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## Law & Entrepreneurship in Global Clinical Education

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## LAW & ENTREPRENEURSHIP IN GLOBAL CLINICAL EDUCATION

**Janet Thompson Jackson and Susan R. Jones<sup>1</sup>**

### INTRODUCTION

As clinical legal education (CLE) continues to evolve and prepare *practice-ready* lawyers, and governments worldwide focus on the multilayered impact of technology, automation and artificial intelligence, there is a pressing need to examine law and entrepreneurship through the lens of global clinical legal education. The range of issues include: corporate social responsibility, disruptive technologies, microbusiness, social entrepreneurship, social impact investing, the creative economy, sustainable local economies, cooperatives and shared work, and inclusive entrepreneurship.

Indeed, new legal entities like benefit corporations and low profit limited liability companies (L3Cs) have emerged to address contemporary legal needs and in the United States. the notion of an entrepreneurial mindset is prominent.<sup>2</sup> Many of today's law

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\*\* Susan R. Jones directs the George Washington University Law School Small Business & Community Economic Development Clinic. She is a past chair of the Clinical Section of the Association of American Law Schools Professor Jones thanks Gia Arney, GW Law Business & Finance Reference Librarian, and research assistants Andrea Johnson and Ayesha Syed for their help with this article.

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<sup>2</sup> Calvin Gladney, *Happy Better Lawyer*, <http://www.happierbetterlawyer.com/home/> (last visited Jan. 22, 2018); David E. Pozen, *We Are All Entrepreneurs Now*, 48 Wake Forest L. Rev. 283, 284 (2008).

students are Millennial generation, ages 18-34, while others are digital natives who have not known a world without technology.

Business law clinics (BLCs), also referred to as transactional clinics,<sup>3</sup> representing for profit, nonprofit or nongovernmental (NGOs) organizations and social enterprises aim to support the growth of entrepreneurial ecosystems while promoting social and economic justice. BLCs teach law students substantive law, practical skills and professional values. Indeed, BLCs with a social and economic justice perspective can help law students, the next generation of leaders, to develop critical analytic skills and insights into how entrepreneurship supports and sometimes hurts human rights and civil society efforts.<sup>4</sup>

**Part one** of this article examines the evolution of global CLE in western countries like the United States, United Kingdom, Canada, Australia, and in Georgia and Croatia.

**Part two** discusses a more recent phenomenon in CLE, the emergence of BLCs, which expand the clinical experience beyond the courtroom to the boardroom, and the differences and similarities between litigation and transactional legal clinics. **Part three** examines the rise in BLCs globally, and contains case studies of the global experience in transactional CLE with perspectives from Georgia, Croatia, Australia, Canada and the

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<sup>3</sup> Alicia Alvarez and Paul R. Tremblay, *Introduction to Transactional Lawyering Practice*, 1, 1-12 (West 2013). Transactional lawyering takes place when parties come together for economics, social, or relational value creation. For purposes of this article we use the term “business law clinics” to include both for profit and nonprofit clinics.

<sup>4</sup> See, e.g., Rebekah Schouten, *Dannon debuts Non-GMO Project verified yogurts*, FOOD BUSINESS NEWS (Sept. 18, 2017), [www.foodbusinessnews.net/articles/news\\_home/New-Product-Launches/2017/09/Dannon\\_debuts\\_Non-GMO\\_Project.aspx?ID=%7B86C74298-1D3A-4FD5-B3F3-1E211A889C6F%7D&cck=1](http://www.foodbusinessnews.net/articles/news_home/New-Product-Launches/2017/09/Dannon_debuts_Non-GMO_Project.aspx?ID=%7B86C74298-1D3A-4FD5-B3F3-1E211A889C6F%7D&cck=1) (last visited Jan. 22, 2018); See, e.g., Lynn Stout, *The Shareholder Value Myth: How Putting Shareholders First Harms Investors, Corporations, and the Public* (May 7, 2012).

U.K. **Part four** considers the unique pedagogical and programmatic aspects of BLCs, such as redefining “practice-ready,” teaching Millennials, and collaboration as a lawyering skill. **Part five** reflects on the significance of BLCs now. In **Part six** the article concludes by looking to the future of BLCs in a global context. The article also includes an Appendix 1 with BLC Lawyering Competencies and Learning Outcomes and Appendix 2 with a Checklist for Starting or Re-Imagining a BLC.

## **PART I: THE GLOBAL CLINICAL LEGAL EDUCATION MOVEMENT**

As early as the 1930s, Jerome Frank, a U.S. federal appellate judge, former chair of the Securities and Exchange Commission, and a leader in the legal realism movement, argued that law schools should incorporate actual practice into legal education. Although a few law schools heeded his advice, the U.S. clinical legal education movement took root in the 1960s when the Ford Foundation created the Council on Legal Education for Professional Responsibility, Inc. (CLEPR).<sup>5</sup> Thus, the U.S. experience with CLE is unique because it received substantial funding which gave it firm footing.<sup>6</sup>

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<sup>5</sup> Robert L. Doyel, *The Clinical Lawyer School: Has Jerome Frank Prevailed*, 18 NEW ENG L. REV. 577, 577 (1982-1983) (During this time, legal education was also being reexamined amid concerns over lawyer competence.).

<sup>6</sup> See Frank S. Bloch, *The Global Clinical Legal Education Movement: Educating Lawyers for Social Justice*, 1, 3 (2010) [hereinafter Bloch, *Global Clinical Movement*].

The modern CLE movement<sup>7</sup> emerged primarily in western countries with the United Kingdom, Canada, Australia and the U.S. as the earliest adopters during the 1960s and 1970s, in response to societal, political and economic needs.<sup>8</sup> In each of these countries, the rise of CLE was associated, at some level, with dissatisfaction with lawyer training as well as a concern for those less fortunate. In the U.K., the CLE movement was tied to the emergence of voluntary legal advice centers and was part of legal education reform including “ethical inquiry”<sup>9</sup> and the “student-client experience.”<sup>10</sup> In contrast, CLE in Canada was linked to a community-based access to justice movement which encouraged law school curricula to include poverty law issues. In Australia, even in the face of tough opposition, law students spurred a student volunteerism movement which facilitated the development of CLE. In the U.S., examples of CLE are found as early as 1893 in the form of a legal aid dispensary<sup>11</sup> and later in 1921 when critics denounced legal education for its lack of an experiential component, witnessed in other professions such as medicine and engineering.<sup>12</sup> Notwithstanding early interests in CLE, the U.S. CLE movement, like

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<sup>7</sup> *Id.* at 5 (U.S. Clinical Legal Education was funded by The Council on Legal Education and Professional Responsibility (CLEPR) and Ford Foundation in the 1960s and 1970s.).

<sup>8</sup> Susan R. Jones and Jacqueline Lainez, *Enriching the Law School Curriculum: The Rise of Transactional Legal Clinics in U.S. Law Schools*, 43 WASH. U. J.L. & POL’Y 85, 85-86 (2014).

<sup>9</sup> Bloch, *Global Clinical Movement* at 128.

<sup>10</sup> *Id.* at 114.

<sup>11</sup> *Id.* at 5 (A Pennsylvania Legal Aid Dispensary was established in 1893).

<sup>12</sup> *Id.* at 5.

other western countries, was most influenced by social issues such as poverty and civil rights.<sup>13</sup>

While early litigation clinics represented clients with respect to criminal defense, welfare rights and public entitlements, domestic relations and landlord and tenant cases, today clinics represent immigrants and refugees, domestic violence and human trafficking survivors, and persons wrongfully convicted of crimes. In the case of criminal exoneration, technological advances in DNA evidence have enabled this new area of practice.<sup>14</sup> Technological advances continue to impact CLE – from law practice incubators to virtual law practice and the rise of new legal clinics in social impact investing, technology, and entrepreneurship law and policy.<sup>15</sup>

CLE began to develop in Central and Eastern Europe in the mid-nineties as former Communist countries transitioned into democratic systems of governance.<sup>16</sup> Eastern European countries have more quickly embraced CLE than most Western European countries.<sup>17</sup> European scholars give several reasons for this, including that the fall of communism led to high incentives to change the structure of classical classroom lectures;

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<sup>13</sup> Bloch, *Global Clinical Legal Education*, at 128.

<sup>14</sup> John M. Butler, *The Future of Forensic DNA Analysis. Philosophical Transactions of the Royal Society B: Biological Sciences*, 370 PHILOS. TRANS R SOC. LOND B BIOL SCI. 1, 1 (Jun. 22, 2015).

<sup>15</sup> See, e.g., Berkley and Brooklyn, *Australia Social Impact HUB Clinic*, UNSW SYDNEY, <http://www.law.unsw.edu.au/current-students/law-action/clinics/social-impact-hub-clinic> (last visited Jan. 22, 2018).

<sup>16</sup> Marguerite Angelari, *Raising the Bar for Legal Education in Western Europe*, (Nov. 18, 2013) available at <https://www.opensocietyfoundations.org/voices/raising-bar-legal-education-western-europe>, (last visited Jan. 22, 2018).

<sup>17</sup> Aksamovic & Genty, *An Examination of the Challenges, Success and Setbacks for Clinical Legal Education in Eastern Europe*, 20 INT'L J. CLINICAL LEGAL EDUC. 427, 429-30. (2014).

that the transition created a market demand for legal reforms; that the transformation from non-market to market economies led to increased need for free legal aid; and that a new generation of law students wanted change.<sup>18</sup> The development of CLE in Eastern European countries in 1990s was based on U.S. models (i.e., live-client, simulation, outside placement) and benefitted from some capacity-building efforts, but resulted in diverse CLE models in Eastern Europe because the design of clinical programs reflected the desire of the clinic founders who developed them.<sup>19</sup> Also, clinical design related to needs in a particular country (e.g., labor and refugee law) and clinic creators lacked systematic approaches or strategies to move toward a uniform concept of CLE.<sup>20</sup>

Initially, many Eastern European clinics failed due to loss of funding, insufficient numbers of teachers who could practice law and had knowledge of clinic pedagogy and methodology, and legislative restrictions.<sup>21</sup> And, while some clinics in Eastern Europe still struggle to find firm footing and support due to a lack of respect from traditional law professors, undeveloped clinical pedagogy, unclear clinical design, and lack of curricular flexibility,<sup>22</sup> many clinics in Eastern and Western Europe are thriving.

Today, legal clinics exist worldwide and their growth and development are tied not only to concerns about the relevance of legal education to the lives of real people, but also to

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 430.

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

<sup>21</sup> *Id.*

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

societal change. BLCs are no exception as they first emerged from concerns about “community economic development,” broadly defined as strategies for creating healthy communities<sup>23</sup> in a worldwide focus on microbusiness, and more recently global interest in the wealth gap.

## **PART II: THE GLOBAL EMERGENCE OF BUSINESS LAW CLINICS**

As with their litigation counterparts, some U.S.-based BLCs were created and supported with external economic funding. In the case of BLCs, this funding came from the U.S. Small Business Administration, state and local governments, and the Ewing Marion Kauffman Foundation.<sup>24</sup> BLCs grew in the U.S. between the late 1970s through the mid-1990s with more than 150 transactional clinics at 200 American Bar Association (ABA) approved law schools today.<sup>25</sup> This article analyzes the rapid growth of the BLC movement. In addition, it seeks to address the questions of why so many business clinics were created at American law schools and whether there are useful lessons from the U.S. experience that can inform the global clinical legal education movement and vice versa.

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<sup>23</sup> See generally, Susan R. Jones and Roger A. Clay Jr., *Building Healthy Communities: A Guide to Community Economic Development for Advocates, Lawyers and Policymakers*, (Feb. 6, 2010).

<sup>24</sup> Jones and Lainez, *Enriching the Law School Curriculum* at 92; Ewing Marion Kauffman Foundation, <http://www.kauffman.org/> (last visited Jan. 22, 2018).

<sup>25</sup> Jones and Lainez at 87.

U.S. BLCs, which represent new and growing businesses and nonprofit organizations that are unable to afford market rate legal services, were created and grew for many reasons.<sup>26</sup>

... [M]arket forces have necessitated changes in the way legal education is delivered, including the escalating importance of clinical legal education in teaching students to think and perform like lawyers. Recent downward shifts in the economy, academic reports extolling the benefits of experiential learning enlivening experiential remedies, funding for transactional clinics, and student demand for hand-on lawyering opportunities have all led to the expansion of transactional clinical curricula. Moreover, transactional clinics are important to teaching not only substantive law, lawyering skills, and values, but they also expose law students to entrepreneurs and social entrepreneurs, helping students to understand their specialized legal needs. This exposure is essential, given the emphasis on entrepreneurship and innovation in American society and the need to cultivate an entrepreneurial spirit in law students at a time when the legal market is shifting, due, in part to rapidly developing technologies.<sup>27</sup>

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<sup>26</sup> Susan R. Jones, *Promoting Social and Economic Justice Through Interdisciplinary Work in Transactional Law*, 14 WASH. U. J.L. & POL'Y 249, 250 n. 2 (2004), [http://openscholarship.wustl.edu/law\\_journal\\_law\\_policy/vol14/iss1/9](http://openscholarship.wustl.edu/law_journal_law_policy/vol14/iss1/9). (At least one of the first business law clinics was funded by the US Small Business Administration. Others were part of the community economic development movement driven historically by civil society groups as early as the 1800s).

<sup>27</sup> *Id.*

Entrepreneurship has always been the backbone of the American economy, but global technological and financial advances, such as crowd funding, supported by innovation and creativity, are disrupting traditional business forms.<sup>28</sup>

The rise of BLCs has continued, not only in the U.S. and Canada, but also in Europe and Australia. The emergence and popularity of these clinics has been in response to many factors, including the generational pull of Millennial law students and Millennial entrepreneurs, student demand for non-litigation lawyering experiences, the limitations of the litigation model to impact systemic poverty, the rise of entrepreneurship globally, the rise and fall and rise again of global economies, and the impact of community lawyering.<sup>29</sup> Although generically called “business clinics,” they vary widely in practice area, design and sometimes, mission. Some BLCs very deliberately stayed within the social justice mission of traditional law clinics, but some have chosen to stray from that mission. As BLCs continue to take shape around the globe, transactional clinicians are creating new space in the clinical landscape.

### **PART III: BLCS – THE GLOBAL EXPERIENCE**

BLCs have emerged slowly in the U.K, Canada, Australia, Croatia and Georgia, and this list may not be exhaustive.

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<sup>28</sup> Jeff Thomas, Praveen Kosuri, and Bernice Grant, *Democratizing Entrepreneurship: Online Documents, Tools, and Startup Know-How*, 26 J. AFFORDABLE HOUSING & CMTY. DEV. L., 193, 217-18 (Dec. 29, 2017).

<sup>29</sup> Jones and Lainez at 121.

*A. BLCs in the United Kingdom:*

Associate Professor Elaine Campbell of Northumbria Law School in the U.K., presenter at the first meeting of the network of European (existing and aspiring) BLCs (hereinafter the “European BLC Network”), observes that she has often been the only business law clinician in attendance at conferences and meetings on CLE. She writes, “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 have existed in the past. They have been hidden away, or, at the very least, backwards in coming forward. This makes it difficult to chart their existence.”

<sup>30</sup> The European BLC Network, sponsored by iLINC – Establishing a European Network of Law Incubators that bridge ICT Entrepreneurs and Start-ups with Law Students, a program of the Seventh Framework Programme of the European Union and funded by the European Commission – appears to be an effort to galvanize the BLC and business law pro bono legal services community. <sup>31</sup> Professor Campbell notes that the U.K. embraced clinical legal education in the 1970s, decades after the U.S., but today “a least 70% of law schools in the U.K. are now involved in pro bono and/or clinical activity.”<sup>32</sup>

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<sup>30</sup> Elaine Campbell, *A dangerous method? Defending the rise of business law clinics in the UK*, 49 THE LAW TEACHER 165, 168-69 (Feb. 23, 2015) available at <https://doi.org/1080/03069400.2015.1004254> [hereinafter Campbell, *A dangerous method?*].

<sup>31</sup> iLINC, <http://www.ilinc.com/> (last visited Jun. 29, 2018) (It is noteworthy that in the US, there are a number of pro bono legal services programs providing business law services); see, Jared Nicholson, *Offering Transactional Legal Aid to Low-income Entrepreneurs*, 6 INDIANA J OF L & SOC EQUALITY, 1 (2018) available at <https://www.repository.law.indiana.edu/ijlse/vol6/iss1/1>.

<sup>32</sup> Campbell, *A dangerous method?* at 2.

The BLC Professor Campbell runs at Northumbria University is a “student law office” and students work in “law firms” to assist businesses, charities and social enterprises of various types and without regard to income. Projects include trademark registration, drafting company registration documents and advising directors on fiduciary duties, and drafting website terms and conditions, and contract drafting. Law students also offer free workshops to the public and to entrepreneurial groups.<sup>33</sup>

The clinical programs that provide *legal advice* as opposed to *legal representation* to businesses are varied. As of 2011, the clinic at York Law School began offering advice to small businesses.<sup>34</sup> Similarly, in 2011, the City University of London created Start-Ed Commercial Law Clinic (Start-Ed Clinic), a free walk in clinic, run by law students supervised by “local professionals”.<sup>35</sup> The Start-Ed Clinic represents small businesses and technology start-ups with business structure and incorporation, contracts, intellectual property, and preparing companies for investment.<sup>36</sup> The University of Portsmouth, Intellectual Property Advice and Support Service (iPass) advises its students and alumni on company formation and ideation, intellectual property and invention commercialization.<sup>37</sup> At the Legal Advice Centre at Queen Mary University of London

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* It is unclear whether these local professionals are lawyers.

<sup>36</sup> *The City Law School University of London*, <https://www.city.ac.uk/law> (last visited June 29, 2018).

<sup>37</sup> University of Portsmouth, IPASS (Intellectual Property Advice and Support Services) Intellectual Property Office, <http://www.port.ac.uk/media/contacts-and-departments/pbs/law/fastforward-2012-winners-ipass-final-IP-CLINIC-FOR-STUDENT-AND-GRADUATE.pdf> (last visited July 15, 2018).

(Queen Mary) law students offer free advice to “income eligible” for profit companies and nonprofit social enterprises on a broad range of businesses, commercial and intellectual property issues.<sup>38</sup> In 2013 Queen Mary’s Centre for Commercial Law Studies created “qLegal”, a program offering legal and regulatory advice to information and communication technology early stage start-ups.<sup>39</sup> Southampton Law School has a pro bono initiative run by final year LLB students “in conjunction with specialist lawyers” designed to facilitate the students’ “development of key skills, including client interviewing, team-work and case management.”<sup>40</sup>

The University of South Wales in Pontypridd has a Legal and Financial Advice Clinic which advises small businesses and social enterprises. Business enterprises are not eligible for free legal advice through government programs, a goal of the clinic is to fill a gap in legal assistance for individuals who need help operating a business.<sup>41</sup>

It appears that The European Network of Law Incubators (iLINC), which helps businesses and is assisted by law students, has also been a champion of BLCs. The goal of iLINC is to build European capacity to provide legal advice to information, communications and technology start-ups and entrepreneurs. Its service delivery includes direct client representation, workshops and internet portals. iLINC’s partner

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<sup>38</sup> Legal Advice Centre, *Queen Mary Legal Advice Centre*, <http://www.lac.qmul.ac.uk/> (last visited Jan. 22, 2018).

<sup>39</sup> *qLegal: The small print for BIG IDEAS*, <http://www.law.qmul.ac.uk/research/funded/qlegal/> (last visited Oct.10, 2018).

<sup>40</sup> *Southampton Law School*, <https://www.southampton.ac.uk/law/index.page> (last visited Jan 29, 2018).

<sup>41</sup> *Legal Advice Clinic*, <https://www.southwales.ac.uk/about/faculties-and-schools/school-law-accounting-and-finance/legal-and-financial-advice/> (last visited Oct. 30 2018).

institutions include Queen Mary University of London, KuLeuVen, Universitat Hamburg and Universiteit Van Amsterdam where students are able to provide legal advice on a very broad range of legal issues under the supervision of qualified lawyers.<sup>42</sup>

*B. BLCs in Canada:*

The University at Windsor (Windsor Law) in Windsor, Canada has an International IP Law Clinic that works in association with the University of Detroit Mercy.<sup>43</sup> This clinic represents clients from the EPICenter, which houses “programs and services ... to help students and recent graduates start and grow their businesses.”<sup>44</sup> The legal representation includes patent and trademark searches and legal opinions. This cross border BLC is believed to be the first of its kind in the U.S. or Canada.<sup>45</sup>

Western University Business Law Clinic (WBLC) in London, Ontario, Canada aims to “alleviate the burden of legal complexities put on aspiring entrepreneurs by providing

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<sup>42</sup> Legal Advice Centre; *see, also, The Hans-Bredow-Institut*, <https://bib.hans-bredow-institut.de/en/forschung/ilinc-establishing-european-network-law-incubators-0> (last visited Jan. 22, 2018) (“The Hans-Bredow-Institut is collaborating with Queen Mary and Westfield College at the University of London, the University of Amsterdam and the Catholic University of Leuven to conduct the project, iLinc: Establishing a European Network of Law Incubators that Bridge ICT Entrepreneurs and Start-ups with Law Students,” as supported by the EU Commission.”).

<sup>43</sup> In Canada there is evidence of BLC creation in 2010. Email from Myra Tawfik, Professor of Law, University at Windsor explaining that the Center for Enterprise and Law, created in 2010 is not defunct but in 2013 it became “the EPICentre for entrepreneurial education and practice”. The Law, Technology and Entrepreneurship Clinic (LTEC) was “affiliated with the EPICentre” but in 2015 LTEC became the International IP Law Clinic.

<sup>44</sup> University of Windsor, *EPICenter*, <http://www.epicentrewindsor.ca> (last visited June 13, 2018). (The EpiCenter has three “Epic” components: 1) a membership program where students use the Business Model Canvas to test their ideas before joining other EPICentre programs 2) The RBC EPIC Founders Program teaches business founders about the Lean Startup model and the Business Model Canvas and 3) a membership incubation program for students, alumni and industry associates.).

<sup>45</sup> Law students get hands-on experience through joint international intellectual property law clinic, University of Windsor, <http://www.uwindsor.ca/law/2018-02-20/law-students-get-hands-experience-through-joint-international-intellectual-property-law> (last visited on Oct. 10, 2018).

small startup businesses with pro bono legal counsel...Traditional legal-aid-type clinics are becoming common in Canadian law schools, and provide a superb learning opportunity for students interested in areas such as family law, criminal law and litigation. In contrast, the WBLC's focus on assisting small-business clients in the wide realm of corporate law provides students with a particularly unique experience."<sup>46</sup>

Clients must meet certain eligibility criteria in order to be represented by this clinic. They must be located in Southwestern Ontario or the surrounding area, unable to afford legal counsel, cannot have received prior legal help from a lawyer, have less than \$100,000 revenue, must have been in business for at least one year, must be approved by the WBLC Faculty Review Counsel, provide meaningful work to clinic students, and be committed to and enthusiastic about their business.<sup>47</sup> WBLC is student run and the students have faculty supervisors as well as outside mentor lawyers. Thirty-six law students work in teams of three. "Student volunteers are hired in their first year for a three-year commitment, so their experience within the clinic can evolve. Students in their first year perform mostly research; second years' get to fulfill a leadership role as file manager; and third years' use their previous experience to advise their colleagues in a supervisory and consultative capacity."<sup>48</sup> The legal matters have included new business incorporations, drafting shareholder agreements or employment contracts and working with

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

<sup>47</sup> Western Business Law Clinic: Becoming a Client, [https://law.uwo.ca/legal\\_clinics/western\\_business\\_law\\_clinic/becoming\\_a\\_client.html](https://law.uwo.ca/legal_clinics/western_business_law_clinic/becoming_a_client.html) (last visited Oct. 10, 2018).

<sup>48</sup> *Id.*

trademarks. A tutoring company and a community tennis club are examples of clients at this clinic.

The Law & Business Clinic at Ryerson University in Ontario, Canada (Ryerson Law & Business Clinic) was founded by Dr. Pnina Alon-Shenker, an associate professor in the Department of Law and Business.<sup>49</sup> The clinic uses an outside counsel model,<sup>50</sup> and students are supervised “by a team of qualified lawyers from Bay St. law firms who work in tandem with Ryerson Law & Business students.”<sup>51</sup> Selected “clients ... are some of Canada’s future business leaders.”<sup>52</sup> Legal services include business organizations, partnership and joint venture agreements, non-disclosure, non-competition and employment agreements, intellectual property, contracts, tax and regulatory compliance.<sup>53</sup>

Established in 2009, the Queens Business Law Clinic (QBLC) in Kingston, Ontario, Canada represents start-ups, entrepreneurs, businesses and non-for-profit organizations. Students are supervised by a program director and “two part-time lawyers who serve as review counsel.”<sup>54</sup> The students receive academic credit for their client work reviewing

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<sup>49</sup> Law and Business Clinic: About Us, <https://www.ryerson.ca/tedrogersschool/lawbusinessclinic/about-us/> [hereinafter Ryerson Law and Business Clinic] (last visited Oct. 24, 2018).

<sup>50</sup> See Alicia Plerhoples and Amanda Spratley, *Engaging Outside Counsel in Transactional Law Clinics*, 20 *Clinical L. Rev.* 379 (Mar. 24, 2014).

<sup>51</sup> Ryerson Law and Business Clinic.

<sup>52</sup> Lawyers, <https://www.ryerson.ca/tedrogersschool/lawbusinessclinic/lawyers/> (last visited Oct. 30 2018).

<sup>53</sup> Law and Business Clinic: About Us, <https://www.ryerson.ca/tedrogersschool/lawbusinessclinic/about-us/> (last visited Oct. 24, 2018).

<sup>54</sup> Queen’s University Law Clinics: Business Law Clinic, <https://queenslawclinics.ca/business-law> [hereinafter Queen’s University Business Law Clinic] (last visited Oct. 24, 2018).

documents such as leases, privacy policies, trademark registrations and contracts.<sup>55</sup> Students also speak to local business groups about legal business issues.<sup>56</sup> Case work is supported by a two-semester credit course.<sup>57</sup>

York University's Osgoode Hall Law School in Toronto boasts two BLCs, the IP Osgoode Innovation Clinic (OIC) and the Osgoode Venture Capital Clinical Project (OVC), an outside counsel clinic model. OIC, founded and directed by Professor Giuseppina D'Agostino in 2010, "is a needs-based, innovation-to-market legal clinic" operated in collaboration with Innovation York<sup>58</sup> and Norton Rose Fulbright Canada LLP. Osgoode Hall Law School student volunteers, known as clinical innovation fellows are supervised by lawyers from the aforementioned firm and exposed to business law issues and "actors in the innovation ecosystem."<sup>59</sup> The clinic offers "one-to-one legal information services to inventors, entrepreneurs, and start-up companies to assist with the innovation and commercialization processes."<sup>60</sup> In the OVC, students work with lawyers from Wildeboer Dellelce LLP as caseworkers, advising early stage business ventures.<sup>61</sup>

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<sup>55</sup> Queen's University Law Clinics: Business Law Clinic: Services, <https://queenslawclinics.ca/business-law/services> (last visited Oct. 30, 2018).

<sup>56</sup> Business Law Clinic, <https://law.queensu.ca/programs/jd/student-experience/clinics/business-law-clinic> (last visited Oct. 30, 2018)

<sup>57</sup> Queen's University Business Law Clinic.

<sup>58</sup> York University, <http://www.yorku.ca/index.html> (last visited Jun. 29, 2018).

<sup>59</sup> Intellectual Property Law & Technology Program, *IP Osgoode Innovation Clinic*, <http://www.iposgoode.ca/ccr-ip-osgoode-innovation-clinic/> (last visited Jun. 29, 2018).

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

<sup>61</sup> The Hennick Centre for Business and Law, *Osgoode Venture Capital Clinic*, <https://hennickcentre.ca/fellowships/osgoode-venture-capital-clinic> (last visited Jun. 29, 2018).

In Montreal, Canada, McGill Law School has a longstanding Legal Information Clinic, “a student run, bilingual and free legal information service” committed to “meeting the needs of marginalized groups.”<sup>62</sup> Started by law students in 1973<sup>63</sup> it offers advice-only services that have expanded to business matters, including nonprofit incorporations.<sup>64</sup>

*C. BLCs in Australia:*

Curtin University in Perth, Western Australia provides advice to small businesses as does the University of Canberra Law School in Bruce, Canberra, Australian Capital Territory “in conjunction with the Legal Aid Act.”<sup>65</sup> Students from the University’s School of Law & Justice assist qualified legal practitioners from the Canberra profession in providing initial advice during the consultation.<sup>66</sup> In another example from Australia, the Start-up Law Clinic is a collaboration between the Bond University Faculty of Law, Bond’s Faculty of Business Transformer Program and Flow Legal, a legal consulting firm.<sup>67</sup> Under lawyer supervision, students in the Start-up Law Clinic volunteer for two hours a week to provide legal information (but not advice) to entrepreneurs in the Transformer

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<sup>62</sup> Legal Information Clinic: About Us, <http://licm.mcgill.ca/legal-information-clinic/> (last visited Oct. 10, 2018).

<sup>63</sup> Legal Information Clinic: About Us-History, <http://licm.mcgill.ca/legal-clinic-history/> (last visited Oct. 10, 2018).

<sup>64</sup> Legal Information Clinic: Our Services-Free Legal Information, <http://licm.mcgill.ca/legal-clinic-free-legal-information/> (last visited Oct. 10, 2018).

<sup>65</sup> Legal Advice Clinic for Small Businesses, <https://www.canberra.edu.au/about-uc/faculties/busgovlaw/about-us/school-of-law/legal-advice-clinic-for-small-business> (last visited Oct. 10, 2018).

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

<sup>67</sup> Start-up Law Clinic, <https://bond.edu.au/intl/current-students/opportunities/bond-law-clinic/startup-law-clinic> (last visited Oct. 10, 2018).

Program.<sup>68</sup> The legal issues range from business structure to intellectual property and financing.<sup>69</sup>

There are also experiential learning opportunities – a research and consulting model - aligned with BLCs. The University of New South Wales in Sydney, houses one such model, the Social Impact Hub, an experiential learning program and consulting service that works with “industry, social enterprises, not-for-profits and foundations to develop and conduct a variety of applied projects in different areas of social impact.”<sup>70</sup> Students working in the program do not enter into lawyer-client relationships but instead offer research assistance to projects in social entrepreneurship, social innovation and social finance, philanthropy, impact investing, business and human rights, corporate social responsibility, law and social movements, collective impact, and pro bono and volunteerism.<sup>71</sup>

#### *D. BLCs in Croatia and Georgia:*

A BLC in Croatia at the Josip Juraj Strossmayer University in Osijek is a collaboration between law and economics faculty to create a clinic that helps start-up entrepreneurs.<sup>72</sup>

Law students work in teams to provide legal advice to entrepreneurs and start-up

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<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> ABOUT, SOCIAL IMPACT HUB, <https://www.socialimpacthub.org/about/> (last visited Oct. 10, 2018).

<sup>71</sup> LAWSTUDENTS, SOCIAL IMPACT HUB, <http://www.socialimpacthub.org/law-students/> (last visited Oct. 10, 2018).

<sup>72</sup> ABOUT US, LEGAL-ECONOMIC CLINIC, <https://www.pravos.unios.hr/katedra-trgovackog-prava/about-us> (last visited Oct. 10, 2018).

companies and help them with formation documents while economics students provide industry analyses.<sup>73</sup>

Free University in Tbilisi, Georgia opened its National Center for Commercial Law Legal Clinic in 2012.<sup>74</sup> That clinic provides legal assistance on commercial matters to entities and individuals. Upper level students provide legal assistance under the supervision of lecturers of Free University or legal practitioners.<sup>75</sup>

In summary, BLCs representing, advising and informing real clients and “BLC-like” experiential learning opportunities are growing worldwide. While the historic context for the development of these clinics may differ, they have a common goal to teach students about business law through an experiential lens.

As noted earlier in this article, the rise of BLCs mirrors global interest in entrepreneurship generally. Muhammad Yunus, Nobel Peace Prize Laureate, founder of the Grameen Bank in Bangladesh, and “one of the greatest entrepreneurs of our time”<sup>76</sup> according to Fortune Magazine, observes, “Every time I see a problem, my mind works in the direction of creating a business to solve it.”<sup>77</sup> Dr. Yunus’ observations about the importance of

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<sup>73</sup> *Id.*

<sup>74</sup> *Mission*, NATIONAL CENTER FOR COMMERCIAL LAW, <http://nccl.ge/en/16> (last visited Jan. 22, 2018).

<sup>75</sup> *Id.*

<sup>76</sup> John A. Byrne. “The 12 Greatest Entrepreneurs of Our Time.” Fortune Magazine. Apr. 9 2012.

<http://archive.fortune.com/galleries/2012/news/companies/1203/gallery.greatest-entrepreneurs.fortune/13.html> (last visited Oct. 24, 2018).

<sup>77</sup> Logan Werlinger, *Muhammad Yunus Awarded George Washington University President’s Medal*, GW TODAY, (Oct. 31, 2016) available at <https://gwtoday.gwu.edu/muhammad-yunus-awarded-george-washington-university-president%E2%80%99s-medal> (last visited Jan. 22, 2018).

entrepreneurship today are instructive especially during these tumultuous times.<sup>78</sup> In 2016, before an audience of university students, he advocated for a “three zeros platform” for systemic change and transformation from a non-greed based civilization to a human-value based civilization: zero poverty; zero unemployment and zero net carbon emissions.<sup>79</sup> This platform is based on the premise that the economic structures that exist today are running in a wrong direction because they push all the wealth to the top.<sup>80</sup> Wealth concentration is increasing daily leaving insufficient resources at the middle and the bottom.<sup>81</sup> Indeed, one percent of the world’s population has more than 99 percent of the world’s wealth and today only 62 people on the planet own more wealth than the bottom half of the entire population.<sup>82</sup>

Demonstrating the speed of wealth concentration with the example noting that in 2010, of 388 people owned more than the bottom 50 percent of the world’s population,<sup>83</sup> Yunus argues that this terrifying pace of wealth concentration is unsustainable. Dr. Yunus goes on to add that the global wealth gap creates unhappiness in the bottom and the middle

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<sup>78</sup> See, e.g., *About*, HALCYON HOUSE, <http://halcyonhouse.org/> (last visited Jan. 22, 2018); See, e.g., *Echoing Green: Funding Social Entrepreneurship & Innovation*, <http://www.echoinggreen.org/> (last visited Jan. 22, 2018) (A few social enterprise incubators such as Halcyon House and Echoing Green support social enterprises.).

<sup>79</sup> Logan Werlinger, *Muhammad Yunus Awarded George Washington University President’s Medal*, GW TODAY, (Oct. 31, 2016) available at <https://gwtoday.gwu.edu/muhammad-yunus-awarded-george-washington-university-president%E2%80%99s-medal> (last visited Jan. 22, 2018).

<sup>80</sup> *Id.*

<sup>81</sup> Erik Simanis and Duncan Duke, *Profits at the Bottom of the Pyramid* (Oct. 2014), <https://hbr.org/2014/10/profits-at-the-bottom-of-the-pyramid>.

<sup>82</sup> *Id.* at 11; see also Nick Bryer, *Richest 62 people as wealthy as half of world's population, says Oxfam*, THE GUARDIAN, <https://www.theguardian.com/business/2016/jan/18/richest-62-billionaires-wealthy-half-world-population-combined> (last visited Jan. 22, 2018).

<sup>83</sup> Werlinger, *infra* note 115.

of societies because they cannot share in the wealth Entrepreneurship though avenues such as social business can change wealth accumulation as entrepreneurs are wealth accumulators and not simply contributors to the one percent.<sup>84</sup> In the end, Dr. Yunus contends there are “three powers” that will enable a three zeros of poverty, unemployment and emissions. The first is social businesses defined as non-loss, non-dividend companies designed to address social problems.<sup>85</sup> The second is young people who see the new world from new perspectives abandoning the structures that created many of the societal problems, giving way to new structures and possibilities.<sup>86</sup> The third is technology, but not used as it is now, by “money makers or war makers,” but with a new social direction.<sup>87</sup> He asserts that these are the foundations for transformation from a non-greed based civilization to a human-value based civilization.<sup>88</sup> Building on the foundation provided by Professor Yunus’ work, it is noteworthy that some BLCs represent worker-owned cooperatives,<sup>89</sup> while others represent clients advocating for solidarity economies promoting just, equitable and sustainable economic structures.<sup>90</sup>

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<sup>84</sup> *Muhammad Yunus @ GW 10.26.16*, YOUTUBE(Oct. 27, 2016) (Dr. Yunus invited the students to consider whether they are thwarting their life’s purpose by working for the ninety-nine percent to make them wealthier.).

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

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

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *See generally*, Carmen Huertas-Noble, Promoting Worker-Owned Cooperatives as a CED Empowerment Strategy: A Case Study of Colors and Lawyering in Support of Participatory Decision-Making and Meaningful Social Change, 17 *Clinical L. Rev.* 225 (2010).

<sup>90</sup> *U.S. Solidarity Economy Network*, <https://ussen.org/> (last visited Oct. 30, 2018).

#### PART IV: THE UNIQUE PROGRAMMATIC ASPECTS OF BLCS

##### A. *Redefining “Practice-Ready”: Social Justice*

In Western Europe, hailed as “the last holdout” in CLE by Professor Rick Wilson,<sup>91</sup> the past decade has seen a boon in legal clinics, evidenced by the European Network for Clinical Legal Education (“ENCLE”), which launched in 2012.<sup>92</sup> ENCLE has been very instrumental in supporting clinical legal educators and states as its main objectives to: “pursue and promote social justice and diversity as core values of the legal profession, improve the quality of legal education, foster awareness of fundamental rights and the mechanisms to enforce them, and promote an understanding of how domestic law and European law interact in practice.”<sup>93</sup>

It is not surprising that ENCLE includes the promotion of social justice as one of its primary objectives. As European schools embraced CLE, a social justice focus addressed the legal needs of those at the margins of society.<sup>94</sup> And, as legal clinics around the world looked to long established clinics in the U.S. as guides for design, the traditional social justice emphasis was evident.

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<sup>91</sup> Rick Wilson, *Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education*, 10 GERMAN L.J. 823, 831 (2009).

<sup>92</sup> *What is Encle?*, European Network for Clinical Legal Education (ENCLE), <http://encle.org/about-encle/what-is-encle>, (last visited Jan. 22, 2018) (ENCLE is a network of persons and institutions who are committed to the growth and quality of clinical legal education programs in Europe).

<sup>93</sup> *Id.*

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

Recently, however, the social justice paradigm has been challenged by some business law clinicians in the U.S., who quite directly question whether their clinics should be obliged to carry out a social justice mission.<sup>95</sup> For others in the U.S., the mere suggestion of a legal clinic without a social justice mission is anathema. “The founders of the modern era of clinical legal education did not envision clinical education simply as a way to enrich legal education with practical experience and skills training... Clinics need not, and should not, abandon their social justice roots, even as they develop new and innovative approaches to clinical education.”<sup>96</sup> Yet, some reject the notion that CLE requires a social justice focus and, instead, argue that students are better served by a broader pedagogical view:

Clinical pedagogy is the multi-faceted jewel in the crown of clinical legal education. Preparation, performance, and reflection are key elements to any clinical experience regardless of subject-matter. The signature feature of clinical pedagogy is the students’ placement in the primary role of representative, where faculty members use those experiences as focal points for further inquiry. This pedagogy can be applied in any clinical experience and unlocks discussions about varied political, economic, and social issues. Clinical faculty should bring that experience to more

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<sup>95</sup> See Lynnise E. Pantin, *The Economic Justice Imperative for Transactional Law Clinics*, 62 VILL. L. REV. 175, 175-211 (2017) (“...there is substantial debate about whether social justice should be a primary or secondary goal or even a goal at all in the design of such a clinic, further raising questions about the justice-oriented lawyering happening in a business law practice”); Praveen Kosuri, *Losing My Religion: The Place of Social Justice in Clinical Legal Education* at 331.

<sup>96</sup> Stephen Wizner, *Is Social Justice Still Relevant?*, 32 B.C.J.L. & SOC. JUST. 345, 347 (Apr. 2012), <http://lawdigitalcommons.bc.edu/jlsj/vol32/iss2/7>.

students regardless of whether it explicitly includes traditional notions of social justice.<sup>97</sup>

Not surprisingly, opinions about the place of social justice in BLCs are not restricted to geographic boundaries. In the U.K., some scholars have argued that transactional law clinics should focus their resources on helping those on the margins of society find access to justice.<sup>98</sup> Others in the U.K., such as Professor Campbell, see a greater educational value in providing opportunities for students to learn practice and ethical lessons through transactions that generally do not occur when representing the poor.<sup>99</sup> While Campbell clearly sees the benefits of providing access to justice for the most disadvantaged in society, especially in the face of less government-funded support, she believes “that there are lessons that transactional law clinics can offer that clinics for underrepresented individuals do not.”<sup>100</sup> There are a number of practice and ethical issues that arise in transactional law clinics that do not in clinics for the poor.<sup>101</sup> Even without a social justice mission, Campbell points out that her clinic’s representation of medium to high income businesses can still contribute to a rise in economic prosperity, which she says, is its own “social good.”<sup>102</sup>

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<sup>97</sup> Kosuri at 339.

<sup>98</sup> Elaine Campbell, *Recognizing the Social and Economic Value of Transactional Law Clinics: A View from the United Kingdom* at 581.

<sup>99</sup> *Id.* at 591.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

Much of the discussion around the place of social justice in BLCs seems to create an all or nothing paradigm. But Professor Lynnise Pantin points out that BLCs do not have to choose between having a social justice mission and producing practice-ready students. Pantin posits that “students can learn corporate skills in preparation for practice while accomplishing the social justice goals aligned with the missions of clinical education.”<sup>103</sup> Pantin acknowledges the need for practice-ready graduates, but labels the prioritization of practice-readiness over social justice as “misguided at best” and failing “our students at worst.”<sup>104</sup>

Pantin argues that “practice-ready” in the BLC context should be revised.<sup>105</sup> Instead of an incidental social good that may arise in non-indigent transactional clinical practice, Pantin calls for a clear methodology for incorporating economic and social justice into the transactional clinical space.<sup>106</sup> Given the persistent social and economic injustices in the world, Pantin believes that when BLC students learn contract drafting techniques, they should also have an understanding of economic justice.<sup>107</sup> Practice-readiness, she concludes, should always include social justice for two reasons: “attorneys should do pro bono work in addition to their paid corporate work, and transactional attorneys are necessary to complete impactful transactional work after graduation from law school.”<sup>108</sup>

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<sup>103</sup> Pantin at 175-211, 179.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 181.

<sup>106</sup> *Id.* at 180.

<sup>107</sup> *Id.* at 181.

<sup>108</sup> *Id.*

Professor Alina Ball has also critiqued and criticized the practice-ready dominant narrative arguing for the integration of critical legal theory into BLCs. According to Professor Ball, critical legal theory and clinical legal theory are aligned in the view that the “law is made, not found”<sup>109</sup> and that it is “based on human experience, policy, and ethics rather than formal logic. Legal principles are not inherent in some universal, timeless logical system; they are social constructs, designed by people in specific historical and social contexts for specific purposes to achieve specific ends. Law and legal reasoning are a part of the way we create our form of life.”<sup>110</sup>

Properly designed BLCs are fascinating laboratories for examining the historical and social context of business law as evidenced by new business forms ranging from L3Cs to benefit corporations, capturing new “social contexts for specific purposes to achieve specific ends”<sup>111</sup> in the form of hybrid corporate entities. U.S. entrepreneurship most notably through the lens of the Horatio Alger, “rags-to-riches” story, challenged as myth, and the notion that everyone can pull themselves up by their own bootstraps continues into today’s culture of disruption, innovation and entrepreneurship.<sup>112</sup> Steve Jobs, founder of Apple Computers, dropped out of college to become a founder of that renown

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<sup>109</sup> Alina S. Ball, *Disruptive Pedagogy: Incorporating Critical Theory in Business Law Clinics*, 22 CLIN. L. REV. 1, 28 (2015) (citing, n. 156) (citing Joseph W. Singer, *Legal Realism Now*, 76 CAL.L. REV. 465, 474 (1988)).

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> Bernard Sarachek, *American Entrepreneurs and the Horatio Alger Myth*, 38 J. OF ECON. HISTORY 439, 439, <http://www.jstor.org/stable/2119834> (last visited Jan. 21, 2018).

start-up,<sup>113</sup> signaling to others the power of hard work and entrepreneurship. While BLCs work with a range of clients, most state bar rules authorizing law students' practice with clients during enrollment in legal clinics, require that students work with low income clients or individuals or groups unable to afford market rate legal services. Given the high cost of legal services, there is a significant range of eligible clients.<sup>114</sup>

In the U.S., Community Economic Development (CED) Clinics practicing business law have clear social and economic justice missions but newly emerging BLCs, lacking a clear CED and perhaps a social entrepreneurship focus, do not necessarily incorporate social and economic justice into their curricula. The debate about whether BLCs should have a social justice focus will likely continue for years. But, regardless of whether BLCs cling to traditional social justice roots or instead choose to represent non-indigent clients in matters that will not directly impact marginalized communities, all clinical programs should prepare students to practice law in the 21<sup>st</sup> Century and beyond. That requires expanding the meaning of "practice-ready" to a readiness to represent people from a variety of diverse backgrounds. It means exposing students to lessons of diversity and cultural consciousness so that they are prepared to represent clients who are not white, wealthy, and in positions of power.

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<sup>113</sup> Brandon Griggs, Steve Jobs: From college dropout to tech visionary, CNN, <http://www.cnn.com/2011/TECH/innovation/08/25/steve.jobs.profile/index.html>, Aug. 25, 2017

<sup>114</sup> Legal Services Corporation, *America's Partner For Equal Justice*, (2008) available at [https://www.lsc.gov/sites/default/files/LSC/pdfs/documenting\\_the\\_justice\\_gap\\_in\\_america\\_2009.pdf](https://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf) (last visited Jan. 21, 2018).

*B. Redefining “Practice-Ready”: Cultural Consciousness and Power*

When the American Bar Association (“ABA”) increased its skills requirement for law schools in 2015, law clinics were well positioned to fill the skills gap. The development and utilization of legal skills in a live-client environment is the hallmark of clinical pedagogy.<sup>115</sup> Clinics have been preparing law students to be practice ready for decades. But, what does practice-ready mean in the 21<sup>st</sup> Century, in a century that will see a “majority-minority”<sup>116</sup> for the first time in U.S. history? Practice-ready must mean more than skills training and practical experience. Even for those who choose not to incorporate social or economic justice ideals into their clinical program, practice ready can, and should, mean preparing law students to interact with other lawyers, business people, and clients from diverse backgrounds.

It is easy to assume that social justice clinics always offer such experiences to students, but such presumptions should be challenged. Referring to clinics that serve the poor and legally disenfranchised, Professor Spencer Rand questioned, “What do students learn from a Social Security Insurance case if they don’t learn to consider the values and biases built into a welfare system that has been created by people with money to discriminate

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<sup>115</sup>*Managing Director’s Guidance Memo Standards 303(a)(3), 303(b), and 304* (Mar., 2015), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/governancedocuments/2015\\_standards\\_303\\_304\\_experiential\\_course\\_requirement\\_authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_standards_303_304_experiential_course_requirement_authcheckdam.pdf) (last visited Mar. 4, 2018) (note expanded definition of clinics, including non live-client and externships).

<sup>116</sup> Sarah Carr, *Tomorrow’s Test: Americas Schools are Majority-Minority. Now What?*, [http://www.slate.com/articles/life/tomorrows\\_test/2016/06/american\\_is\\_becoming\\_a\\_majority\\_minority\\_nation\\_it\\_s\\_already\\_happened\\_in.html](http://www.slate.com/articles/life/tomorrows_test/2016/06/american_is_becoming_a_majority_minority_nation_it_s_already_happened_in.html) (last visited Jan. 21, 2018).

between categories of people that have been deemed deserving of help? What do students learn from a landlord/tenant case if they don't recognize it as an often unsuccessful alliance by those without property to negotiate laws that were created by and are designed to benefit the propertied?"<sup>117</sup> Or as noted in the business context, what do students learn about contract drafting if they don't understand economic injustices and power imbalances that too often accompany such contracts?<sup>118</sup>

In a profession where the majority of practicing lawyers are still white and male, and where law schools still struggle to matriculate culturally diverse students in significant numbers, the likelihood that the profession will be unprepared for an increasingly culturally diverse market is high. Studies show that, "Interest in entrepreneurship among people of color is quite strong, but access to the resources to do it successfully is often a challenge."<sup>119</sup> From a client perspective, a diverse client base expects lawyers who are culturally proficient.<sup>120</sup>

Cross-cultural competency is a term familiar to U.S. clinicians through The Five Habits scholarship of Professors Susan Bryant and Jean Koh Peters and in Bryant's seminal

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<sup>117</sup> Spencer Rand, *Teaching Law Students to Practice Social Justice: An Interdisciplinary Search for Help through Social Work's Empowerment Approach*, 13 CLINICAL L. REV. 459, 461 (2006).

<sup>118</sup> See Pantin, *supra* note 28.

<sup>119</sup> Center for Global Policy Solutions, *Entrepreneurship Report*, available at <http://globalpolicysolutions.org/press-release-entrepreneurship-report/> (last visited Jan. 22, 2018).

<sup>120</sup> Blanca Banuelos, *Embracing Diversity and Being Culturally Competent is No Longer Optional*, (March 22-24, 2012) available at [https://www.americanbar.org/content/dam/aba/events/labor\\_law/2012/03/ethics\\_professional\\_responsibility\\_committee\\_midwinter\\_meeting/mw2012\\_cultural\\_competency.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/events/labor_law/2012/03/ethics_professional_responsibility_committee_midwinter_meeting/mw2012_cultural_competency.authcheckdam.pdf) (last visited Jan. 22, 2018).

article on Building Cross-Cultural Competence in Lawyers.<sup>121</sup> Bryant recognized the need for clinic students to analyze power imbalances in the lawyer-client relationship and how differences in race, national origin, gender, socio-economic status, and sexual identity shape that relationship.<sup>122</sup> How can student attorneys help marginalized, low income and even middle income clients who are people of color if they are unaware of inclusive business practices<sup>123</sup> and programs designed to address systemic racial segregation? Bryant's work has had an enduring impact on CLE, and now, more than ever, cultural consciousness<sup>124</sup> should be more fully integrated into clinical teaching regardless of whether the clinic adopts a social justice focus. The term "cultural consciousness" is used here instead of "cultural competence" in response to the evolving recognition that educating students to interact with diverse communities requires more than competence (knowledge, skills, and attitudes)<sup>125</sup> and must involve a "critical consciousness," a term borrowed from medical education literature and refers to "a reflective awareness of the differences in power and privilege and the inequities that are imbedded in social relationships."<sup>126</sup> Even, or maybe especially, for those BLCs whose clientele reflects the corporate clients that its students will someday represent in private

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<sup>121</sup> Susan Bryant, *The Five Habits: Building Cross-Cultural Competency in Lawyers*, 8 CLINICAL L. REV. 33, 33-34 (2001).

<sup>122</sup> *Id.*

<sup>123</sup> Insight, *About the Insight Center*, <https://insightccd.org/about-the-insight-center/> (last visited Jan. 22, 2018).

<sup>124</sup> See Arno K. Kumagai, MD, and Monica L. Lyson, MD, *Beyond Cultural Competence: Critical Consciousness, Social Justice, and Multicultural Education*, 84 ACAD. MED. 782, 782 (Jun., 2009).

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 783.

firms, providing an understanding of cultural differences and power dynamics in transactional practice is critical to graduating practice ready lawyers. To illustrate, this is especially true as clinical programs respond to the educational motivations of Millennials, who are service-oriented,<sup>127</sup> but for whom the traditional clinic public service mission may seem outdated.<sup>128</sup> Clinical professors in the U.S. Canada, Europe, Australia, and around the globe have a unique opportunity to help students recognize such imbalances and how they as clinic students, and later as attorneys, can help to transform the relationship between the law and power.

*C. Millennials*

Given the connection between social and technology driven entrepreneurship and Millennials, it is useful to consider how this generation in particular may impact business law practice now and in the future. Assessments of Millennial generation law students, “born between 1981 and 1999, ranging in age from 14 to 31,<sup>129</sup> suggest that this unique generation will require law faculty to rethink how it teaches. Millennials also referred to as Generation Y, have been described as the greatest generation of optimistic entrepreneurs and a “hidden ‘powerhouse’ of potential” that is “leaving a lasting impression on the world and presenting unparalleled opportunity.”<sup>130</sup> Government

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<sup>127</sup> Emily A. Benfer and Colleen F. Shanahan, *Educating the Invincible: Strategies for Teaching the Millennial Generation in Law School*, 20 CLINICAL L. REV. 1, 7 [hereinafter *Educating the Invincible*] (Nov. 8, 2013).

<sup>128</sup> See Karla Mari McKanders, *Clinical Legal Education at Generational Crossroads: Shades of Gray*, 17 U. TENN CLINICAL L. REV. 223, 223 (Oct. 27, 2010).

<sup>129</sup> Benfer, *supra* note 54, at 7.

<sup>130</sup> *Id.* at 1, 3-4.

regulations greatly impact business and the global consulting firm, Deloitte, reports that Millennials could not only “reenergize government” but “help to transform it into a high-performing twenty-first century organization with model workforce practices.”<sup>131</sup> As explained below, collaboration and teamwork are essential lawyering skills and the Millennials are pegged as “confident, team oriented, conventional, achieving and ambitious.”<sup>132</sup> Of particular interest to BLC clinicians concerned with social justice, Millennials want to better society and are “service and cause oriented.”<sup>133</sup>

Bringing consumer perspectives to their education, Millennials are goal-oriented; enjoy a facilitative, non-hierarchical, non-teacher centric classroom and their learning styles are focused on multimedia, teaching that is entertaining and exciting, using simulations or live clients.<sup>134</sup>

The learning outcomes set forth in the Appendix, ranging from interviewing and counseling to problem solving and self-reflection, are aligned with the Millennials’ need for structure and transparency, for example, understanding why an assignment is important. On the other hand, a reported challenge of working with Millennial law students is their tendency toward fast pace action and multi-tasking resulting in their frustration with reflection and critical thinking, essential lawyering skills.<sup>135</sup>

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<sup>131</sup> Educating the Invincible at 3.

<sup>132</sup> *Id.* at 8.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* at 10-11.

<sup>135</sup> Emily A. Benfer and Colleen F. Shanahan, *Educating the Invincible: Strategies for Teaching the Millennial Generation in Law School*, 20 CLINICAL L. REV. 1, 26 (Nov. 8, 2013).

*D. Collaboration and Beyond*

To fully prepare law students to engage effectively in global transactional markets, law schools world-wide would do well to focus more on collaborative learning.<sup>136</sup> The benefits of learning and working in teams have been evident for many years. In 1992, the ABA's MacCrate Report "found that "cooperation among co-workers" was an essential element of efficient law office management.<sup>137</sup> The MacCrate Report concluded that "effective collaboration with others" was a critical skill, "regardless of whether a lawyer is a solo practitioner, a partner or associate in a firm, or a lawyer in public service practice."<sup>138</sup> Yet, twenty-five years later, most law schools still do not give collaboration high priority as a practice skill outside of clinics, legal writing, and skills courses.

That is not to dismiss the significant teamwork many law professors incorporate into their podium or seminar classes. Many professors regularly utilize small groups or pairings in first year classes to introduce students to working and problem-solving together. These and other active learning strategies can be very effective in the learning

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<sup>136</sup> *TU Law featured as a top experiential learning program in Europe*, <https://law.utulsa.edu/2018/02/02/tu-law-selected-best-study-abroad-program-europe/> (last visited Mar. 6, 2018); *see also* Smyth, Gemma, Hale, Samantha Gold, and Neil, *Clinical and Experiential Learning in Canadian Law Schools: Current Perspectives*, *CANADIAN BAR REV.*, 95, 175, <https://scholar.uwindsor.ca/lawpub/49> (currently "Osgoode Hall has developed a three-pronged approach to its experiential 'practicum' requirements: exposure to relevant law and context, substantial experiential engagement, and reflective practice"); *see also* *experiential learning - Offshore study*, *THE UNIVERSITY OF SYDNEY LAW SCHOOL*, <https://canvas.sydney.edu.au/courses/4533/pages/experiential-learning-offshore-study> (last visited Mar. 6, 2018) (Currently The University of Sydney Law School offers an offshore program to supplement study in Australia toward Master of Laws degree (LLM) or may also count as electives towards an LLB or JD degree. The units are taught on an "intensive basis – usually over four or five successive days – with some interim assessment components" completed at a later time, though this is not a part of the regular curriculum).

<sup>137</sup> Michael I. Meyerson, *Law School Culture and the Lost Art of Collaboration: Why Don't Law Professors Play Well with Others?* 93 *NEB. L.REV.* 547, 557 (2014).

<sup>138</sup> *Id.*

process, but they are not usually designed with the purpose of developing competencies in professional teamwork (although that may be a valuable by-product). Though exceptions exist, few podium professors devote a significant amount of class time to collaborative learning as a core competency measure.<sup>139</sup> Such resistance exists even though non-clinical professors agree that developing effective collaborative skills is an important learning objective.<sup>140</sup> Still, “many believe that teaching and assessing students’ collaborative interpersonal skills is impractical.”<sup>141</sup>

This dearth of collaborative learning spaces in law schools has a number of causes. A primary cause is familiar to anyone who has been exposed to the traditional culture of law school from movies and books – rival students competing for grades. Some of the blame for this competition goes to law school grading policies that reinforce the competitive culture. “Most law schools require their faculty “to apply some standardized mean or curve in awarding [their] grades. Mandatory grade curves send the (accurate) message that success is only to be determined by besting your classmates, not by the absolute measure of your understanding.”<sup>142</sup> But, arguably, professors share the blame for the competitive culture. “[L]aw students learn more than just law from their professors. They also learn what it means to be a lawyer. In terms of their psychological

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<sup>139</sup> See Sophie M. Sparrow, *Can They Work Well on a Team? Assessing Students’ Collaborative Skills*, 38 WM. MITCHELL L. REV. 1162, 1165 (2012).

<sup>140</sup> Sparrow at 1663-64.

<sup>141</sup> *Id.* at 1164.

<sup>142</sup> Myerson at 556.

and intellectual development, [p]robably the greatest role models for students are faculty members themselves. To the extent that law professors avoid collaboration, so will their students.”<sup>143</sup>

The consequences of the legal academia’s disregard of collaborative learning are many, and increasingly harmful in a global society. “Among the many critiques of legal education are criticisms that law students do not graduate with effective emotional intelligence skills - in particular, they have not learned to work well with others.”<sup>144</sup> And, working well with others is crucial, both in domestic and international lawyering. As a recent study concluded, ““most legal work in 2013— at least the high-value work that attorneys and law firms coveted— required multiple attorneys to work together. Collaboration was, in fact, extremely valuable to firms: it allowed them to take on increasingly sophisticated client work, which in turn let them charge higher prices.”<sup>145</sup> Increased globalization also has led to American lawyers working more with lawyers in other countries: “Counsel must frequently collaborate across geographic and cultural boundaries with far-off partners to ensure that work is aligned with the client’s global strategy and accounts for country-specific issues.”<sup>146</sup>

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<sup>143</sup> Myerson at 555; *see also*, Janet Weinstein, Linda Morton, Howard Taras and Vivian Reznik, *Teaching Teamwork to Law Students*, 63 J. LEGAL EDUC. 36, 36 (Aug. 2013) (“law professors unfamiliar with teamwork theory and practice are unlikely to use teams to engage students in learning.”).

<sup>144</sup> Sparrow at 1662.

<sup>145</sup> Debra Cassens Weiss, *BigLaw firm reveals nuts and bolts of its pay system in Harvard case study on collaboration*, ABA JOURNAL (Oct. 15, 2013) available at [http://www.abajournal.com/news/article/biglaw\\_firm\\_reveals\\_nuts\\_and\\_bolts\\_of\\_its\\_pay\\_system\\_in\\_harvard\\_case\\_study/news/article/do\\_you\\_volunteer\\_on\\_a\\_regular\\_basis/?utm\\_campaign=sidebar](http://www.abajournal.com/news/article/biglaw_firm_reveals_nuts_and_bolts_of_its_pay_system_in_harvard_case_study/news/article/do_you_volunteer_on_a_regular_basis/?utm_campaign=sidebar) (last visited Jan. 22, 2018).

<sup>146</sup> Myerson at 561.

If we recognize that “group work is routinely understood as one of the most effective learning methods based on the principles that learning is “inherently social” and “an active process”<sup>147</sup> and clearly see the need to prepare law students for a collaborative practice, how do we achieve that in a law clinic setting?

Law clinics, particularly BLCs, have always been an exception to the individualistic approach of law school learning.<sup>148</sup> BLC student attorneys commonly work in pairs or small groups. In this collaborative model the students are responsible for both their own learning and contribute to and support the learning of their co-counsels. When the model works, the whole is greater than the sum of its parts. But, while student pairing often meets the goal of work allocation and having another set of eyes and ears in a client meeting, too often the pairing is not designed to meet the goal of developing collaborative interpersonal skills. Meeting that goal takes intention, even for clinical programs where interpersonal skills are emphasized.

The benefits from collaborative work and teaching teamwork as a skill are many. Students learn critical life skills including “communication, planning and coordination, leadership and cooperation, as well as conflict resolution, problem solving, and creative thinking.”<sup>149</sup> These skills are helpful for any area of legal practice, but especially in business practice, where client businesses often count the ability to work in a team as one

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<sup>147</sup> A. Rachel Camp, *Creating Space for Silence in Law School Collaborations*, 65 J. LEGAL EDUC. 897, 898 (2016).

<sup>148</sup> Camp at 897 (“In many clinical programs, collaboration—through team pairings and group work—has long been the norm...” though, litigation clinics commonly use an individual approach).

<sup>149</sup> *Teaching Teamwork to Law Students* at 38.

of the top five characteristics necessary to secure a position.<sup>150</sup> Such business clients “expect firms to work effectively across departments, offices, and even jurisdictions.”<sup>151</sup> One of the reasons driving the value of collaboration among business clients is the changing nature of the legal work being done. Due to increased globalization and business consolidation, legal work has become “increasingly complex, multi-disciplinary and international.”<sup>152</sup> In addition, law firms have begun to “outsource” some legal work to less expensive foreign lawyers.<sup>153</sup> This so-called “legal process outsourcing” requires “good communications skills, along with the ability to motivate workers from different organizations, negotiate and administer service contracts, assemble effective teams, and plan for and respond to contingencies. In other words, American lawyers need to learn how to collaborate with their international colleagues, just as they must learn to collaborate here at home.”<sup>154</sup> Failure to incorporate this critical skill into clinical pedagogy may result in the realization of British Professor Richard Susskind’s prediction that law schools will continue to produce 20<sup>th</sup> century lawyers in the 21<sup>st</sup> century.<sup>155</sup> Susskind urges collaboration not only among lawyers, but also among law firms, saying that 21<sup>st</sup> century clients expect as much.<sup>156</sup>

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<sup>150</sup> *Id.* at 40.

<sup>151</sup> *Id.*

<sup>152</sup> Myerson at 560-61.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> Richard Susskind, *Tomorrow’s Lawyer*, OXFORD UNIV. PRESS (2d ed. May 25, 2017).

<sup>156</sup> *Id.*

At the same time, law school curricula and clinicians must not swing the pendulum to the other extreme in focusing on collaborative learning as the end goal. Doing so tends to “isolate and ignore individuals who do their best work when given space to contemplate and consider ideas alone, and instead reward[s] those who are the loudest and most comfortable within the collaborative space.”<sup>157</sup> In her book, *Quiet: The Power of Introverts in a World That Can't Stop Talking*, Susan Cain, an attorney, voices a similar concern. Cain argues that our institutions are designed for extroverts and that there is a bias against introverts.<sup>158</sup> Cain notes that collective thinking strategies favor dominant extroverts, but cautions that forced and inflexible teamwork can actually stifle creativity and lead to destructive behavior.<sup>159</sup> Cain cites to the financial crisis as an example of groupthink dominated by extrovert leaders.<sup>160</sup>

Considering the many benefits of collaborative learning and the expectation of collaborative lawyering, law clinics, and BLCs in particular, should include collaboration as a learning objective. Clinical professors should teach the skill of collaboration while honoring differing personalities in the room by clearly communicating that students who use “deliberation, contemplation and quiet reflection”<sup>161</sup> are valued as much as the students who quickly and comfortably participate in the classroom. Collaborations fail

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<sup>157</sup> Camp at 899.

<sup>158</sup> Susan Cain, *Quiet: The Power of Introverts in a World That Can't Stop Talking*, 1-19 (May 2, 2017).

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> Camp at 899.

often because of a lack of understanding about how people work best to achieve the end goals and not because there is something inherently wrong with the collaboration in and of itself.<sup>162</sup>

Given the fast-paced nature of business and the associated need for rapid innovation, collaboration is critical in business environments. Accordingly, we have highlighted the importance of this skill in BLCs. As the BLC Learning Outcomes in the Appendix makes clear, the lawyering competencies learned in BLCs are the same as those in litigation clinics, namely: case theory and development; fact-gathering; client centered interviewing and counseling; problem-solving and judgment; negotiation, persuasion and advocacy; professionalism, cross cultural competence, social justice and systemic critique; self-evaluation, reflection and learning from experience.

#### PART V: THE SIGNIFICANCE OF BLCS NOW

“Global development is entering a phase where entrepreneurship will increasingly play a more important role. There are at least three reasons for this, each particular to certain types of countries. Firstly, in the West, the managed economy of the 1970s-2000s, characterized by reliance on big business and mass production, has given way to a so-called entrepreneurial economy. Here knowledge-driven goods and services are now

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<sup>162</sup> *Id.*

more flexibly provided by smaller firms, and the emergence of a creative class requires a less interfering but more facilitating state.”<sup>163</sup>

The United Nations University World Institute for Development Economics Research (UNU-WIDER) has focused on the role of entrepreneurship in economic development.

That research concludes that entrepreneurship will “contribute to growth and employment creation in advanced, emerging and least developed countries alike.”<sup>164</sup>

Indeed, global problems, ranging from poverty and terrorism to climate change and migration, need entrepreneurial solutions.”<sup>165</sup>

This trend in global entrepreneurship is pronounced in Western countries. According to the U.S.-based Ewing Marion Kauffman Foundation, entrepreneurship is affected by the changing nature of work.<sup>166</sup> Many Americans are working as freelancers or microbusiness owners, leading economists and policymakers to label this form of work in new ways.<sup>167</sup> “Platform economy,” referring to a range of work relationships, the “sharing economy,” the “gig economy,” and the “on-demand economy,” are the most prevalent.”<sup>168</sup> The platform economy, a menu of “alternative work arrangements,” is a noun describing “the collection of transactions occurring on online structures, which act

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<sup>163</sup> Wim Naude, *Entrepreneurs and economic development*, UNITED NATIONS UNIV. (Mar. 23, 2011), available at <https://unu.edu/publications/articles/are-entrepreneurial-societies-also-happier.html>.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> Ewing Marion Kauffman Foundation, *Entrepreneurship Policy Digest, What the Changing Nature of Work Means for Entrepreneurship* (Aug. 9, 2016), [hereinafter Kauffman, *Changing Nature of Work*] (last visited Jan. 22, 2018).

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

as intermediaries between workers, customers and businesses.”<sup>169</sup> Significantly, all industries and wage and skill levels are found in the platform economy and it “may look like a traditional job (such as delivering food) or more like a micro-business (such as producing and selling craft goods on an online platform).”<sup>170</sup> Some researchers believe that the platform economy is rapidly growing and may have resulted in “all net employment growth from 2005 to 2015.”<sup>171</sup> Notably, “16 percent to 34 percent”<sup>172</sup> of workers earn their living through these alternative work arrangements. Platform economy work may be less risky than entrepreneurship and persons less risk adverse may be drawn to it.

On the other hand, entrepreneurship is a wealth generator and “is an important option for securing economic independence.”<sup>173</sup> Law students and lawyers must understand these new economy law and policy issues. This is especially true for minorities such as African Americans in the US.<sup>174</sup> To illustrate, in the U.S., a report by the Center for Global Policy Solutions found that “expanding entrepreneurship among people of color is an essential strategy for moving the country toward full employment for all.”<sup>175</sup> Unfortunately, due to historical and present racial discrimination, “America is currently

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<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *id.*

<sup>173</sup> *Id.*

<sup>174</sup> See Algernon Austin, *The Color of Entrepreneurship: Why the Racial Gap among Firms Costs the U.S. Billions*, GLOBAL CENTER FOR POLICY SOLUTIONS (April 20, 2016) available at <http://globalpolicysolutions.org/report/color-entrepreneurship-racial-gap-among-firms-costs-u-s-billions/> (last visited Jan. 22, 2018).

<sup>175</sup> *Id.*

forgoing an estimated 1.1 million businesses owned by people of color."<sup>176</sup> Indeed, "[t]hese missing businesses could produce an estimated 9 million more jobs and boost" the American "national income by \$300 million."<sup>177</sup> The Future of Work Initiative of the Joint Center for Political and Economic Studies, a U.S. based think tank, aims to ensure that workers of color have new economy job skills.<sup>178</sup> Entrepreneurial perspectives and mindsets complement this vision.

To be sure, the platform economy has significant law and policy "implications for economic independence and entrepreneurial capacity."<sup>179</sup> Examples of these law and policy implications include how platform economy workers will retain benefits, traditionally associated with paid labor, in these alternative work arrangements, how assets will be accumulated for the future, the type of education and job training needed to prepare workers for this new economy and whether wage insurance is a viable policy approach to help the middle class.<sup>180</sup>

Gary Swart, former president and CEO of Odesk, which merged with Elance to become Upwork, now the largest freelancing work website in the country and a general/venture Partner at Polaris, notes that there are 500 entrepreneurship programs at U.S. universities

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<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> Joint Center, *About*, JOINT CENTER FOR POLITICAL AND ECONOMIC STUDIES (Mar. 9, 2015), <http://jointcenter.org/about/about> (last visited Mar. 4, 2018).

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

up from 250 just 10 years ago.<sup>181</sup> “It’s a testament to what’s going on in the world. Clearly entrepreneurship is not just about starting businesses, it’s a mindset which is attracted to opportunity, innovation and value creation. This is what, students/Millennials, persons 18-30 years old, care about and making a difference in the world, making impact.”<sup>182</sup>

Swart notes that two-thirds of employees want to quit their jobs because they aren’t happy with the work.<sup>183</sup> They want to make more of a difference and are attracted to innovation and opportunity and value creation but these opportunities may not exist at large companies.<sup>184</sup> Innovative, forward thinking companies must consider how they will retain talent. Author, Thomas W. Malone, noting the rapid speed of workforce change observed that his father had one job in his career, and that he’ll have 7 jobs, and his kids will have 7 jobs at one time.<sup>185</sup> Another prediction is that learners of today will have 10 jobs by the time they are 40 -- that’s a new job every 2 years.<sup>186</sup>

## PART VI: CONCLUSION: THE FUTURE OF BLCS IN GLOBAL CONTEXT

BLCs are growing slowly outside of the U.S. and this growth warrants further study, analysis and comparative inquiry. Accordingly, this article, a first of its kind, explores

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<sup>181</sup> Gary Swart, *Keynote Address: 2016 New Venture Competition Finals*, YOUTUBE (June 27, 2016), <https://www.youtube.com/watch?v=pEJL2qswBGk>.

<sup>182</sup> NFTE, *Entrepreneurship: The Best Preparation for the Innovation Economy*, available at <https://nfte.com/why-entrepreneurship/> (last visited Jan. 22, 2018).

<sup>183</sup> Gary Swart, *Keynote Address: 2016 New Venture Competition Finals*, YOUTUBE (June 27, 2016), <https://www.youtube.com/watch?v=pEJL2qswBGk>.

<sup>184</sup> *Id.*

<sup>185</sup> Thomas W. Malone, *The Future of Work: How the New Order of Business Will Shape Your Organization, Your Management Style, and Your Life*, Harv. Bus. Rev. (Apr. 2, 2004).

<sup>186</sup> See also Gary Swart, *Keynote Address: 2016 New Venture Competition Finals*, YOUTUBE (June 27, 2016), <https://www.youtube.com/watch?v=pEJL2qswBGk>.

BLCs within the context of the global clinical movement. Entrepreneurship holds a special place in legal education today because technology, automation and artificial intelligence are disrupting traditional economies and changing forms of work giving rise to new corporate legal forms such as benefit corporations -- blending social purpose and profit -- and new work patterns, evidenced by the platform economy. Some of these economic disruptions stem from entrepreneurial innovation.

In light of the foregoing, this article analyzes the emergence of BLCs in eastern and Western Europe, Canada, the U.S. and Australia and posits a broad definition of practice-ready, inclusive of social justice, honoring cultural consciousness and power alongside collaboration, teamwork and business risk analysis.

Recognizing that not all BLCs are able to embrace this broad definition and that environmental needs will prevail, at minimum, BLCs should envision entrepreneurship as a social benefit. The article concludes that BLCs are important now because of the Millennial generation, the rise of the new economy and of social enterprises.

## **Appendix 1**

### **GEORGE WASHINGTON UNIVERSITY LAW SCHOOL SMALL BUSINESS & COMMUNITY ECONOMIC DEVELOPMENT**

#### **LAWYERING COMPETENCIES AND LEARNING OUTCOMES**

The overall teaching goal of SBCED Clinic is to provide law students with direct practical experience with various aspects of the lawyering process, particularly as it relates to small business law and community economic development. Specific lawyering competencies to be discussed and evaluated throughout the semester include: (1) case theory and development; (2) fact-gathering and development; (3) client-centered interviewing and counseling; (4) problem-solving and judgment; (5) negotiation, persuasion, and advocacy; (6) professionalism; (7) collaboration; (8) cross-cultural competence; (9) social justice awareness and systemic critique; and (10) leadership, self-evaluation, reflection, and learning from experience.

#### **SBCED Clinic Core Lawyering Competencies and Learning Outcomes**

- 1. Case Theory and Development**
  - A. Understand how legal problems arise and are experienced by clients;
  - B. Understand how to research and identify relevant legal doctrine; and
  - C. Understand how to identify the historical context of ongoing development of law through critical lawyering and legal analysis.
  
- 2. Fact-Gathering and Development**
  - A. Understand how to discern legally relevant facts and identify gaps in knowledge;
  - B. Understand the relationship between fact and theory, and understand how to leverage frameworks such as negotiation, the practical dimensions of cases, and other modes of planning/analysis to balance competing options; and
  - C. Exercise judgment, problem solving, and critical thinking in the factual analysis process.
  
- 3. Client-Centered Interviewing and Counseling**
  - A. Identify and apply legal doctrine and theory to specific facts of client issues;

- B. Develop awareness and familiarity with interviewing and counseling techniques; and
- C. Understand the ethical requirements of client confidentiality and the importance of that requirement for the client.

**4. Problem-Solving and Judgment**

- A. Identify both legal and non-legal strategies for addressing legal problems;
- B. Devise innovative methods and strategic plans that creatively use law to empower clients to accomplish their goals; and
- C. Utilize problem-solving skills to identify strengths and weaknesses of various options.

**5. Negotiation, Persuasion, and Advocacy**

- A. Understand appropriate uses of precedent documents and learn how to draft relevant legal documents for the client;
- B. Develop an ability to convey legal conclusions and recommendations through purposeful writing;
- C. Understand how to anticipate potential problems, conduct legal research and communicate findings to clients, colleagues, and supervising attorneys; and
- D. Understand how to effectively deliver oral presentations and oral recommendations to clients, colleagues and supervisors.

**6. Professionalism**

- A. Understand the ethical obligations and responsibilities of the lawyer;
- B. Understand the importance of professionalism in the following instances:
  - i. class attendance and participation;
  - ii. case management and file organization;
  - iii. time management;
  - iv. interactions with clinic colleagues and supervisors;
  - v. communication with potential and existing clients;
- C. Communication with stakeholders in the legal system, (e.g., attorneys, government agencies, etc.); and
- D. Understand how to balance professional responsibilities with self-development, and personal health and well-being.

**7. Collaboration**

- A. Develop collaborative and interpersonal working skills;
- B. Develop interdisciplinary working skills with other lawyers, accountants, business advisors, and financial institutions;
- C. Develop perspectives on and identify methods to contribute positively toward existing legal institutions through strategic professional relationships; and
- D. Engage in strategic and contextual thinking to determine options available to clients.

**8. Cross-Cultural Competence**

- A. Exercise empathy in contextualization of client issues, and develop cross-cultural competence in representation of clients;
- B. Learn how to transfer skills and insights to new contexts; and
- C. Understand the importance of context and culture in identifying goals and options.

**9. Social Justice Awareness and Systemic Critique**

- A. Understand the role of the lawyer as a legal professional and social justice advocate;
- B. Understand the role of the lawyer in advancing social justice and poverty alleviation; and
- C. Understand the role of legal advocacy to influence political and social justice.

**10. Leadership, Self-Evaluation, Reflection, and Learning From Experience**

- A. Exercise self-awareness to zealously represent clients with compassion and empathy;
- B. Develop reflective lawyering skills, including identifying the lessons and meanings of lawyering experiences; and
- C. Develop best methods to create learning habits and understand the value of one's learning process.
- D. Understand the role of lawyers as leaders.

**Washburn Small Business and Nonprofit Transactional Clinic:**

**Lawyering Competencies and Learning Outcomes**

**1. Attorney-Client Relationship**

- A. Fosters confidence, builds trust and maintains active communication with clients
- B. Facilitates active participation by clients in their projects
- C. Consistently gives clients meaningful explanations of the law in terms they can understand
- D. Uses client goals as a guide for all client work
- E. Practices compassion and empathy

**2. Project Development and Planning**

- A. Conducts comprehensible and reliable research to identify all possible options and to discard inappropriate options
- B. Demonstrates effective legal analysis
- C. Effectively works through legal, social, and economic issues with the client in order to clarify existing goals and to set future goals
- D. Clearly articulates plans and strategies in writing so that others could follow the plan

**3. Practice Management**

- A. Manages time effectively and meets deadlines
- B. Consistently follows Clinic office procedures
- C. Maintains files so that others may reconstruct what has occurred, track research, and determine what has been advised
- D. Allocates time, effort and other resources to consistently meets obligations to clients and the Clinic
- E. Prepares for supervision meetings and timely submits supervision agendas
- F. Initiates contact with Clinic supervisor and seeks additional supervision when needed

**4. Oral and Written Advocacy**

- A. Expresses thoughts with precision, clarity, economy, and organization

- B. Communicates, verbally and in writing, with clients in a style and format that is appropriate for each client
- C. Timely prepares and thoroughly proofreads work before submitting it
- D. Responds to Clinic supervisor's written and verbal comments
- E. Writes professional email communications to Clinic supervisor and others

**5. Collaboration and Professionalism**

- A. Engages in true collaboration with Clinic partner, not simply division of tasks
- B. Meets with Clinic partner at least twice a week to discuss client matters
- C. Addresses collaboration-related concerns appropriately
- D. Thoroughly prepares for meetings with clients, Clinic partner, and supervisor
- E. Demonstrates respectful interaction with Clinic staff
- F. Secures approval from Clinic supervisor before acting
- G. Identifies and address ethical, ideological, or personal considerations bearing on a project or the attorney-client relationship
- H. Demonstrates value and respect for all people and integrates cross-cultural consciousness in Clinic work

**6. Self-Evaluation**

- A. Effectively critiques own performance, including strengths and areas in need of improvement
- B. Accepts constructive feedback and applies it appropriately
- C. Examines own insights, biases, and reactions concerning issues that arise in the course of client representation and project work
- D. Regularly assesses self-care, such as adequate sleep, proper nutrition, exercise, mental health needs, and use of alcohol and recreational drugs.

## **Appendix 2**

### **Checklist for Starting or Re-Imagining a BLC**

- ✓ What is the need in your community for business legal services?
- ✓ Have you done a needs assessment or a listening project to determine the need?
- ✓ What are the results of that process?
- ✓ Do you have support from the local or national bar or other legal groups?
- ✓ Is a BLC consistent with your national, regional, or local government's economic development agenda?
- ✓ Are there other actors or stakeholders supporting a BLC in your community?
- ✓ What are sources of funding a BLC?
- ✓ Who will be the clients/beneficiaries of a BLC?
- ✓ Who will be the community partners of a BLC?
- ✓ How will you measure the effectiveness of the BLC for clients?
- ✓ How will you measure the effectiveness of a BLC for students?
- ✓ How will you measure the effectiveness of a BLC for stakeholders?
- ✓ Will your BLC focus on particular sectors, e.g., technology, immigrant or women-owned businesses or social enterprises?
- ✓ What types of direct legal representation does your BLC provide?
  - Examples include business formation, business regulation, contracts, intellectual property, and employment.