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RETHINKING LEGAL EDUCATION IN TIMES OF CRISIS

Some Remarks from the Case of the Roma Tre Migration and Citizenship Law Clinic

ABSTRACT. The article provides a critical understanding of the expansion of clinical legal education in Italy, which have occurred in the last decade, in order to investigate the meaning of the implementation of law clinics in Italian law departments and its role in rethinking legal education methods and practice. In this light, the paper will not deal with the issue of the definition of law clinic, which fuels the debate among clinical scholars. Rather, it will analyse the evolution of clinical legal education through the lens of the concept of 'crisis'. Intended as a situation in which social processes, actors and forces push for a rethinking of legal knowledge categories and teaching methods, 'crisis' will provide a critical analytical framework through which to reflect on the unconventional approach to law and legal education that law clinics foster. In the following sections, the article will build on practical examples from the experience of the Roma Tre Migration and Citizenship Law Clinic to show, on the one hand, how a law clinic can become a relevant actor in promoting access to justice for marginalized people and groups; on the other, how it can carry out activities that – by linking research and social engagement – lead students to develop a critical approach toward law and legal instruments, deepening their understanding of the relation between law and social phenomena.

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1. Introduction

Italian law clinics are a recent phenomenon, having begun about ten years ago with the first clinical trials in the law departments of Brescia, Torino-IUC and Roma Tre.¹ What could have seemed like just an attempt to introduce a practice-oriented teaching methodology borrowed from the US tradition of legal education, it soon turned out to be a much deeper phenomenon. In her research on Italian clinical legal education, Clelia Bartoli refers to it as a ‘movement’ in order to grasp the meaning and implications of a process that entails a different approach to the law and raises awareness of the role played by legal scholars in the promotion of social justice.² Bartoli argues that the ‘clinical movement’ mirrors “the emergence of a new wave in academia” that is moving toward “a more realistic, critical and socially committed conception of law.”³ In other words, the spread of law clinics across Italy⁴ cannot be understood simply as a successful introduction of a way of teaching distinct from the theoretical and methodological apparatus of legal formalism; instead, it reveals a more profound process of rethinking of the legal culture. The clinical approach challenges, in fact, the alleged autonomy of legal knowledge and its *subject*, as it entails a “social conception of the law” that takes seriously the role, interests and relationships of legal and social actors in what has been defined as “the social processes of legal invention.”⁵ Simply put, clinical methodology – at least when it promotes ‘access to justice’ for disadvantaged groups and subjects – brings to the fore the multiple social, economic and political factors that shape the law as a ‘social

1 Further information is available at: www.clinicalegale.unibs.it; www.iuctorino.it/studies/clinical-education; www.clinicalegale.giur.uniroma3.it.

2 C. BARTOLI, *The Italian legal clinics movement: Data and prospects*, in *International Journal of Clinical Education*, 22, 2, 2015, pp. 213-229.

3 BARTOLI, *The Italian legal clinics movement*, cit., p. 214.

4 In 2019 more than twenty law departments in Italy provide clinical courses, including those at the universities of Brescia, Roma Tre, Turin, International University College of Turin, Perugia, Florence, Palermo, Catania, Verona, Bergamo, Milano-Bicocca, Genoa, Bari, Teramo, Sassari, Naples, Foggia, Trieste and Udine. The main fields of interest are human rights, migration and refugees, labour, criminal and prison law. There are also clinical programs focusing on disabilities, anti-discrimination, family law, minors, privacy and environmental law. For an overview of the clinical programs in Italy, see BARTOLI, *The Italian legal clinics movement*, cit.

5 A. M. HESPANHA, *Legal History and Legal Education*, in *Rg*, 4, 2004, pp. 41-56, pp. 45-46.

product' and in its everyday application.

It is worth noting that what happened in Italy has occurred within a broader process of the expansion of clinical legal education in Europe. In the last two decades, other countries such as Spain, France and Germany have experienced either the introduction or the multiplication of clinical programs. However, law clinics are not *per se* a novelty in European legal education. Clinics appeared in British universities in the 1970s, in the wake of the first wave of modern clinical legal education in common law countries,⁶ and the 1990s saw the first clinical trials in former communist countries.⁷ Therefore, the recent spread of law clinics can be seen as a third step in the implementation of European clinical legal education. Yet this recent increase is more than just a further development. In fact, this new generation of law clinics has distanced itself from both the Anglo-American and the Eastern European traditions to create a “distinctly European identity”, linked to the peculiarities of civil law systems but, above all, with the engagement with the wider social, political and legal space produced by the process of European integration.⁸ In this light, Italian law clinics are part of a broader movement at the regional level that is challenging the traditional apparatus of the European legal teaching, which has historically been tied to legal formalism, by pushing it to reimagine itself as more “pragmatic, policy-aware, and action-oriented.”⁹

This process has generated an increasing interest among legal scholars, and there is now a rich body of literature about clinical legal education and its development at both the international and national levels. The discussions tend to focus on ‘technical’ and ‘methodological’ aspects, trying to sketch a definition of law clinic and to identify its key or essential features.¹⁰ The heterogeneity of organizational models, the broad

6 J. GIDDINGS *et al.*, *The first wave of modern clinical legal education. The United States, Britain, Canada and Australia*, in F. BLOCH (ed.), *The Global Clinical Movement: Educating Lawyers for Social Justice*, Oxford, Oxford University Press, 2011, pp. 6-7.

7 E. WINKLER, *Clinical Legal Education. A report on the concept of law clinics*, 2012, available at: law.han-dels.gu.se/digitalAssets/1500/1500268_law-clinic-rapport.pdf.

8 A. ALEMANNINO, L. KHADAR, *Conclusion*, in Id. (eds.), *Reinventing Legal Education: How Clinical Education Is Reforming the Teaching and Practice of Law in Europe*, Cambridge, Cambridge University Press, 2018, p. 341.

9 ALEMANNINO, KHADAR, *Conclusion*, cit., p. 347.

10 For an extensive discussion of this point, see C. Bartoli, *Legal clinics in Europe: for a commitment of higher*

range of legal and paralegal activities that clinics perform and the variety of fields of intervention are all relevant matters that fuel the debate among clinical scholars, pushing them to deepen the critical issue of what a law clinic is and is not.

The problem of sketching a definition of law clinic is also at the heart of the Italian debate. This need for clarity among clinical scholars certainly comes from the variety of clinical programs, which is at least partially connected to the current ‘crisis of legal studies’. Since, in fact, the drop of enrolments in Italian law departments in the last eight years,¹¹ they are pushed towards fierce competition in attracting students by offering a wide range of courses and practice-oriented activities, which are supposed to provide them with better job opportunities in the future. This competition leads law departments to widen their clinical programs that can be presented as innovative methodologies for developing professional skills and competences, yet running the risk of using ‘law clinics’ as a label for activities that don’t fit either the essential methodological aspects or the social justice values that underlie the tradition of clinical legal education.

However, given the existing literature, this article will not address definitional issues or the organisation and functioning of law clinics. It is enough to recall here Emil Winkler’s survey of the variety of clinical programs around the world and his claim that “there are no set definitions of what a law clinic or clinical programs should consist of.”¹² According to Winkler, a definition of a legal clinic “would be something like [...] *a combination of practical legal education and legal aid.*”¹³ This very brief and ‘open’ definition seems sufficient to account for the fundamental features that a law clinic should include: student involvement in practical activities concerning real legal cases and actual clients, for both educational and social justice aims.¹⁴

education in social justice, in *Diritto & Questioni Pubbliche*, Special issue, 2016. See also WINKLER, *Clinical Legal Education*, cit.

11 From 27.171 in the academic year 2011/12 to 17.130 in 2017/2018. See, Anvur, *Rapporto biennale sullo stato del sistema universitario e della ricerca*, 2018, p. 28.

12 WINKLER, *Clinical Legal Education*, cit., p. 4.

13 *Ibid.*

14 While the definition advanced by the European Network for Clinical Legal Education (ENCLE) is much

In light of these considerations, this article will start by focusing on the case of Italy with the purpose of situating the introduction and growth of law clinics against the backdrop of the ‘multiple crises’ that involved Italian society in the last decade. Intended as a situation in which social processes of socio-legal change push for a rethinking of legal knowledge and teaching practice, ‘crisis’ will provide a critical analytical framework through which to reflect on the unconventional approach to law and legal education that law clinics foster. The subsequent sections will build on practical examples from the experience of the Roma Tre Migration and Citizenship Law Clinic¹⁵ – one of the first clinical programs in Italian law departments. The third part will thus analyse the case of the Roma Tre Law Clinic’s free consultancy service for migrants and asylum seekers. The fourth will instead focus on the Clinic’s intervention on the topic of migrant labour exploitation in Italian agriculture. The dual aim is to show, on the one hand, how a law clinic can become a relevant actor in promoting access to justice for marginalized people and groups; on the other, how it can carry out activities that – by linking research and social engagement – lead students to develop a critical approach toward law and legal instruments, deepening their understanding of the relation between law and social phenomena.

2. Legal education in times of crisis: framing the spread of law clinics in the context of socio-legal change

The expansion of clinical legal education is often read in connection with processes of the globalisation of law and jurisdictions and of increasing internationalization of higher education.¹⁶ This is especially true in Europe, where the integration process created a transnational legal space that enables scholars, lawyers and students to easily exchange knowledge and teaching experiences and, above all, to approach common issues

more detailed and extensive, it refers to the same essential aspects. See the ENCLE definition at: encle.org/about-encle/definition-of-a-legal-clinic. For an extensive discussion on this matter, see A. Maestroni, *Accesso alla giustizia, solidarietà e sussidiarietà nelle cliniche legali*, Torino, Giappichelli, 2018.

15 About the Roma Tre Migration and Citizenship Law Clinic, see F. ASTA *et al.*, *Il ruolo delle cliniche legali come strumento di insegnamento e approccio al diritto. L’esperienza della Clinica del Diritto dell’Immigrazione e della Cittadinanza di Roma Tre*, in A. MAESTRONI *et al.* (eds.), *Teorie e Pratiche nelle Cliniche Legali*, Torino, Giappichelli, 2018.

16 ALEMANNNO, KHADAR, *Conclusion*, cit., pp. 323-330.

with a shared legal framework. As several scholars have pointed out, there is a line between law clinics and the so-called ‘Bologna Process’ that aimed to harmonize the higher education systems in EU countries in order to meet the requirements of the labour markets.¹⁷

The Bologna Process certainly created a favourable cultural environment for the introduction of clinical legal education as a practice-oriented teaching methodology. Marella and Rigo stress the ‘ideological consistency’ of the convergence of the development of clinical programs and the Bologna Process, since law clinics can easily be bent to the aims of ‘professionalization’ and ‘commodification’ of education and knowledge for which Bologna was designed.¹⁸ In this light, since the 2012 reform of the legal profession provided for law students to carry out the first six months of the necessary eighteen-month lawyers’ training pathway during university studies,¹⁹ some law departments allow students to do it by attending a clinical program. A quick glance to the websites of law departments demonstrates the link between law clinics and ‘professionalization,’ since most of them group clinical programs and legal traineeships under the same page. Nevertheless, as Marella and Rigo observe, it is important to highlight how Italian law clinics seem for now to have moved instead toward a critical understanding of the law and a stronger awareness of the jurists’ role in promoting social change.²⁰ This article suggests thus framing the ‘blossoming’ of law clinics in the context of the recent ‘multiple crises’ of Italian society and legal order in order to understand it as the result of socio-legal change that required a rethinking of both legal education and culture.

In the last decade, the word ‘crisis’ has been endlessly evoked: the 2008 economic collapse, the mass movements of refugees in 2011 and 2015, the fall of traditional political parties and the resurgence of nationalism, the growing opposition to the EU and the events related to climate change are just some examples of the social and political

17 The ‘Bologna Process’ was an intergovernmental cooperation that involved 48 European countries, the Commission and a number of other actors. About the connection between the Process and the development of clinical legal education in Europe, see Bartoli, *Legal clinics in Europe*, cit., pp. 76-78.

18 M. R. MARELLA, E. RIGO, *Le cliniche legali, i beni comuni e la globalizzazione dei modelli di accesso alla giustizia e di lawyering*, in *Rivista Critica del Diritto Privato*, 4, 2015, pp. 537-556, p. 546.

19 Art. 40, Law no. 247/2012, entitled ‘The New Discipline of the Legislation of Legal Professions.’

20 MARELLA, RIGO, *Le cliniche legali*, cit., p. 547.

phenomena labelled as ‘crises.’ ‘Crisis’ does not have a clear definition in either legal theory or social and political theory. Under this perspective, Giuseppe Campesi defines it as “a catch-all word, a label [...] that denotes a situation that breaks with routine and calls for immediate action:” in this sense, it is “almost a synonym for ‘emergency.’”²¹ Read in the traditional approach of “Securitization Theory” then, ‘crisis’ works as a discursive tool used by powerful social actors for purposes of government and control. Since the ‘crisis narrative’ often produces this kind of political effects, one can look to the several ‘crises’ that hit Italian society as opening up spaces for exceptional or emergency measures. Yet in this context, the term reflects something different: a period or phase of relevant social, political and legal changes that question – or rather overturn – the well-established theoretical frameworks, approaches and categories, as well as the teaching methodologies of several fields of knowledge.

In the last ten years, ‘crisis’ has not just been used to justify the adoption of emergency measures, rather it has served as an effective rhetorical tool that encompassed and merged very different social phenomena into a sort of ‘crisis continuum,’ that has profoundly shaped both people’s experiences and the production of knowledge. According to Dines, Montagna and Vacchelli, “crisis has not simply become the descriptor of a succession of events, but rather a paradigmatic frame for thinking about our times.”²² They describe ‘crisis’ “as a powerful narrative device that, when invoked, produces a set of meanings that structure knowledge of social phenomena and, crucially, shape policy decisions, governance structures but also our own approach as academics to studying the world.”²³ Since ‘crisis’ has become a “protracted experiential condition”²⁴ with epistemological implications for the scientific understanding and the critic of social phenomena, the development of clinical legal education must be understood within the

21 G. CAMPESI, *Crisis, migration and the consolidation of the EU border control regime*, in *Int. J. Migration and Border Studies*, 4, 3, 2018, pp. 196-221, p. 197.

22 N. DINES *et al.*, *Beyond crisis talk: interrogating migration and crises in Europe*, in *Sociology*, 52, 3, 2018, pp. 439-447, p. 441

23 *Ibid.*

24 *Ibid.* The authors base their analysis on Jane Roitman’s reflections on the topic contained in the book *Anti-crisis*, published by Duke University Press in 2014.

epistemic effects of this context. Intended as a situation in which social processes, actors, factors and forces push for a rethinking of legal knowledge and teaching methods, ‘crisis’ provides thus a critical analytical framework through which to reflect on the spread of law clinics and their unconventional approach to law and legal education. After all, the history of clinical legal education has always been connected to periods of radical social change. In the United States, the spread of law clinics was fostered by the civil rights movement from the mid-50s to the late 60s, while in Latin America and Eastern Europe countries the introduction of clinical legal education occurred during phases of deep constitutional transition.²⁵

In Italy, the main areas law clinics intervene in underline the relevance of processes of social and legal change in the development of clinical legal education. Migration and asylum, labour, prison, environmental law, anti-discrimination and gender-related issues are all domains characterized by structural inequalities and an unbalanced distribution of power among social actors. Furthermore, while these features largely result from the law and its concrete application by institutional actors, they have been sharpened by specific political and legislative choices made in – and justified by – the protracted experience of ‘crisis.’ Labour and migration are useful examples. On the one hand, the worsening of the overall economic situation brought drastic welfare cut-backs and a further boost toward the liberalization of labor markets and the precarization of working relationships. On the other, a number of legislative reforms and policies have significantly restricted the rights of migrants, asylum seekers and refugees.²⁶ The policies deployed in these fields have often relied upon the ‘narrative of crisis’ as in the cases of the financial crisis or the rhetoric of the refugee and migration ‘crisis’ or ‘invasion’: narratives often interwoven and mutually reinforcing. Thus the choice of the early Italian law clinics to focus on labour and migration is not just revealing of the general commitment to social justice and the promotion of access to justice for vulnerable

25 Bloch (ed.), *The Global Clinical Movement*, cit.

26 Since 2009 a long series of reform have affected the Italian migration and asylum law with the aim of restricting migrants’ rights, their access to social services and even their arrival on the national territory. Recently the so-called “law on security” (no. 132/2018) abolished the permit for humanitarian reasons, restricted asylum seekers’ rights and weakened the Italian reception system.

people and groups that steers clinical activities;²⁷ it also highlights the choice to deal with topical issues emerging from important processes of social and legal transformation in domains of social relationships that are inherently conflictual due to the unequal distribution of rights and – more broadly – of social power.

The close connection with social change seems to be – at least in part – a direct consequence of the clinical methodology itself. Since they provide legal assistance to real subjects and communities, law clinics open a breach in the narrow community of academia and bring to the fore everyday issues and phenomena. It is the *clients* who drive to some extent the educational experience, steering it toward some legal issues rather than others; and this is especially true for law clinics that offer legal aid services directly to the public.²⁸ What occurs in clinical legal education is thus a *reversal* of the traditional process of knowledge production: instead of scholars selecting and labelling specific matters as relevant for legal thought, actual common people and social groups point to what deserves – or better, *needs* – to be addressed by legal science. Law clinics make it possible for social realities to cross past academic boundaries and contaminate the approach, topics and process of legal knowledge production. Using the famous phrasing of the post-colonial scholar Dipesh Chakrabarty, Marella and Rigo argue that the global spread of law clinics can be understood in terms of a sort of ‘provincialization’ of “traditional legal culture.”²⁹ In other words, as Chakrabarty’s purpose was to renew the understanding of categories and assumptions of Western political tradition by “exploring how this thought – which is now everybody’s heritage and which affects us all – may be renewed from and for the margins,”³⁰ that is, from its colonial roots and history, the ‘provincialization’ of legal education (and knowledge) works to shift the atten-

27 BARTOLI, *The Italian legal clinics movement*, cit.. On the experience of the University of Brescia, see M. BARBERA, *The making of a civil law clinic*, in M. Pedrazzoli, L. Nogler, L. Corazza (eds.), *Risistemare il diritto del lavoro. Liber amicorum*, FrancoAngeli, Milano, 2012, p. 323 ss.

28 At the moment, there are only two law clinics in Italy that provide a drop-in service open to the public within a Law Department: the Roma Tre Migration and Citizenship Law Clinic, established in 2010 and, since 2015, the Human Rights Law Clinic at the University of Palermo.

29 MARELLA, RIGO, *Le cliniche legali*, cit., p. 542.

30 D. CHAKRABARTY, *Provincializing Europe: Postcolonial Thought and Historical Difference*, Princeton University Press, Princeton, 2000, p. 16.

tion to issues and layers of the legal order that are usually overlooked or relegated to the margins. This, in turn, promotes a critical rethinking of the categories and paradigms of legal science.

As said before, research on clinical legal education shows that the vast majority of the law clinics in Italy pursue access to justice for disadvantaged subjects and groups, minorities and vulnerable people. This commitment offers a viewpoint from the bottom and margins of the social hierarchy, meaning that layers of social order are engaged by people who are more likely to face abuse, unlawful practices and violations of their rights by public authorities and officials and more powerful private actors (i.e., employers). In these fields of society people often have disordered, unconventional and unwarranted legal experiences, far from the canonical understanding of the rule of law and its founding principles of due process, equality, non-discrimination and so on. People at the bottom of society usually face what Michel Foucault calls the ‘daily life’ of liberal democracies, in which the

calm force of the State, it is known, conceals its violence; its laws, the unlawfulness; its rules, the arbitrariness. The swarming of abuses, misuses and irregularities constitutes not so much an inevitable detour, but the essential and permanent life of the “rule of law”. The bad temper of the prosecutor or the indigestion of the judge, the sleepiness of the jurors are not hitches to the universality of the law, but they rather secure its *ordered course* [emphasis mine].³¹

Foucault’s reflection highlights the structural role of hidden abuses and daily violations as a condition for the ordinary exercise of the law in liberal states and its role in securing and governing the hierarchies of the society.

The reversal of approach entailed in clinical methodology focuses attention on issues – the everyday unlawful practices and behaviours of public administrations, local authorities and minor courts – usually experienced by marginalized subjects and thus largely overlooked by legal culture and scholars whose approach is often influenced by

31 M. FOUCAULT, *Préface* a M. DEBARD, J. L. HENNING, *Les Juges kaki*, Paris, 1977, pp. 7-10, in M. FOUCAULT, *Dits et Écrits*, vol. III, n. 191, pp. 138-140.

their belonging to higher social classes.³² Most of all, it sheds light on how these practices and behaviours are crucial in defining what the “social conditions of the possibility”³³ are for the access to justice and the exercise of rights by specific social groups, communities and categories of people. And once again, it comes to light the connection between clinical legal education and processes of social change: marginalized groups and communities are, in fact, often both the bearers and promoters of the most powerful processes of transformation of the relationships and the rules of the society.³⁴

3. Promoting access to justice for migrants and asylum seekers in times of crisis: the case of the Roma Tre Law Clinic on Migration and Citizenship

When the Roma Tre Law Clinic on Migration and Citizenship was established as an experimental seminar on immigration and asylum law in 2010, it was one of the very first clinical programs in Italy. From the very beginning, the clinic dealt with real legal cases, focusing on the situation of the Afghan asylum seekers whose asylum requests were stuck because of the provisions of the “Dublin Regulation” and who lived in a self-built tent camp – called “*la buca*” (*the hole*) – at the Ostiense train station near the University.³⁵ The clinic has been an optional curricular course since the academic year 2011-2012, and it is attended each year by an average of 25 students. The course provides students with both practical and theoretical knowledge on migration and refugee law, along the lines of the ‘learning by doing approach’ developed by the US law clinics. The Clinic has always combined theoretical knowledge with practical experience, through a teaching methodology that starts from the claims and the needs of actual rights-bearing people.

In 2012, the Clinic set up a free legal consultancy service (‘Front Office’), the

32 L. FERRAJOLI, *Diritto e ragione. Teoria del garantismo penale*, Roma-Bari, Laterza, 1998, p. 800.

33 P. BOURDIEU, *La distinction: critique sociale du jugement*, 1979, trad. it. *La distinzione. Critica sociale del gusto*, Bologna, il Mulino, 1983, p. 427.

34 On this point, see F. ASTA *et al.*, *Il ruolo delle cliniche legali*, cit.; and C. CAPRIOGLIO, *Teaching Law, Promoting Social Justice. Notes on the Development of Clinical Legal Education in Italy*, in *German Journal Of Legal Education*, 4, 2017, pp. 225-239.

35 H. GRANT, J. DOMOKOS, *Dublin regulation leaves asylum seekers with their fingers burnt*, in *The Guardian*, 7th October 2011, available at www.theguardian.com/world/2011/oct/07/dublin-regulation-european-asylum-seekers.

first in Italy, inside the building of the Law Department, which is open to the public weekly all year long. There, students are directly involved in analysing and solving real cases from outside the University. Under the supervision of two immigration lawyers, students provide legal information, support for administrative procedures and practices, draft appeals against refusals of international protection and research asylum seekers' countries of origin.³⁶ Open to the public and offering free and qualified services of legal assistance, the Front Office soon became a point of reference for local immigrant communities and asylum seekers in Rome. In fact, thanks to the students' commitment and competences, the Clinic now has around 200 users annually.³⁷ This figure does not show just the high quality of the Clinic's services and the excellent work of the students, but mostly the actual – and growing – social need for access to legal aid and consultancy. Third-country nationals, refugees and asylum seekers are, in fact, a structural component of the contemporary Italian society, forming more than 8% of the resident population.³⁸

This demand for legal assistance comes from the fact that migrants – perhaps more than other disadvantaged groups – face multiple obstacles in accessing justice, with not only social, cultural and economic barriers, but also legal hurdles keeping them from claiming their rights. Applying to the court means acting *as a citizen* in the public sphere and doing it, most of the times, on your own, as an individual: the lack of formal recognition of citizenship status thus structurally limits migrants' access to justice. Furthermore, the growing intolerance towards migrants and minorities, the precarity of their legal status, the lack of awareness of their rights and the increasing costs of proceedings and of a legal defense all discourage migrants from seeking to have their rights respected.

36 Due to the relevance of the Countries of Origin Information (COI) in the appeals against first-instance denials of asylum, a new clinical program was launched in 2017 – the Legal Clinic on Human Rights and Refugee Law – focused on producing independent “COI Reports” available as open source at protezioneinternazionale.giur.uniroma3.it. The program is carried out in collaboration with the Tribunal of Rome, which often refers to these reports in asylum cases. For further information, see giurisprudenza.uniroma3.it/didattica/cliniche-legali/legal-clinic-human-rights-and-refugee-law.

37 Further information is available at www.giurisprudenza.uniroma3.it/didattica/cliniche-legali/clinica-del-diritto-dellimmigrazione-e-della-cittadinanza.

38 According to the Italian National Institute of Statistics, there were 5,144,440 third-country nationals in Italy as of the 1st January 2018, an increase of around 100,000 people from the previous year. The data are available at www.dat.istat.it/?lang=en.

In this context, it is worth noting that the Italian system of legal aid, regulated by Decree of the President of the Republic no. 115/2002, is supposed to ensure the right to take legal action and the right to defense at all levels and states of judicial proceedings for poor people, in accordance with Article 24 of the Italian Constitution.³⁹ However, despite the formal provisions, the law requires very strict income limits to be eligible for legal aid and it does not cover the costs of the administrative procedures related to the exercise of fundamental rights. Furthermore, the many bureaucratic obstacles in applying for legal aid significantly reduce the access to justice for vulnerable people and socially disadvantaged groups.

The case of the recognition of international protection is a good example of the ineffectiveness of the Italian legal aid system. During the whole first part of the procedure, from the submission of the asylum request to the decision of the Territorial Commission,⁴⁰ the law does not provide asylum seekers with any form of legal assistance or administrative support. This lack of support has consequences. For instance, in 2018 the percentage of recognition of international protection (refugee status and subsidiary protection) in the first instance was only 16% of all asylum requests, while, in the same year, the Clinic lodged more than 80 appeals against the denials of international protection before the Tribunal of Rome, with 90% of the decisions resulting in the applicant receiving a form of protection. The Clinic's experience, even though of limited statistical value, nonetheless reveals how crucial it is for asylum seekers to have access to qualified, professional legal assistance.

The issue of the access to justice for migrants in Italy has been raised by several independent organizations. In the 2014 report on the conditions of undocumented migrants in Italy – which references the findings of the Roma Tre Law Clinic's research on

39 Art. 24 Constitution of the Italian Republic: “1. Anyone may bring cases before a court of law in order to protect their rights under civil and administrative law. 2. Defense is an inviolable right at every stage and instance of legal proceedings. 3. The poor are entitled by law to proper means for action or defense in all courts [...]”.

40 The Territorial Commissions for the international protection recognition are administrative authorities competent to process requests for international protection in first instance. Located in the main urban centres, the Territorial Commissions are part of the Ministry of Interior and operate under the coordination of the National Commission, which is based in Rome.

administrative detention⁴¹ – the International Commission of Jurists (ICJ) states that

[...] the need for substantial reforms in both the legal framework and in policies and practice of Italian officials, both executive and judicial, charged with administering the expulsion and detention regime, is compelling, if equal access to justice is to be guaranteed to undocumented migrants. [...] The ICJ mission found the present system to be seriously and unacceptably flawed and incapable of ensuring an effective remedy to migrants in situations of expulsion or detention.⁴²

While the study considers only the so-called undocumented migrants, the ICJ and the European Council on Refugees and Exiles (ECRE) have raised similar concerns about asylum seekers and refugees.⁴³ Furthermore, the reforms adopted by the Italian Government in 2017 and 2018 seriously curtailed asylum seekers' rights and ability to apply to courts, further limiting their access to justice.⁴⁴ The 2017 reform implemented the system of administrative detention, which allows asylum seekers to be detained under specific conditions,⁴⁵ it changed the regulation of the notifications of decisions of the Territorial Commission and reduced the number of the jurisdictional levels for appealing denials of international protection from three to two. The decree also estab-

41 The Roma Tre Law Clinic coordinated the research "Lexilium – Observatory on judicial review of migrants' removal." The research was carried out by a national network of law clinics and it collected and examined case law from Justices of the Peace in Bari, Bologna, Prato, Rome and Turin during the first and last quarters of 2015. Further information is available at www.lexilium.it. For the final reports, see F. MASTROMARTINO, E. RIGO, M. VEGLIO, *Lexilium. Osservatorio sulla giurisprudenza in materia di immigrazione del giudice di pace: sintesi rapporti 2015*, in *Diritto, immigrazione e cittadinanza*, 2, 2017.

42 International Commission of Jurists (ICJ), *'Undocumented' Justice for Migrants in Italy. A mission report*, Geneva, October 2014, p. 62.

43 International Commission of Jurists (ICJ), European Council on Refugees and Exiles (ECRE), *Joint Submission to the United Nations Special Rapporteur on the human rights of migrants report on access to justice for migrants*, 16th April 2018.

44 Law Decree no. 13/2017, converted with amendments into Law no. 46/2017, and the Law Decree no. 13/2018, converted with amendments into Law no. 132/2018.

45 On this point, see F. ASTA-C. CAPRIOGLIO, *Per giusta decisione. Riflessioni sul controllo giurisdizionale del trattenimento degli stranieri*, in *Materiali per una storia della cultura giuridica*, 2, 2017, pp. 553-572.

lished fast-tracked procedures for the evaluation of the appeals that allow judges not to hear the applicant in person and to ground the decision on the video recording of the interview with the Territorial Commission. The 2018 reform abrogated the provision of the permit for ‘humanitarian reasons,’ which was the most common form of protection granted in Italy in recent years, and downsized the reception system for asylum seekers and refugees.

From this perspective, Italian law clinics – especially those dealing with migration and asylum issues – are operating in a context that recalls, to some extent, the historical circumstances in which the first wave of clinics arose. As mentioned, modern clinical legal education took shape in US law schools in the ’60s with the aim of improving access to justice for poor people and vulnerable groups who could not afford the costs of justice, since the American law did not – and does not – provide a public legal aid in several domains, such as civil law cases.⁴⁶ While law clinics cannot fill the gaps in the legal protection system, the experience of the Roma Tre Law Clinic shows that they can play a vital role in promoting access to justice for migrants and asylum seekers. But there is something more. The work of the Clinic must be seen in connection with the phenomenon of the so-called ‘crisis of justice’ or ‘crisis of jurisdiction’: that is the increasing failure of courts to enforce the law and to protect rights from violations and abuses. The debate on the ‘crisis of justice’ – especially in the domain of civil law – dates back to the early ’80s and has been understood in connection with the retreat of welfare state and the de-judicialization (*i.e.*, Alternative Dispute Resolution (ADR) procedures) prompted by neoliberal policies.⁴⁷

Relatedly, the austerity measures adopted in Italy in the aftermath of the 2008 financial crisis led to an increase of the costs of proceedings and gave a further boost to

46 GIDDINS *et al.*, *The First Wave of Modern Clinical Legal Education*, *cit.* About the issue of access to justice and legal aid in the United States, see G. P. JAMES, *Access to Justice, Costs, and Legal Aid*, in *American Journal of Comparative Law*, 54, Supplement Issue, 2006, pp. 293-316.

47 V. DENTI, *Riflessioni sulla crisi della giustizia civile*, in *Il Foro Italiano*, 108, 11, 1985, pp. 341-352; L. Lanfranchi, *Costi sociali della crisi della giustizia civile e degiurisdizionalizzazione neoliberista*, in *Giur. it.*, 1996, IV, 165 ss. For a comparative analysis of the issue, see A. Zuckerman (ed.), *Civil justice in crisis: comparative perspectives of civil procedure*, Oxford University Press, Oxford, 2000. On the relation between clinical legal education and the process of de-judicialization in Italy, MARELLA-RIGO, *Le cliniche legali*, *cit.*, pp. 544-546.

the phenomenon of the “escape from litigation (*fuga dalla giustizia*)” that, according to Maria Rosaria Ferrarese, means “that people use the channels of civil justice less and less to settle their disputes.”⁴⁸ Since in the field of migration and asylum the ‘escape from litigation’ often means that migrants’ fundamental rights are less and less recognized, the activities of the Roma Tre Law Clinic are an interesting experiment in recovering and rehabilitating the law and litigation as effective tools for the enhancement of constitutional rights and freedoms.

4. Linking research and social engagement: the case of students in support of migrant workers in the fields of Southern Italy

In the last six years, the Roma Tre Law Clinic has developed a line of action-research focused on the issue of migrant labour and exploitation in Italy’s agricultural sector. This section will not provide an extensive analysis of the topic, but instead will show how, by linking research and social engagement, these activities have enabled students to develop a critical approach to the law and its relation with social actors and processes. First, however, it is worth spending a few moments on the process that led the Clinic to focus on the topic.

In the last ten years, the media has paid increasing attention to migrant labour in the Italian agricultural areas, especially in Southern regions, where revolts and strikes for fair wages and better living conditions have shed light on the severe living and working conditions of migrant workers, for example, in Rosarno in 2010 and Nardò in 2011.⁴⁹ This raised public awareness of the role of the illegal gangmaster system (*caporalato*) and organised crime in agriculture.⁵⁰ For this reason, between 2011 and 2016 the Italian Parliament adopted two legislative reforms focusing on law enforcement and

48 M. R. FERRARESE, *Civil Justice and the Judicial Role in Italy*, in *The Justice System Journal*, 13, 2, 1988-89, pp. 168-185.

49 D. PERROTTA, *Ben oltre lo sfruttamento: lavorare da migranti in agricoltura*, in *il Mulino*, n. 1/14, 2014, available at www.rivistailmulino.it/journal/articlefulltext/index/Article/Journal:RWARTICLE:75749. For a critical reflection on media representation of migrant workers exploitation in Italy, see N. DINES, E. RIGO, *Postcolonial Citizenships and the “Refugeeization” of the Workforce: Migrant Agricultural Labor in the Italian*, in S. Ponzanesi and G. Colpani (eds), *Post-colonial Transitions in Europe: Contexts, Practices and Politics*, Lanham, Rowman and International, 2015.

50 Illegal gangmaster is the unlawful recruitment of workers on behalf of third parties, often under exploitative conditions. It is a widespread phenomenon in Italian agriculture, but also in other sectors of production (*i.e.*, construction).

the prevention and repression of crimes, as like ‘gangmastering’ and the most severe forms of labour exploitation.⁵¹ A criminal law approach that brought legal scholars to mainly focus on the analysis of practical problems arising from the application of the new criminal offence provisions.⁵²

However, the Clinic’s interest in this matter did not come from the increasing media and political attention or the increased engagement of the law and legal scholars. Rather, the interest stemmed from the encounter with actual migrant workers during the daily activities of legal aid and consultancy. The migrants who came to the Front Office for legal advice on migration-law-related issues told students about the harsh conditions and on-going violations they suffered living and working as harvesters in Southern Italy. Students thus decided to leave the University to support Clinic users in the places where they spent considerable time facing severe problems and abuses. This shows the reversal of the knowledge production process and the continuous reshaping of the educational path that clinical legal education can entail. In fact, the development of a research interest on the topic did not come from the awareness of some more sensitive scholars of the social relevance of migrant agricultural labour exploitation. Instead, it was the social relevance of the issue that pushed the Clinic – especially the students – to face a phenomenon affecting the daily lives of thousands of migrant citizens in Italy.⁵³

The first activities were carried out in the winter 2014, when a group of students moved for two weeks to Rosarno, in Calabria; there, in cooperation with a network of as-

51 Law Decree no. 138/2011, later converted with amendments into Law no. 148/2011, and Law no. 199/2016. The first reform introduced the offence of “Unlawful gangmastering and labour exploitation” in Article 603-*bis* of the Italian Criminal Code. The 2016 reform amended the provision in order to make the employer liable for the behaviour of labour exploitation. For a critical reflection on the new criminal offence provision, see S. T. CAGLI, *La controversa relazione della sanzione penale con il diritto del lavoro, tra ineffettività, depenalizzazione e istanze populiste*, in *Lavoro e diritto*, 3-4, 2017, pp. 613-642.

52 D. FERRANTI, *La legge n. 199/2016: disposizioni penali in materia di caporalato e sfruttamento del lavoro nell’ottica del legislatore*, in *Diritto Penale Contemporaneo (on-line)*, 2016.

53 For an introduction of the problem and a survey of the relevant legal instruments, see A. CORRADO, *Migrazioni e lavoro agricolo in Italia: le ragioni di una relazione problematica*, EUI, Firenze, 2018. For an extensive denunciation of the severe labour exploitation of migrants in Italian agriculture, see Amnesty International, *Exploited Labour. Migrant workers in Italy’s agricultural sector*, 2012, available at www.amnesty.org/en/documents/EUR30/020/2012/en.

sociations and volunteers, they set up a legal consultancy service inside the workers' tent camp. The students provided legal information and advice to workers on migration and asylum law and took part in assemblies of workers and public initiatives to denounce the severe conditions of exploitation. The same year, the students spent part of their summer holidays in the north of Apulia on the Capitanata plain, one of the most important tomato-growing areas in Italy, where about 15,000 migrants work during the harvest season. For two weeks, students offered consultancy and legal advice to migrant workers in the self-built "Grand Ghetto," inhabited at the time by around 1,500 sub-Saharan migrants. The students also organized discussions about matters of interest to the workers, in order to better understand their views and opinions, give practical information related to the exercise of rights and help them improve their Italian language skills.⁵⁴

The strong interest shown by students, and the legal competences acquired during the fieldwork experiences, brought the Clinic to promote, in the summer 2016, an 'experimental field trip' to Venosa, in Basilicata, an important tomato-growing area of Southern Italy, where the regional government was experimenting with new policies for the reception of temporary migrant workers, related to the broader aim of prevention and repression of gangmastering.⁵⁵ There, the students visited the Italian Red Cross reception centre for migrant workers and denounced the inadequate living conditions and problems workers faced every day in the centre: particularly, the isolation, the long distance from the harvest and the lack of basic services.⁵⁶ Students also took part in the organisation of a public event for migrant workers promoted by a network of local associations. The following year, students carried out a fieldwork research in the north of Apulia, focusing on the functioning of the supply chain and the role of large-scale retailers in creating the conditions for agricultural labour exploitation. Finally, in 2018 a

54 Some of the findings and reflections emerging from the research carried out in Apulia and Calabria appeared in E. Rigo (ed), *Leggi Migranti Caporali. Prospettive critiche e di ricerca sullo sfruttamento del lavoro in agricoltura*, Pisa, Pacini Giuridica, 2016.

55 On this, see N. DINES, *Humanitarian reason and the representation and management of migrant agricultural labour*, in *Revista THEOMAI*, 38, 2018, pp. 37-53.

56 About the fieldwork researches in Apulia and Basilicata of the Roma Tre Law Clinic's students, see also ASTA *et al.*, *Il ruolo delle cliniche legali*, cit.

group of students went back to Basilicata to update the research carried out two years earlier and observe the changes in local reception of migrant workers.

These activities had implications for the students' legal education, since they fostered an unconventional perspective on the law that shed light on the connection between legal instruments and relationships and interests of different social actors involved in agricultural production. As in 'participatory action research,' where "researchers are not separate, neutral academics theorizing about others, but co-researchers or collaborators with people working towards social equality,"⁵⁷ students worked closely with migrant workers to support their rights and claims. In fact, as Hough and Kalsen argue, "legal participatory action research,' or legal PAR, makes its most significant and original contribution to legal scholarship not only by 'looking to the bottom' in a theoretical sense, but by treating those 'at the bottom' as equal research partners who are presumptively best situated to identify, analyse, and solve the problems that directly affect them."⁵⁸

Leaving aside a methodological discussion of what 'legal participatory action research' is and its strengths and limits, what is interesting here is that the close relationship with workers built during fieldwork brought the students to share, to some extent, the view of the workers. Being in close touch with the social reality of agricultural labour led students to adopt what can be defined as a "situated justice perspective:" a realistic and anti-formalist approach that highlights the various social, political, economic and cultural factors that affect the ability of vulnerable subjects to exercise their rights.⁵⁹ In other words, it enabled students to experience first-hand the multiple structural – and often hidden – factors that limit the exercise of rights by vulnerable social actors like migrant workers. Furthermore, it shed light on the role of the law in shaping the balance of forces between employers and workers. In a context structurally shaped by conflicting interests – such as labour relationships – less powerful rights-bearers do

57 B. GATENBY, M. HUMPHRIES, *Feminist Participatory Action Research: Methodological and Ethical Issues*, in *Women's Studies International Forum*, 23, 1, 2000, pp. 89-105, p. 90.

58 E. HOUGH, K. KALSEN, *It's Critical: Legal Participatory Action Research*, in *Michigan Journal of Race & Law*, 19, 2, 2014, pp. 287-347, p. 294.

59 E. BERREY *et al.*, *Situated Justice: A Contextual Analysis of Fairness and Inequality in Employment Discrimination Litigation*, in *Law and Society Review*, 46, 1, 2012, pp. 1-36, p. 3.

not often perceive the law as a neutral tool that provides rules and schemes to settle legal disputes among equal subjects fairly. On the contrary, a situated justice perspective led students to experience that “legal categories, frameworks, and cultural constructs are not impartial” and that “[D]espite law’s ideological promise of neutrality, legal concepts communicate the worldviews of people in positions of power and facilitate those groups’ interests.”⁶⁰

Migrant labour in Italian agriculture is thus a paradigmatic example of the role of the law in securing a certain set of social relationships. The issue lies, in fact, at the intersection between two different sectors of the legal order – labour and immigration law – both of which regulate domains of society that are structurally unbalanced.⁶¹ In this light, the close observation of what occurs in the harvests of Italian agriculture, through the ‘legal participatory action-research’ fieldwork activities, increased the students’ awareness of the real causes of the widespread violations of rights, the daily abuses and lack of policies of mediation of labour relations in agricultural production. It also enabled them to understand that the Italian labour law often fails to provide effective remedies to migrant workers and, more broadly, an actual legal protection of their rights. It unveiled the law’s hidden role in weakening the position of migrant workers in their relationships with their employers. In fact, it made clear how the precariousness of the immigrant legal status and the countless restrictions in their access to social services prevent – or at least discourage – migrants from seeking justice and claiming their rights as workers.⁶²

5. Conclusions

The article placed the spread of law clinics in Italy against the backdrop of the context of crisis – or rather, ‘multiple crises’ – that involved the Italian society in the last ten years. The evolution of clinical methodology in law departments was thus ana-

60 BERREY *et al.*, *Situated Justice*, cit., p. 8. See also, E. BERREY, *Why Diversity Became Orthodox in Higher Education, and How It Changed the Meaning of Race on Campus*, in *Critical Sociology*, 37, 2011, pp. 573-596.

61 For an extensive analysis of the interactions between labour and immigration law, see C. Costello, M. Freedland (eds), *Migrants at Work. Immigration & Vulnerability in Labour Law*, Oxford, Oxford University Press, 2014.

62 On this, see M. McBRITTON, *Lavoro degli immigrati e lavoro sommerso: l’inadeguatezza della normativa*, in *Questione Giustizia*, 3, 2014, pp. 171-180.

lysed through the lens of the concept of ‘crisis,’ intended as a situation in which social processes, actors, factors and forces push for a rethinking of legal knowledge categories and teaching methods. The aim was, in fact, to highlight the connections between clinical legal education and processes of socio-legal change, in order to shed light on the core meaning of the expansion of clinical programs in Italy and the consequences on traditional legal education approach and methods.

Through the analysis of practical examples from the experience of the Roma Tre Migration and Citizenship Law Clinic, the article firstly emphasized the Clinic’s role in promoting access to justice for marginalized groups and vulnerable people, as well as in recovering the litigation as an essential tool for the enhancement of fundamental rights in a time of ‘crisis of jurisdiction.’ Furthermore, the case of migrant labour in agriculture shed light on how a clinic can provide for a “situated justice perspective,” which enables students to experience first-hand the multiple structural factors that – behind formal legal provisions – define the real conditions of possibility for the exercise of rights by vulnerable subjects, as well as to understand the role of the law in shaping the balance of forces between social actors.

In light of these reflections, the article thus argued that clinical legal education is not just a matter of methodology, nor of ‘simply’ enhancing the values of justice and equality that, among others, underlie the Italian Constitution and the most relevant international human rights conventions. Rather, as Marzia Barbera – one of the most prominent Italian clinicians – recently pointed out, law clinics concern something more relevant: at the very core of clinical legal education is, in fact, the ‘positioning’ of jurists and legal knowledge amid the multiple relations of power and inequality that shape society.⁶³ Law clinics, in fact, entail a ‘partisan’ view toward the law that pushes legal scholars and students to side with the less powerful people, communities and social groups. What is at stake in clinical legal education is thus the very understanding of the function of the law and the role that jurists and lawyers play in the face of some of the fundamental challenges and socio-political issues that will shape future societies.

63 BARBERA, *Il movimento delle cliniche legali e le sue ragioni*, in A. Maestroni et al. (eds.), *Teorie e Pratiche nelle Cliniche Legali*, Torino, Giappichelli, 2018, p. XXV.
