real life, company, commercial and intellectual property work does not exist in a vacuum. My students have been able to assist with other cases within the Student Law Office on issues as diverse as benefits appeals and contractual disputes. The Business & Commercial firms have become a favoured source of information for students working in other areas. For example they may require information about a certain business they are litigating against or what it means if their client is a trustee of a charity. Collaborative working like this is reminiscent of life in private practice. If the pedagogic aim of CLE is to give students an experience of real law and lawyering in context, then legal clinics which incorporate business advice are at the forefront of achieving this goal. Incorporating students and clinicians who have different interests only enhances the learning experience for everyone.⁵⁰

Social justice values are still inherent in our work

It is important to address the misconception that all businesses can afford to pay for legal services. There were approximately 4.9 million private sector enterprises in the United Kingdom at the start

⁴²E. Gouvin (2009) “Teaching Business Lawyering in Law Schools: A Candid Assessment of the Challenges and Some Suggestions for Moving Ahead” 78 *University of Missouri-Kansas City Law Review* 429.

⁴³*Ibid*, at p. 430.

⁴⁴*Ibid*, at p. 452.

⁴⁵*Ibid*.

⁴⁶At 17.9%. <http://www.lawsociety.org.uk/representation/research-trends/fact-sheets/> (Accessed 30 September 2014).

⁴⁷*Ibid*.

⁴⁸Students put forward a first and second choice. The Business & Commercial firms are regularly oversubscribed.

⁴⁹Kosuri, *supra*, n. 34, at. p. 338.

⁵⁰*Ibid*.

of 2013.⁵¹ 99.9% of private sector businesses are small to medium sized (SMEs), employing an estimated 14.4 million people. This makes up 59.3% of private sector employment. SMEs estimated combined annual turnover of £1,600 billion accounted for 48.1% of private sector turnover. These businesses are the lifeblood of the United Kingdom economy.⁵² As Pleasence and Balmer note, “their ability to prosper affects us all”.⁵³

In 2013, the Small Business Legal Needs Benchmarking Survey⁵⁴ found that 38.1% of the participant businesses reported one or more ‘significant’ legal problem in the preceding 12 months.⁵⁵ The adverse consequences of these legal problems frequently involved loss of income, incurring additional costs and damage to reputation.⁵⁶ Despite acknowledging this, only 15.9% of those businesses obtained independent help from solicitors, primarily for cost purposes.⁵⁷ Businesses dealt with 51.9% of problems on their own and took no action to deal with 9% of problems. The survey findings are backed up by what our clients tell us at the Student Law Office. Cost is key and clients would prefer to take the risk, or live in blissful ignorance.

If a business has cash in the bank, does this mean that it should be excluded from receiving free legal advice? Many of the businesses that we assist in the Student Law Office will have money that they can use for legal services. However, if they do not have to pay they can divert those funds elsewhere. They can use it to pay wages, contribute to a community project, purchase new equipment, fund expansion, and/or engage marketing support to help them reach a new audience. All of these examples will ultimately prolong the life of a business which may then go on to employ more people, take part in further community and charity schemes, and engender economic and social growth. Jones’ argument that “small business development has ... a greater impact on sustained community change than just representing indigent individuals”⁵⁸ is not fanciful. It is just that we are so used to conceptualising social justice in terms of poverty.

An alternative is to look at business law clinics as being aligned with a social justice agenda, but through a new methodological lens. By helping businesses, students positively impact on their local community by promoting long term sustainability and economic prosperity. It is also simplistic to put all businesses in one box, neglecting to look at the people behind them. A business concern may be profitable but the person driving that business forward may be part of a socially or economically disadvantaged group.⁵⁹

There are many different ways of organising a business law clinic. It does not have to have an open door policy. For example, the clinic could focus on social enterprises and charities. There is now a

⁵¹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/254552/13-92-business-population-estimates-2013-stats-release-4.pdf (Accessed 28 September 2014)

⁵²P.T. Pleasence and N.J. Balmer, “In Need of Advice? Findings of a Small Business Legal Needs Benchmarking Survey” (Legal Services Board: London, 2013) available at <https://research.legalservicesboard.org.uk/wp-content/media/In-Need-of-Advice-report.pdf>. This was the first survey of its kind in the UK.

⁵³*Ibid.*

⁵⁴*Ibid.*

⁵⁵*Ibid.*

⁵⁶*Ibid.* Only 13% of participants agreed that lawyers provide a cost-effective means to resolve legal issues.

⁵⁷*Ibid.*

⁵⁸Jones, *supra* n. 14, p. 260.

⁵⁹For example, we act for a number of female business owners who are also full time mothers and therefore have specific needs in terms of the timing and method of delivery of legal services.

long list of legal structures available for these kinds of enterprises⁶⁰ so students will still be exposed to the commercial realities and inner workings of a functioning business, and be able to hone their legal skills in the process.

I understand why some business law clinics have decided to means test, and it is for each to decide what they want their objectives to be. I do not criticise any clinic for the way that they choose to run. This would indeed be an “anathema, not to mention self-defeating”.⁶¹ However, my fear is that some may sleepwalk into having restrictions about who and what they will advise due to a misconception that clinic can only be about and for the poor. Ironically, many of the charities and social enterprises that we have acted for have been extremely healthy and could afford to pay for advice privately if they chose to do so.

Writing about his development of an entrepreneurship legal clinic, Kosuri notes that the challenge he faced was “to convince others that I could in fact have the same public interest impact practising transactional work than they could as a litigator or advocate.”⁶² It would be a shame if clinics focussing on transactional work had to continually fight for acceptance, as a consequence of a perceived detachment of that kind of work from a social justice ideology.

Conclusion

Kosuri has suggested that it is time for a reformation.⁶³ I don’t think we need one. The working title for this article was “come and have a go if you think you’re hard enough”, but that plays to the idea that business law clinics pose some form of threat. There is no need for a coup, a revolution or revolt. However, we do need to challenge the status quo and the conceptualisation of social justice in a clinical context. Business work has much to offer. For the students, it provides access to an authentic education in the realities of working with and advising a range of enterprises. For those enterprises, it provides the opportunity to use funds which may have been swallowed by large legal bills for other ventures or projects. If we restrict who can and cannot have access to clinical legal education then that would be the real danger.

Acknowledgements

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⁶⁰ Alongside, well known structures such as unincorporated associations and companies limited by guarantee, we now have Community Interest Companies and, more recently, Charitable Incorporated Organisations.

⁶¹ Kosuri, *supra* n. 34, at p. 332.

⁶² P. Kosuri, “Clinical Legal Education at a Generational Crossroads: X Marks the Spot” (2010) 17 *Clinical Law Review* 205, at p. 214.

⁶³ Kosuri, *supra* n. 34, p. 334.