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‘THE REPRODUCTION OF HIERARCHY’ IN ITALIAN
LAW DEPARTMENTS AND INNOVATIVE TEACHING.
THE ROLE OF LAW CLINICS**

ABSTRACT. *The topic of innovative teaching must be framed through a discourse that recognizes the eminently political nature of law departments. It is not possible to disregard, in the study of legal education, the fact that courses of study and teaching activities have nothing merely technical and neutral about them; they are practices and tools that are functional in placing students within social hierarchies proper to the legal world that awaits them. The law department is thus a hierarchically organized space in which students are taught the body of knowledge necessary to be part of that hierarchy.*

Every aspect of legal education is functional to hierarchical reproduction, from classes to curricula to teaching methods. The goal of critical study is to question legal education, expose the ideology behind it and propose alternative practices. In this sense, clinical legal education (CLE) can be conceived of as an innovative teaching that eschews hierarchical reproduction, as long as it is configured as a transformative practice that aims to protect general interests through collective conceived access to courts. In this way, students are immersed in an alternative, egalitarian educational space of shared and interdisciplinary knowledge.

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** This title and this article are a tribute to one of the most brilliant books I have ever read. Duncan Kennedy’s work on Legal Education and the Reproduction of Hierarchy should be required reading for every student about to enter law school in any part of the world.

1. *Introduction*

Reflections on legal education and the state of teaching in law faculties cannot be separated from the consideration that these are intensely political places. Despite the efforts made to create niches of technical knowledge, with little intellectual content and without the necessary theoretical depth or effective scope of practical application, one glimpses an inseparable ideological dimension that constitutes the backbone of the legal education offered to students to take their place in the social hierarchies that characterize the neoliberal state.

Emphasizing the ideological dimension of legal education does not simply mean questioning what is taught in law classes, with which methods and techniques it is done: it means, above all, recognizing that there is nothing technical or objective about the choices regarding these topics. The disciplines included, the prevalence of frontal lectures, the preparation of students based on mnemonic data, the excessive professionalization of courses are all aspects peculiar to Italian legal education that have negative implications; however, the emergence of these aspects is not the result of chance; they are functional practices to introduce students into the social hierarchy that characterizes the legal world inside and outside universities.

It is impossible to think about innovative teaching without starting with a thorough understanding of how legal education is provided in the faculties and of the ideology that underlies this hierarchical system of knowledge production. In this sense, any reformist intention should be aimed at recognizing and counteracting this hierarchy. A complete dismantling of the latter does not seem conceivable with the means at hand; only innovative teaching can make it explicit and at the same time depower it by seeking to transform the practices that enable its reproduction.¹

¹ On the progressive push for reforms of university education, see B De Sousa Santos, 'La Universidad en el siglo XXI. Para una reforma democrática y emancipadora de la Universidad' in R Ramirez (ed), *Transformar la universidad para transformar la sociedad* (2nd edn, Senescyt 2012) 139.

2. *Legal education and legal hierarchy*

For reasons of brevity, it will not be possible to go into detail on all the areas and practices that support this hierarchy and make it possible to reproduce it. Duncan Kennedy's volume² on the subject provides a meticulous description of how such a hierarchy operates in US law schools, but it is not possible to overlap this experience with Italian law faculties: there are several differences between the two legal systems in this area, such as the fact that legal education in the US is provided within graduate schools for students who have already completed a university education, which requires that what Kennedy says be contextualized within the European and Italian contexts. At the same time, the considerations that the author draws from the analysis of this model of legal education remain unchanged, considerations that will be taken up here by attempting to describe the Italian model.

Access to law faculties has always been one of the available instruments of social mobility, since students enrolled in law faculties knew that the multiple possibilities offered by a law degree would allow them a wide range of professional opportunities and the necessary preparation to face the state examinations required by our system. In general, most law students are convinced that they will find more than just the opportunity to practice a socially valued profession; there is a related idea of public service, and that law represents a progressive force in society, so that the opportunity to study and practice law means choosing progress over chaos, modernity over tradition. This belief has endured even in recent years, when enrollments in law schools have declined, especially in those universities located outside of major urban centers, in smaller jurisdictions, or in more depressed economic realities.

However, other faculties have recently shown greater attractiveness: political science is often preferred to law because of the versatility of its curricula, which allows for less in-depth preparation in the legal field, complemented by a range of cross-curricular knowledge that attracts students precisely for the breadth of preparation offered.

The crisis in the legal profession and the freeze in public administration have

² D Kennedy, *Legal Education and the Reproduction of Hierarchy: A Polemic Against the System, A Critical Edition* (NYU Press 2004).

also eroded the primacy of law schools, and the proliferation of three-year degree programs has attempted to reshape legal education by creating a series of shorter and more specialized career paths. This policy has ended up cracking the role of law schools as engines of social progress: the provision of intermediate job numbers, lacking general preparation in the legal field, highly specialized and with limited job outlets, represents the denial of the idea for which law school allowed the opportunity of access to professions and job positions considered socially admired.

3. The reproduction of hierarchy between faculty and students in Italian law departments

It is a common belief among law students that they are embarking on a demanding course of study that requires sacrifice, preparation, and a return on investment in social and economic terms. It is therefore a competitive environment in which each student must work hard, show intelligence, develop character, and know how to be tough with his or her peers.

From the very first year, these aspects are more than obvious; the faculty members are almost all Italian, mostly male, generally middle class, from the same city as their department, especially in the smaller law departments, and tend to be heterosexual or make an effort to appear as such. The classroom is therefore structured in a highly hierarchical order. The dominant teaching method is still the frontal lecture, in which each student projects the sense of deference developed during compulsory schooling onto the teacher, who is then free to deliver her lecture undisturbed. The frontal lecture allows the teacher minimal preparation, shelters her from any interruption or exchange with the students, reduces the need to prepare teaching materials other than those necessary for her own exposition, and paradoxically reassures the student herself, who can apply her study methods to a single teaching text instead of relating to multiple authors, multiple points of view, and a more complex overall view of the course topics.³

³ See on this M Vogliotti, 'Per una nuova educazione giuridica' (2020) 20(2) *Diritto & Questioni Pubbliche* 229; E

The frontal lecture fits perfectly with the hierarchical nature of the organization within law classrooms. Apart from the deference they owe to the teacher, students are free to develop their own autonomy within the class, they can pay attention to the lecture, take notes or abstain from it, and in this lies the great difference with high school and other compulsory schools: the university teacher tends not to engage the individual student, but waits for him to relate to her. In the absence of a didactic device capable of filtering the relationship between teacher and student, such as dialogic or participatory classes might be, this relationship is established through the autonomous choices of each student: some will try to intervene during the class to stop the teacher's stream of consciousness; others will approach at the end of the lecture to ask the usual questions about the syllabus; others will turn to the teacher's own aides.

Meanwhile, the class continues, and it becomes clear that what is being learned is a set of terms and definitions, but above all a new language, a new way of expressing oneself, of thinking, of explaining one's ideas. Information begins to circulate, the commitment and sacrifice that everyone talks about suddenly take on real forms: codes, judgments, reference texts. As time passes and the different courses alternate, it becomes clear that neither the students nor the teachers are as homogeneous as they seemed at first glance. Teachers take on a name associated with a certain behavior: teachers take on a name associated with a certain behavior: some are more casual speakers than others, interrupting the lecture with a few jokes, hinting at their opinions on the facts of the day; others appear more demanding, more assertive and more authoritarian.⁴

On the other hand, the need to assimilate the language and the legal way of thinking in a short period of time leads the students to prefer teachers who are considered to be clearer, those who refer more to the volumes of the course, those who prefer definitions, normative references, those who tend to present law as a complex of technical, logical and neutral tools.⁵

Morin, *La testa ben fatta. Riforma dell'insegnamento e riforma del pensiero nel tempo della globalizzazione* (Raffaello Cortina Editore 2000).

⁴ On this see D Kennedy, 'Legal Education as Training for Hierarchy' in D Kairys (ed), *The Politics of Law: A Progressive Critique* (3d edn, Basic Books 1998) 55-6.

⁵ On presenting the law as a technical, apolitical and neutral tool, see G Capuzzo, 'Legal Expertise: On Some Uses

This approach wins over a large part of the students, not only because it provides a set of techniques for assimilating the new legal language, but above all because it explains, for the first time, what the rigor required of law students consists of.

Frontal lectures will thus be peppered with tedious, technical and often sufficiently complicated examples, chosen to illustrate the mechanical precision of the lawyer in using the available legal tools, without any political or moral significance. Students are required to present this approach as the correct one in order to be recognized as belonging to the community of legal experts. Consequently, students feel the need to conform to this standard in order to fully learn the language and mindset of lawyers.

The more technical, logical, abstract and authoritarian a teacher is, the more rigorous he or she is considered to be and the closer he or she is to the ideal of the law professor. Conversely, the more a teacher pays attention to issues of public policy, disregards the slavish analysis of formal technical data alone in favor of different points of view, and adopts a dialogical attitude, the more his image will deviate from the idealized figure mentioned above.

At the same time, teachers are in a unique position to observe the students in the classroom: those who are more attentive, those who are less so, those who attend all the lessons, those who are compulsive users of their laptops' keyboards, those who intervene with a question or a suggestion, those who sit in the front rows and those who remain further away. The student who is nearing the end of the lesson, the one who shows that he has read part of the assigned reading, i.e. the course book; the one who answers the occasional question of the teacher, the one who proves to be active in one of the various social moments that take place during the lesson: the collection of the attendance signatures, the discussion of the scope of the program. As already mentioned, the frontal lecture increases the autonomy of the students under the watchful gaze of the teacher, who judges the behaviors and interactions, the level of respect, the degree of amusement generated by one of his or her questions. As mentioned

of Law in Transnational Regimes' (2013) 4(2) Comparative Law Review <<http://www.comparativelawreview.unipg.it/index.php/comparative/index>> accessed 25 July 2023.

earlier, the frontal lecture increases students' autonomy under the watchful gaze of the teacher, who judges behaviors and interactions, the level of deference, the degree of amusement generated by one of his jokes.

4. *Ideology and hierarchization in legal courses and curricula*

The preceding paragraphs reconstruct how law departments of Italian universities are eminently political places where legal education is provided in a highly hierarchical environment from the perspective of both students and faculty.

According to Duncan Kennedy, there are two main areas related to legal education that contribute to the reproduction of hierarchy.⁶ The first relates to the experience within the classroom, the undergraduate curriculum and, in particular, the classical teaching methods that function to expose students to a set of practices and attitudes with a hidden and often unacknowledged ideological dimension towards the economy, society and politics. The second concerns a sampling of various institutional practices aimed at stimulating students' voluntary adherence to the specular hierarchical construction of the legal world that awaits them outside the university.

We have already had the opportunity to talk about the hierarchical structure of classes; it is not, however, the case to investigate institutional practices, a topic that is beyond the scope of innovative teaching methods, so it is perhaps better to focus on the issue of curricula and teaching approaches, since it relates more directly to the main theme of this paper and introduces the second part of the discussion.

It is difficult to arrive at a general summary of the concepts that students learn during their legal career, but in general it can be said that they are pushed to assimilate a considerable number of rules organized according to abstract legal schemes and categories. They learn to apply these rules to factual situations, to rudimentarily use a list of balancing public policy arguments that lawyers can use to argue that a given rule should apply to one situation rather than another when a conflict arises. These are

⁶ Kennedy, 'Legal Education as Training for Hierarchy' (n 4) 58.

arguments such as ‘legal certainty’, ‘certainty of legal transactions’, and ‘the need to avoid market failures’.⁷

This background is often somewhat criticized by critical scholars who emphasize the formalistic scope of certain principles, such as that of legal certainty. However, this background can be particularly useful for the average lawyer because it allows for various reflections on the indeterminate nature of the legal system, the need to constantly balance conflicting legal interests, and the eminently ideological nature of different conceptions of law. In this area, the main question is how these concepts can be assimilated by the student.⁸

As seen in the previous section, professors tend to teach these skills through frontal classes in which it is stated that law is a precise and unambiguous language for initiates, and that it emerges from a rigorous logical procedure of legal reasoning; this formalistic and dogmatic approach to law provides a distorted image of the legal system, according to which legal issues can be resolved by applying neutral syllogisms to mere factual situations, but above all it legitimizes most of the rules in force in our system, which are considered untouchable by students. At the same time, the context of different disciplines (and different disciplinary scientific fields) presents each legal issue as distinct from the other, thus contributing to the persistence of inaccurate and deceptive dichotomies, such as those between public and private, market and family. Such a fragmented study of law makes it really difficult to have an integrated view of what law is, how it works, or how it might change.

Second, the formalistic teaching methods just outlined do not allow for an adequate transmission of legal skills; these are often acquired unconsciously through mnemonic study that privileges definitions, the repetition of code provisions from memory, without critical analysis and reasoning about how they work and how they are interpreted. Such teaching methods, accompanied by a scientific context that hinders interdisciplinarity both between legal disciplines and with other fields of knowledge,

⁷ Ibid 59.

⁸ D Kennedy, ‘The Political Significance of the Structure of the Law School Curriculum’ (1983) 14 *Seton Hall Law Review* 1.

accentuate real and imagined differences in students' abilities, but in such a way that students do not know when they are learning and when they are not, and have no way of improving or understanding their own learning process. As seen above, the assimilation of skills is perceived by students through the gradual emergence of differences among them, defining a hierarchical process based on a set of skills that are considered innate, rather than the result of each student's autonomous progress, a situation that reinforces class hierarchies.

Thirdly, the dominant teaching methods usually teach skills in isolation from substantive experiences that would enable students to understand the social repercussions of the legal rules analyzed in the classroom. This approach prevents students from assuming any future role other than that of trainee in a hierarchically organized law firm, where senior lawyers control the content and pace of depoliticized craft training in a context of intense competition, without protection and often without compensation.⁹

The ideological basis of such teaching approaches is the distinction between law and politics. Teachers convince students that legal language and thought exist in themselves and are independent of any kind of political consideration, and push them to accept as valid dogmatic arguments that are often incoherent or so vague as to be meaningless. Sometimes they are simply authoritative arguments, where the validity of the authoritative premise is placed outside the discussion by the professors. Sometimes they are policy arguments (e.g., transactional security, legal certainty) that are treated in one situation as if they were binding legal rules, but are ignored in the next case when they suggest that the decision was wrong.

Courses of study have a similar structure. Before private law, it is not uncommon to find Roman law, which functions both as a historical basis for the former and as a legitimizing tool for private legal institutions (the Roman dominium and private property). Constitutional law is usually included in first-year courses and serves as an introduction to understanding state structures and the discourse of rights. Teachers tend to present it as a legal discipline supported by an internal logic, as a logical exercise in legal reasoning, with evaluations of the politics of law remaining relatively in the

⁹This structure can be found in Kennedy, 'Legal Education as Training for Hierarchy' (n 4) 59-60.

background. Then, in the following years, there are courses that enrich the picture sketched in the first year between capitalism (civil law, commercial law, criminal law, labor law, civil procedure) and the administrative structure of the modern regulatory state (administrative law, criminal procedure, and tax law).¹⁰

There is no substantial difference with the first-year courses, which are also aimed at providing a formal set of knowledge about the discipline, limiting the recourse to questions of values and the substantive impact of legal rules within society. The only difference is the greater freedom of teachers to express their opinions; the progressive ones will imply that it is necessary to intervene in the market, but any intervention must be discreet because it is enormously complicated and, in any case, entrusted to a group of technical experts. Conservative teachers, on the other hand, will point out that the protection of the private individual derives from natural law and that much of the intervention of the state is irrational or inefficient, justified by policies that have nothing to do with the actual functioning of the legal system.¹¹

Finally, there are peripheral subjects such as philosophy of law, history of law, and comparative law. These subjects are presented as not entirely relevant to the logical, neutral, serious, and rigorous hard core of law; depending on the department, they may be a kind of practical school, a divertissement, or a space for interdisciplinary study left for these disciplines precisely because they are not really law. As noted above, students tend to appreciate this kind of teaching context, the hierarchy of courses in the curriculum helps them to balance the study effort required for each discipline, the prevailing teaching methods crystallize in their minds a set of formal information and some organizing categories. In such a context, it would be quite unusual for a student to develop a critical attitude toward this system on his or her own.¹²

¹⁰ Ibid 60.

¹¹ Ibid 61.

¹² Ibid 62.

5. *Critical thinking and legal education: rights discourse and law clinics*

Moreover, critical thinking cannot be developed without direct knowledge of the substantive implications that legal rules have within society. The eminently logical and abstract character of the classical teaching methods does not take into considerations the actual social and economic interests that hide behind the technical provisions. On the other hand, the main critique developed against this teaching method is not without remark. As Kennedy himself notes¹³, the alternative approach is fundamentally centered on the discourse of rights; the identification and recognition of subjective rights becomes a teaching tool when it enables students to link the substantive interest of a particular social group, with the legal discipline that protects that specific position, Such a critique is quite common among left-wing students and it centers around a progressive program that can be reduced to recognizing people's rights and to bringing about the triumph of human rights over mere property rights'.¹⁴ This critical approach fails to explain the indeterminacy that characterizes law; it merely points out that the system fails to enforce formally recognized rights. Rights discourse is internally incoherent, vacuous and circular. Legal thought can generate equally plausible justifications of rights for any kind of outcome.¹⁵

Subjective rights are by their very nature formal, in the sense that they provide individuals with legal protection against, any kind of arbitrariness against individuals – to speak of subjective rights is not precisely to speak of social justice between classes, races or sexes, consequently the legal discourse that is produced is traditionally individualistic and deliberately blind to the reality of substantive inequality.

In other words, the use of rights discourse as an alternative teaching tool is unable to teach students to free themselves from the logical-legal reasoning techniques that are used by a considerable proportion of teachers. From a certain point of view, rights discourse represents the perfect counterbalance for classical teaching methods

¹³ On the critique of the rights discourse, see D Kennedy, 'The Critique of Rights in Critical Legal Studies' in W Brown and J Hallen (eds), *Left Legalism/Left Critique* (Duke University Press 2002) 176-226.

¹⁴ Kennedy, 'Legal Education as Training for Hierarchy' (n 4) 62.

¹⁵ On this see M Cappelletti, *Dimensioni della giustizia nelle società contemporanee* (Il Mulino 1994).

dominated by logical-legal reasoning, since it does not focus too much on deconstructing the abstract system that dominates the other approach, it merely mitigates it through the introduction of a series of value considerations that rest on a progressive legal rhetoric, which provides at most an emotional stance against the legal order.

In such a context, truly innovative teaching must push the students to think about law in a way that allows them to grasp its substantive indeterminacy, to criticize it without rejecting it outright, and to manipulate it without abandoning their own system of thought and action. Thus, it is not necessary to outline new teaching techniques when it is possible to go and rediscover used tools in the toolbox of legal education. The first one that comes to mind is, without a doubt, clinical legal education (CLE).

CLE represents the perfect example of how to produce a substantive educational approach that does not disregard the normative datum, but immediately drops it into the real dimension of different social interests. The origin and especially the evolution of legal clinics is imbued with the critical thinking centered around the rights discourse, yet these do not become entangled with it.¹⁶

This didactic method becomes innovative as it reaches into the folds of law to find technical solutions that can grant protection to specific social groups on a single legal issue. CLE is forced to leave both rights rhetoric and logical-legal reasoning in the background. Working within the legal order, it must address its antinomies, inconsistencies and vagueness. Clinicians cannot remain confined within the narrow fences of different disciplines but learn to navigate a legal world that knows no precise boundaries and that ranges from private to public, from administrative to civil more easily than one might imagine.¹⁷

CLE is a perfect example of how to produce a substantive educational approach that does not disregard the normative datum, but immediately drops it into the real dimension of different social interests. The origin and, above all, the development of

¹⁶ On this see K Kreuse, 'Getting Real About Legal Realism, New Legal Realism and Clinical Legal Education' (2011) 56 *New York Law School Law Review* 295.

¹⁷ On this see P Galowitz, 'The opportunities and challenges of an interdisciplinary clinic' (2012) 18 *International Journal of Clinical Legal Education* 165.

the legal clinics are imbued with critical thinking centered on the discourse of rights, but they do not become entangled in it.

This didactic method becomes innovative when it reaches into the folds of the law to find technical solutions that can grant protection to specific social groups on a single legal issue. CLE is forced to leave both legal rhetoric and logical-legal reasoning in the background. It must work within the legal order, addressing its antinomies, inconsistencies, and ambiguities. Clinicians cannot remain within the narrow confines of different disciplines, but must learn to navigate a legal world that knows no precise boundaries and that moves more easily than one might imagine from private to public, from administrative to civil.

6. *Clinical Legal Education as innovative teaching*

CLE has recently experienced exponential growth within the Italian legal system, a recent mapping carried out by the Association of Italian Legal Clinics reported the existence of more than ninety educational activities of various kinds that can be broadly traced back to the experience of CLE.¹⁸ In such a context, it is necessary to reiterate what are the basic elements that have characterized CLE since its origin within the US legal system.¹⁹

These experiences appear to be very different from each other; indeed, it seems difficult to determine which of them can truly be called law clinics by assuming the intent of social transformation or access to justice for the disadvantaged. In terms of

¹⁸ This mapping is currently under way and it is sponsored by the Association of Italian Legal Clinics: R Ciavarella, C De Martino and M D'Onghia, 'Mappatura delle cliniche legali nell'Università italiane', file from authors. The report is not published yet because only the first part, the quantitative one has been completed, as stated before, mapping is still under way, the second stage of the project is a qualitative study and it will be released at the next Association's General Assembly that will take place in Turin at the end of November 2023. This mappings is based on a previous study carried on by L Scomparin, 'Mappatura delle cliniche legali italiane. Working paper del Coordinamento Nazionale delle Cliniche Legali Italiane' (2020), file from the author.

¹⁹ FJ Bloch and M Menon, 'The Global Clinical Movement' in FJ Bloch (ed), *The Global Clinical Movement. Educating Lawyers for Social Justice* (OUP 2011) 271.

teaching activities, the indispensable elements of law clinics are a training model marked by experiential learning and the direct interaction of students with the legal and social reality being studied. In other words, to be able to speak of law clinics, the confrontation of students with real cases is inescapable, whether when preparing legal opinions or litigation, or when the prevailing activity is mediation with institutions, drafting legislative proposals, making recommendations or other extrajudicial activity.²⁰

Outlined in this way, CLE represents an interesting starting point for developing innovative teaching that can produce an effective critique of the classical approach to logical-legal reasoning. CLE means abandoning the frontal lecture, this does not mean that students will not attend explanatory moments by teachers, it means that learning takes place on an interactive and experiential level, the technical-legal component is explained through the study of its impact in the social dimension. More. The comparison with real cases illustrates, without the need for rhetoric, the reflections on different social groups of the legal rules that are studied within the different courses.²¹

The interactive character then contributes to a sharing of knowledge that is a fundamental trait of the clinical experience, unlike the frontal lecture in which the transfer of knowledge flows from the lecturer to the students by contracting with the students' autonomy its diffusion and sedimentation, within the CLE, lecturers and students contribute to creating shared knowledge through the reversal of the hierarchical logic that has been highlighted with the classical didactic approach.²²

Clinical didactic activity is not immune to criticism; it has already been exposed how CLE is often entirely embedded within the rights discourse as a tool for substantive application of legal protections elaborated at the theoretical level; according to this scheme, the goal of social justice is achieved through the enucleation of a set of subject

²⁰ M Barbera, 'The making of a civil law clinic' in L Nogler and L Corazza (eds), *Risistemare il diritto del lavoro. Liber amicorum Marcello Pedrazzoli* (Franco Angeli 2012); M Barbera, 'The Emergence of an Italian Clinical Legal Education Movement: The University of Brescia Law Clinic' in A Alemanno and L Khadar (eds), *Reinventing Legal Education How Clinical Education is Reforming the Teaching and Practice of Law in Europe* (CUP 2018).

²¹ See on this L Scomparin, 'Lo sviluppo delle cliniche legali italiane' [2019] *Questioni e Giustizia* 142.

²² On this point see M Tushnet, 'Scenes from the Metropolitan Underground: A Critical Perspective on the Status of Clinical Education' (1984) 52 *George Washington Law Review* 272; C Blengino and A Gascon Cuenca, *Epistemic Communities at the Boundaries of Law: Clinics as a Paradigm in the Revolution of Legal Education in the European Mediterranean Context* (Ledizioni 2019).

rights and their recognition by the legal system. In these cases, the legal clinic becomes a platform for the defense of certain subjective rights, rather than a site for the manipulation and transformation of law itself. Viewed from the prism of a radical critique—to which the legal clinic movement pays a theoretical debt—this model of CLE can certainly appear little more than consolatory, as if students must fill up on good intentions during their formative years because they are destined for a profession where individual profit prevails, the CLE thus assumes a functional role in softening the system by making it more acceptable, in line with the *pro bono* activity promoted by international law firms.²³

It is clear how CLE has potential to represent effective innovative teaching in the Italian university landscape without flattening them, on the one hand, on critical thinking revolving around a discourse on rights and, on the other, on a professionalizing dimension connected to a merely technical 'know-how' approach.²⁴ Specifically, CLE contains a transformative force of the legal and social dimensions that represents the greatest critical reach of this didactic approach. The conformation of the law clinic, which moves in an interdisciplinary context that is at the same time experiential, non-hierarchical, shared and collective, encourages an overall rethinking of the concepts and rules that come to the fore during its activities.²⁵

CLE pushes to work on specific issues that affect well-defined legal and social interests, however, these interests are always thought of as collective, they transcend the protection of the rights of a single individual, even when clinical activities serve to protect a single individual, the perspective is always that of the social group(s) behind the person(s) assisted.²⁶

²³ See MR Marella and E Rigo, 'Le cliniche legali, i beni comuni e la globalizzazione dei modelli di accesso alla giustizia e di lawyering' (2015) 33 *Rivista critica del diritto privato* 537.

²⁴ See Bloch (n 19).

²⁵ See C Blengino, 'Che cosa ci insegnano le cliniche legali?' (2021) 21 *Diritto e questioni pubbliche* 41; J García-Añón, 'Transformation in Legal Teaching and Learning: Clinical Legal Education as a Transformative Component' in J García-Añón (ed), *Transformaciones en la Docencia y Enseñanza del Derecho. Actas del V Congreso Nacional de Docencia en Ciencias Jurídicas, Unitat d'Innovació Educativa – University of Valencia* (2013).

²⁶ See on this C Blengino 'Fondamenti teorici di una pratica: approccio bottom up, prospettiva interdisciplinare e impegno civile nella clinica legale con detenuti e vittime di tratta' in A Maestroni, P Brambilla and M Carrer (eds),

Similarly, access to justice takes on different characters; it is no longer the individualist principle around which the clinical experience was formed in US law schools, where access to the protection of rights is not guaranteed to all. In a system such as the Italian one, where at least formally legal aid is guaranteed for those who cannot afford a technical defense, the principle has taken on a different dimension, one that is related to the question that every legal interest protected by CLE is a collective interest, in the same way access to justice cannot be understood as an action to protect an individual, but as a collective access to protect a specific social group.²⁷

The transformative potential that can be found in some experiences of Italian law clinics is the classic product of the adaptation of legal models from other legal systems. The work of integrating CLE into the Italian legal system has seen active scholars and researchers who have shaped a method of practical teaching peculiar to the American legal world of law schools in order to place it within a civil law system characterized by a clearly conservative context with regard to legal education and teaching methods.

It is not possible to understand the impact of law clinics in the Italian legal system if we do not consider how they were introduced into the legal system as a tool for critiquing legal thought. If one looks carefully at the experience of the oldest law clinics, it is easy to discern in these activities a precise critical connotation of the type of legal education provided within the Italian legal system, the degree to which law faculties are detached from the actual social context in which they are situated, and the still pervasive formalism that continues to characterize much of Italian legal doctrine.²⁸

A cursory glance at the scholars who were first involved in the development of the CLE model in Italy reveals the names of some of the most active exponents of Italian critical legal theory; the fact that this approach takes on the substantive connotations

Teorie e pratiche nelle cliniche legali (Giappichelli 2018) 233-260.

²⁷ See M Cappelletti and B Garth, 'Access to Justice and the Welfare State. An Introduction' in M Cappelletti (ed), *Access to Justice*, vol 4 (EUI 1981); G Marini, 'Giustizia accessibile a tutti' [1980] *Politica del diritto* 585.

²⁸ On the adaptation of the US law clinics' model into the civil law system with specific regard to Italy, see C Amato, 'Experiential learning from the continental viewpoint: if the cap fits...' in R Grimes (ed), *Re-thinking Legal Education under the Civil and Common Law. A Road Map for Constructive Change* (Routledge 2018) 13.

of anti-discrimination protection and of workers and women workers, of migrants and their status, of territory and the environment, rather than of prisoners and women prisoners, is only a direct consequence of the critical commitment that underlies these experiences and the work of these academics.²⁹

Thus, the Italian CLE model was born as a critical tool of the Italian system, highlighting its limitations, such as the lack of inclination to substantive reflection, the rigid hierarchical construct that characterizes relations within departments, and the doctrinaire formalism.³⁰

The importation of the U.S. legal model serves to counter these tendencies, the global CLE is rejected in the Italian experience as a critical teaching method, and the reference to social justice and public engagement, which represent the goals to which the work of law clinics must aspire, takes on a pregnant meaning in the Italian context, because it allows the functionalization of critical thinking to certain substantive areas proper to each law clinic. In this sense, the critical scope of CLE is expressed through the impact it has on the social context in which it operates.³¹

The indissoluble link between the critical academic dimension and the social transformative function of Italian CLE is perfectly illustrated by a few examples, among many, related to the activities of law clinics. The first one is one of the oldest clinics, called 'Salute, Ambiente e Territorio',³² active at the Law Faculty of the University of Perugia, coordinated first by Maria Rosaria Marella and now by Giovanni Marini. This clinic accepts as clients only associations and committees working for the protection of the territory and the environment, and has distinguished itself in several cases, among others, concerning Ilva in Taranto, the right to housing in the city of Perugia, and the legal protection of a square in the Pigneto district of Rome. The second example refers to the legal clinic opened by Bocconi University in the San Siro district,³³ a very young

²⁹ See J García-Añón, 'La integración de la educación jurídica clínica en el proceso formativo de los juristas' (2014) 12 REDU 153.

³⁰ On this see R Mestre (ed), *Guía práctica para la enseñanza del derecho a través de las clínicas jurídica* (Tirant 2018).

³¹ On the social impact of CLE, see L Arbetman, E O'brian, *Street Law: A Course in Practical Law* (McGill 2016).

³² See the law clinic website, Clinica legale 'Salute, Ambiente e Territorio' <<https://giurisprudenza.unipg.it/didattica/cliniche-legali/law-clinic-salute-ambiente-e-territorio>> accessed 23 July 2023.

³³ See the law clinic website, Clinica legale 'Bocconi nel quartiere di San Siro' <<https://www.unibocconi.it/wps/wcm/>>

clinic that provides legal assistance in one of the most vulnerable areas of the city of Milan.³⁴

These examples, although very different, signal the tendency of the Italian CLE to establish a link between the university world and the community; a link that can reposition the university at the center of cultural activity and the social context, to increase the academic community's knowledge and awareness of the social problems that characterize the Italian reality. This objective depends on a consistent research activity, which must not be limited to the mere documentation of the different cases followed, but must generally include all the work carried out within the project, from the theoretical approach to the solution and presentation of the case.³⁵

In this way, the legal clinics succeed in imposing the objective of reforming academic curricula and redirecting the training of lawyers towards social justice. Diversity and plurality of approaches are maintained, since students can be involved in a wide range of projects: from issues of diffuse interests that are an expression of the local area, to issues of health and the environment, to activities aimed at protecting the most vulnerable social conditions.³⁶

The tension between critical theory and social justice is at the center of several reflections on CLE, including those of Cecilia Blengino, which revolve around the idea of CLE as a reflective practice that allows clinicians to immerse themselves in the contexts in which law is created, enabling them to grasp the complexities and contradictions inherent in legal phenomena, to rework feelings and emotions, and to recognize and overcome habitus and cognitive distortions. At the same time, the encounter with the people to whom the practice of law is directed allows future lawyers

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³⁴ On this type of community-based clinics, K Tokarz and others, 'Conversations on "Community. Lawyering": The Newest (Oldest) Wave in Clinical Legal Education' (2008) 28 *Washington University Journal of Law Policy* 359.

³⁵ See on this P Brayer, 'A Law Clinic Systems Theory and the Pedagogy of Interaction: Creating a Legal Learning System' (2000) 12 *Connecticut Public Interest Law Journal* 1.

³⁶ See J Perelman, 'Penser la pratique, théoriser le droit en action: des cliniques juridiques et des nouvelles frontières épistémologiques du droit' (2014) 74 *Revue interdisciplinaire d'études juridiques* 133.

to confront the problem of access to justice in a direct and concrete way.³⁷

Maria Rosaria Marella and Enrica Rigo had already arrived at similar considerations when they reflected on CLE in the prism of the commons: according to their approach, knowledge is a collective product in an authentic and progressive sense, and it belongs to an indeterminate community, or at least one that is not closed or circumscribed within the university framework.³⁸

The legal clinic thus actualizes the most up-to-date and militant notion of the common good precisely because its function lies not simply in guaranteeing the collective use and management of the intangible resources that identify it, but redistributes those resources outside the community of reference, strengthening or creating ex novo ties of social (and political) solidarity between the student community and social actors outside it:

The legal clinic, interpreted and acted as a common good, declines in current terms the social vocation of the early US law clinics, which, moving from instances of social justice, invented 'militant' forms of access to justice. Law clinics integrate (or can integrate) commons with strongly transformative connotations because their primary purpose is to share the knowledge produced in the university with the outside world, with the broader community living outside the university's boundaries.³⁹

In this sense, CLE can be thought of as innovative teaching the moment one conceives it as a critical tool of classical teaching methods, an approach that can shake the foundations of logical-legal reasoning and frontal lecture. Through such use, one might find that the practices developed in this context, are also helping to change law as such.

³⁷ On reflective practice see C Blengino, *Svelare il diritto. La clinica legale come pratica riflessiva* (Giappichelli 2023); C Blengino and others, 'Reflective Practice: Connecting Assessment and Socio-Legal Research in Clinical Legal Education' (2019) 3 *International Journal of Clinical Legal Education* 54.

³⁸ MR Marella and E Rigo, 'Cliniche legali, Commons e giustizia sociale' [2015] *Parolechiave* 181.

³⁹ *Ibid* 191.