

Experimental Legal Education in a Globalized World

Experimental Legal Education in a Globalized World:

The Middle East and Beyond

Edited by

Mutaz M. Qafisheh and
Stephen A. Rosenbaum

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INTRODUCTION

MUTAZ M QAFISHEH
AND STEPHEN A ROSENBAUM

In an ever-interdependent world, legal education is undergoing a paradigm shift. Traditional law instruction, the lecturing and mere memorizing, have become a fading fashion. Legal clinics are cropping up. Students seek to practice while studying and can contribute to social justice as part of the educational process. Students no longer accept one-way interaction from their professors. They want moot competitions and mock trials, to appear in court, serve their communities, defend human rights, and interact with their peers in various corners of the globe. The old legal doctrine that confines law to fixed national borders is no longer working in the face of technology. Simply put, today's challenges cannot be solved by past tactics.

The Middle East is no exception when it comes to adopting new trends. Legal clinics, with various levels of development, can be found in most countries of the region: Bahrain, Egypt, Iraq, Iran, Jordan, Kuwait, Lebanon, Morocco, Oman, Palestine, Qatar, Tunisia, Turkey, and United Arab Emirates. Other countries are contemplating new clinics. However, little literature can be found on legal education in the region, particularly *clinical* legal education. This book aims to fill in the existing gap, and, at the same time, offer comparative cases that might benefit legal educators, justice practitioners, and educational as well as juridical policy-makers in the Middle East and beyond.

This region, in turmoil and conflict, needs reform in all respects: political, economic, social, religious, legal, and educational. Legal education lies at the heart of such long awaited reforms. As it proved in other regions, legal education can contribute to respect of the rule of law and realization of human rights, especially in times of transition. Clinical legal education comes to legal education reform as a practical tool. Hence, this book examines legal education within selected locations in the Middle East, and

underscores successful pedagogical models from various parts of the world.

By and large, legal education in the Middle East is characterized as theoretical. It historically followed the French model, starting in the Ottoman Empire/Turkey and later in Egypt, and from there spread to the rest of the region. Typically, in the course of pursuing a Bachelor of Laws (LLB), students sit in the classroom and listen to professors, memorizing often out-dated textbooks or notes, and regurgitate what they studied in the exams at the end of a semester or a school year. Skills-oriented legal education, for example case analysis and field work, is still lacking. Nisreen Mahasneh and George Chritchlow highlight deficits in legal education in Jordan as a case-in-point in the region (chapter 4). Camilia Camal (chapter 6) and Stephen Rosenbaum (chapter 5) paint a similar picture in Egypt. However, the region is not removed from educational trends that have overrun the globe during the past decade.

This book is largely the outcome of an international conference on *Global Legal Education Approaches: Experiences for Palestine*, organized by Hebron University School of Law and Legal Clinics in October 2013. Authors who were unable to participate in the conference held in Palestine submitted papers afterwards. As legal education in Palestine is similar to that taking place in most law schools in the region, the editors decided to expand the title of the book to include experiences in and for the Middle East. A number of contributors met in Delhi during the conference of the Global Alliance of Justice Education (GAJE) in December 2013, including the two editors themselves, one from Palestine and the other from the United States, both of whom had shared interests in human rights education and Middle Eastern and broader international experience.

Anonymously peer-reviewed, this book focuses on practical legal education, where learning is student-centered, particularly clinical legal education, field work, street law, community service, simulations, placements/internships, moot courts and mock trials, problem-based learning, case analysis, group work, role-play, and brainstorming. Some of these models are well-established in certain universities, while others can benefit by exchanging expertise and best practices across borders. A successful law school or clinic, old or new, anywhere in the world, will grow from the exchange, regardless of the distance, culture, context, jurisdiction, or level of economic development.

The book incorporates chapters written by leading legal scholars from most continents, and represents the major jurisdictions of the globe. A number of scholars are emeriti professors with decades of legal teaching and practical experience. Others are deans of law schools, founders of legal clinics, or currently run clinical programs. Yet others are students who contributed to the development of clinical movement. Writers come from developed and developing countries; all are concerned with the advancement of legal education, to make it more interactive, and to contribute to bridging the gap between the powerful and powerless communities.

The book is composed of five parts, comprising a total of 28 chapters. Each part includes three to nine chapters representing a common theme.

Part I presents an overview of certain global legal education approaches, with a particular focus on clinical education. The first chapter is written by Frank Bloch, editor of the oft-cited *Global Clinical Movement: Educating Lawyers for Social Justice* and GAJE Executive Secretary. Bloch, who was one of the keynote speakers at the aforesaid Hebron University conference, tackles the 'Role of Clinics in Legal Education Reform.' His chapter is devoted to what is arguably the primary goal of clinical education: the advancement of legal education worldwide. Yuval Elbashan, with his diverse experience around the world, views the legal clinic as a 'laboratory' and offers an elegant consideration on the theoretical basis for the clinical legal education, in chapter two. The third chapter is by Jeff Giddings, whose experience-based book, titled *Promoting Justice through Clinical Legal Education*, covers the second goal of clinical education, namely the social justice mission. This chapter sheds light on the significance of supervision in experiential education as a means for both professors and students to assume ethical responsibility for the cases they handle and the communities they serve. These three chapters lay the foundation for the specific regional, national, local, and thematic models of legal education set forth in the following chapters of the book.

Parts II venture into the genesis of the book, by addressing legal education experiences in a number of countries and universities in the Middle East: Jordan, Egypt, Qatar, Iran, and Afghanistan (Part III is devoted entirely to legal education in Palestine). Although there are variations from one country to another and between law schools or clinics within each country, this part examines the common characteristics of Middle Eastern legal

instruction. Most clinics in the region have been influenced by the North American approaches, as shown by Mahasneh and Critchlow in their stimulating dialogue on Jordanian legal education in chapter 4. Despite all the challenges it faces in the post-January 2011 ‘revolutionary’ (or ‘counter-revolutionary’) era, Egypt may continue to be the most influential country in the region: politically, socially, culturally, educationally, and legally. As noted above, Egyptian legal education mainly follows the continental law school model and has impacted, positively and negatively, almost all countries in the region. Rosenbaum and Camal offer external and internal perspectives on the challenges of Egyptian reform in chapters 5 and 6, respectively, with specific reference to the role of clinical education in the aftermath of the ‘Arab Spring.’

Other models are also discussed in Part II. Legal clinics in the Gulf States are emerging, with new clinics in Bahrain, Kuwait, Oman, Qatar, and United Arab Emirates. These clinics were all found, or are in the process of being set up, with the support of experts from well-established clinics. Rosenbaum and Mary Pat Treuthart chronicle the development of a clinic in Qatar in chapter 7. They highlight one of the major human rights concerns in that sub-region, namely domestic violence. In chapters 8 and 9, Sahar Maranlou and Richard Grimes flag the prospects of modernizing legal education by the adoption of clinical approaches in Iran and Afghanistan, respectively. Both countries are non-Arabic speaking, yet are applying Islamic legal traditions in their judicial systems, and are considered part of the ‘Greater Middle East’ under certain cultural or religious criteria. Afghanistan, as we will see with regard to Palestine as a state under military occupation, represents the role that clinics may play in a conflict-affected society.

Part III is dedicated to legal education experiences in Palestine. Although relatively small, with about 5,000,000 citizens, the country’s legal system presents a unique case. Under military occupation since 1967, the State of Palestine’s legal sources derive from the various schools of the ruling powers: Ottoman/Turkish, British, Jordanian in the West Bank, Egyptian in the Gaza Strip, Israeli military orders, and the Palestinian Authority. Formal legal education started as early as 1920, when British colonial authority established Jerusalem Law Classes as the first law school. As Assaf Likhovski elaborates in chapter 10, this school, followed the practical legal education prevailing at the time in England, and continued until 1948, when Mandatory Palestine was divided into three separate parts: the State of Israel (founded on 78% of Palestine’s land), the West

Bank under Jordanian rule (20%), and the Gaza Strip under Egyptian administration (2%).

From 1948 until 1994, Palestinians in the West Bank and Gaza had no law school; lawyers and judges received their legal training mainly from Europe or in neighboring countries, notably Egypt and Jordan. In 1986, an ambitious LLB program launched at Hebron University and lasted for one year only due to an Israeli military commander's decision to close down the initiative. It was not until after the establishment of the Palestinian Authority in 1993-1994 that Palestinians were able to open their first law school. The three inaugural law professors, although employed by Hebron University, moved the school to Al-Quds University in the Jerusalem area, as the Hebron campus was still prohibited from teaching law while under Israeli control until 1996. The ban lasted until Israeli troops withdrew from portions of Hebron in 1997. Twenty years after the attempt to open Hebron law faculty, there are now twelve universities in Palestine teaching law. Half of them host legal clinics and the rest are on their way to setting up new clinics. In chapter 11, Mutaz Qafisheh tells the story of modern legal education in Palestine, describing in detail the Hebron University clinical programs over the past five years.

Legal clinics in Palestine are now heading towards specialization, with the first wave of off-campus criminal justice clinics administered by a few universities. As explained by Nael Ghannam, Natalie Rea, and Nicole Taylor, in chapter 12, in their comparison of specialized clinics in Palestine and Afghanistan, such clinics may pave 'a path to better lawyering.' Deena Hurwitz, in chapter 13, applies a 'human rights based approach' to legal education by proposing a set of methods for mainstreaming gender equality in Palestinian law schools. On another front, Sanford Silverburg suggests, in chapter 14, how to teach legal issues relating to the question of Palestine, keeping in mind the necessity to adopt pedagogical methods for a 'globalized international legal world.' Lastly in this part, in chapter 15, David Chavkin asserts that the recent recognition of Palestine as a state by the United Nations, other states and international organizations, gives young Palestinian law schools the opportunity to become pioneers at the regional and global levels by adopting 'experiential learning' methodologies, particularly the legal clinic approach.

Part IV summarizes selected models of clinical legal education in nine countries in the Global South and North. These models are now more necessary than ever as a means to learn from one another. David

McQuoid-Mason, who has written hundreds of studies on the role of law students in contributing to social justice, sums up, in chapter 16, his decades-long academic and practical experience on Street Law and community service in dozens of countries, with substantial reference to South Africa. Chapters 17 and 18 discuss clinical education in Nigeria, a trend that began ten years ago, much like in Palestine. In these two chapters, both Onuora-Oguno Azubike and Kevwe Omoragbon, recommend a number of actions to improve clinical pedagogy, which may enlighten other clinics elsewhere. Shuvro Sarker, in chapter 19, provides an overview of colonial and post-colonial Indian legal education, and the needed measures to enable law schools in India to compete globally and to better serve the marginalized communities. In these four models, the analysis was conducted by professionals with regard to their own countries. On the other hand, Rebecca Parker as an expatriate expert, in chapter 20, offers a study on a recently designed and executed credit-bearing law module in Vietnam, employing a clinical methodology that may be presented with local and contextual adaptations in any country or region, including in the Middle East.

Part IV also compares student clinical legal services between China and Germany in Jan-Gero Hannemann and Jan Lampe's chapter 21, and touches upon further cases from Europe and Australia. Judith Büschleb and Julian Udich wrote in chapter 22 about their experience with a student-run legal clinic employing 'an integral approach' while still studying and administering a law clinic in Hamburg, Germany. Katarzyna Gromek-Broc and Richard Hedlund evaluate, in chapter 23, their own exciting experiment in 'problem-based learning' at the University of York, England, using a medical law module to demonstrate the advantages and loopholes inherent in an integrated approach. From Australia, Richard Foster shares, in chapter 24, his experience with a multi-disciplinary clinic in a 'community environment' combined with 'holistic service' at Monash University.

Lastly, Part V discusses four thematic legal education issues. Donald Nicolson, in chapter 25, and Shadi Alshdaifat, in chapter 26, both concentrate on teaching legal ethics. The former focuses on teaching ethics to law students in clinics, while the latter touches on the ethics of those engaged in dispensing legal advice, including lawyers, professors, judges, prosecutors, and law students. In chapter 27, Anand Tripathi suggests perspectives for bringing Islamic law teaching in line with certain modern global legal education approaches. Jacopo Terrosi concludes this series, in

chapter 28, with a discussion on the right to education during armed conflict. The challenge he lays out has relevance for legal educators in a number of conflict and post-conflict Middle Eastern countries, including Palestine/Israel, Syria, Iraq, Lebanon, Libya, Yemen, and Afghanistan.

The editors are grateful to all those who contributed to the production of this book. Special thanks are due to Dr Nabil Jabari, Chairperson of the Board of Trustees of Hebron University, for his ongoing support to the Hebron law school and legal clinics in the university that organized the international conference upon which this book is largely based. This book would not have been possible without the valuable participation and the support of the following individuals to the aforesaid conference: Hendam Rjoub, Rana Tamim, Carolyn Graydon, Jihad Shomali, Tzili Mor, Nisreen Mahasneh, James Apple, Daniel Breger, Ghassan Abdallah, Loai Ghazawi, Neta Ziv, Hicham Chabaita, Bassam Qawasmeh, Ahmad Switti, and Yasin Sayyed. The editors recognize with gratitude the work of the following persons who contributed to the proofreading of a number of chapters of the book, particularly: Katherine Aspell, Sharmila Bellur, Bridgette J Cooper, Miranda Everitt, Nereida Heller, Charlotte Hill, Jonathan W V Yantzi, and Cecile Farmer. We also thank S Brett DeBoer for the efforts in designing the front cover of the book. Lastly, we appreciate the professional assistance of Cambridge Scholars Publishing and its patience during the editorial process over the past three years.

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PART I

GLOBAL LEGAL EDUCATION APPROACHES

INTRODUCTION

Legal education has gone global, thanks to law clinics, the internet, an end to the Cold War, immigration, the evolution of human rights norms, moot courts, street law, and cultural, educational, and linguistics exchange programs. In his edited book, *Global Clinical Movement: Educating Lawyers for Social Justice*, Professor Frank Bloch and educators from different regions around the world discuss some of these issues. In his theoretical note on clinical legal education, Yuval Elbashan leads off by showing that clinics are a meeting ground between the legal needs of the disempowered populations and the legal services provided by the university, where students accrue skills and practical experience. Jeff Giddings, an Australian clinical pioneer, explores the role of clinics in legal education reform, and the significance of supervision practices in experiential education.

In chapter one, Bloch argues that legal education institutions are inherently conservative, like academia in general, where change comes slowly. Efforts to reform professional education come slowly as well, paralleling the conservatism of the legal profession. Along came clinical pedagogy, where teachers sought to address the failure of law schools to prepare competent and professionally responsible lawyers by combining skills training with social action. Throughout its history, however, clinical education has been undercut by resistance based on three false dichotomies. Skeptics assume that clinics must be devoted either to teaching or to service, either skills training or social justice, and either research or advocacy. These dichotomies are not only false, but properly implemented, clinical education combines these three sets of supposedly opposite goals. In calling for a shift to ‘socially relevant legal education’ and the integration of the three principal elements of any law school’s mission (teaching, research, public service), the global clinical movement can help lead the way to lasting legal education reform.

Elbashan shows in chapter two that legal clinics also have pedagogical and research objectives. In effect, clinics are laboratories for researching and creating law; students study and research the experience of law and jurisprudence, social contexts, and the impact of these discoveries on

professionalism and social responsibilities. The community activist and professor adds that if we wish to move from law teaching to justice education, we ought to prefer the realization of the latter over the former, inasmuch as full realization of one comes at the expense of the other.

Giddings addresses in chapter three the relevance of effective supervision in harnessing the learning potential of experiential legal education. The chapter highlights supervision from multiple perspectives: those of the student, supervisor, and the law school. It questions the assumptions that are sometimes made about the effectiveness of lawyers as student supervisors. It touches upon the effective preparation of students for the supervisory relationship and examines the supervision landscape in Australian clinical education as a case study for success. It draws on the supervision literature from other disciplines, particularly in the health area, with the aim of building collective understanding of practices sustainable in the way they support students and supervisors.

CHAPTER ONE

GLOBAL LEGAL EDUCATION: THE ROLE OF CLINICS IN LEGAL EDUCATION REFORM

FRANK S BLOCH

Reforming legal education is always a challenge. It involves two inherently conservative institutions: the legal profession and the legal academy. While it is fair to say that clinical legal education has contributed substantially to the reform of legal education around the world over the past decades, it continues to face substantial headwinds on a number of fronts. Most generally, one sees resistance to clinical legal education's emphasis on the practice of law—what lawyers do and how they should do it—as opposed to what the law is and what it might be. Many in the profession believe that lawyer training is the responsibility of the practicing bar. And many legal education institutions agree. More specifically, clinics face resistance to the experiential methodology centered on student interaction with the community on issues of social justice. Three alleged dichotomies faced by clinical programs have been put forward regularly to limit the relevance of clinical legal education on broader legal education reform, not only by clinical education's detractors, but sometimes within the clinical movement itself.

The three dichotomies that have been raised over and over to limit the scope of clinical legal education are *skills v social justice*, *teaching v service*, and *research v advocacy*. These are either/or, black/white distinctions that come up regularly where clinical legal education is being proposed, and are often used to block the full development of law school clinics. The idea is simple: clinics focus on either professional skills or on social justice; they are designed either to teach or to provide service; clinical teachers engage either in academic research or in advocacy. It is not to say that both sides of these dichotomies are not present in clinical