

Designing Innovative Clinical Legal Programs to Respond to Changing Social Needs^{*}

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I. Introduction

My argument is that Japanese law schools are urged to flexibly design innovative clinical programs to respond to changing social needs so as to maximize the educational effect for law students. As globalization progresses and technological innovations advance, our world is becoming more complex, unstable, and unpredictable. In this era, people in economic needs are more susceptible to uncertainty. They are more likely to confront unexpected hardship and less likely to afford to retain their attorney even if required.

Some countries have their national legal aid programs in operation under their national statutes. This type of system is relatively rigid and less flexible, and sometimes not good at addressing new types of legal problems. For example, in Japan, we have a national legal aid program, *Ho-*

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terasu, funded by the government. The targeted fields of the program are fixed by the law and other national regulations. On March 11, 2011, an unprecedented huge earthquake and tsunami hit the northern part of Japan, and many of the victims fell into utmost difficulties for the needs, including legal aids right after the disaster. However, *Ho-terasu* was not able to expand its services for a free legal consultation to those people affected by this disaster until after April 2012¹ because it took time to amend the relevant laws. In addition to this, although arbitration is now acknowledged as an effective alternative dispute resolution in Japan, people who hope to use arbitration cannot rely on the program of *Ho-terasu*.² As these examples show, the Japanese national legal aid system is not yet perfect. On the other hand, clinical legal education is free from restrictions of national regulations. This trait should be recognized as one of the hallmarks of legal clinics. Clinical legal programs have inherently the potential to be designed for a more flexible platform to dramatically improve access to justice for socially vulnerable people. Throughout this article, I will explore what type of clinical legal programs are truly needed in our changing society, focusing on the flexibility of clinical legal education.

Creating client interest-oriented programs also maximizes student learning outcomes in clinical legal education. Students' motivation for their participation is maximized, and they can obtain basic legal skills required as a legal professional in the most effective manner, especially when a law student can feel the importance of herself and necessity as a legal professional.

In Part II of this article, I will examine examples of how clinical legal education has actually functioned as a social infrastructure in society in the U.S. where this pedagogy developed. Every program that I will introduce here was designed to respond to actual clients' needs at the U.S. law schools. These opportunities enabled law students to effectively acquire legal skills, sense of responsibility and ethics required as a legal practitioner.

In Part III, I will share two successful achievements of the clinical legal

¹ Higashinihon Daishinsai no Hisaisha ni taisuru enjo no tameno nihonshihōsientā no gyomu no tokurei ni kansuru hōritsu, Law No. 6 of 2012, https://elaws.e-gov.go.jp/search/elawsSearch/elaws_search/lsg0500/detail?lawId=424AC1000000006 (Japan).

² Kazuhiko Yamamoto, *Hoterasu no Shien to Kadai*, 90 SŌGŌ HŌRITSU SHIEN RONSŌ 86, 90-91 (2017).

programs at Waseda Law School: Sports Law Program and International Human Rights Program. Both programs were uniquely created as a client-centered program outside of the scope of the existing national legal aid.

In the last Part, I will discuss the future of the clinical legal education required in the Japanese educational settings in the light of successful examples explained in this article, and make concluding remarks.

II. Clinical Legal Education Needed by Our Community

A. PRIORITIZING SOCIAL JUSTICE MISSION

Clinical legal education is educational process in which law students provide legal services to real needy clients under the supervision of qualified attorneys³. It was born and has continued to develop in U.S. law schools. It is not mere educational process in law schools, but it provides law students with an opportunity to participate in actual cases and enables them to integrate legal doctrines, skills, and a sense of responsibility as a lawyer. This unique education is not just to foster professional skills and critical thinking with actual people needing legal aid but also to contribute to society by defending human rights and promoting social justice at the grassroots. When law schools create new types of clinical legal programs, facilitators have to be aware of whether these programs serve these two goals: student education and social justice.

It is true that these two aspects are equally important, but my argument here is that clinical legal education should prioritize the social justice mission over the educational one, which enables law schools to accomplish both of the two missions in a more effective manner. In other words, designing truly client-centered programs is needed for the purpose of maximizing the educational aspect of clinical legal education⁴. I will introduce some examples at the U.S. law schools, which successfully served

³ See e.g., Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 *FORDHAM L. REV.* 1929, 1930 (2002).

⁴ Policy Advocacy Clinic implemented by East Bay Law Community Center, a law office affiliated with University of California Berkeley School of Law adopts three principles for teaching its students; 1) problem-based, 2) client-driven, and 3) bottom-up. This program is also based on the same idea. See Jasmin Antolin Poyaoan & Stephanie Campos-Bui, *By the people, For the people: Community-Based, Non-Litigation Approaches to the Legal Profession*, 52-3 *COMPARATIVE LAW REV.* 134, 144 (2019).

for both realizations of clients' needs and educational effect by prioritizing its social justice mission in the next section.

B. SUCCESSFUL EXAMPLES IN THE U.S LAW SCHOOLS.

In the U.S., programs of clinical legal education have taken the initiative as indispensable legal resources, especially when their community encountered severe hardship⁵. Here are two examples in which clinical legal education has played an essential role in relatively recent and high-profile cases.

In 2017, "Worker and Immigrant Rights Advocacy Clinic" at Yale Law School worked on immigration lawsuits challenging the so-called "Muslim ban" executive order, and the clinic obtained a court order granting a temporary stay against the ban⁶. On January 27, 2017, President Donald Trump issued Executive Order 13769 (Protecting the Nation from Foreign Terrorist Entry into the United States)⁷, trying to protect the U.S. from the threat of terrorism. This executive order suspended for 90 days the entry of certain aliens from seven countries: Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. These countries had already been identified as presenting heightened concerns about terrorism. This executive order was recognized as a course of the President's campaign promise. As a result of the executive order, nationals of these countries who already departed at the time of the issuance of the order were detained as soon as they arrived at the U.S. airport. It should be noted that some of them fled from imminent and severe persecution from their own government to travel to the U.S. If their entry into the U.S. had been rejected, they would have been forced to return to their countries. They were facing serious and life-threatening

⁵ On this point, Prof. Carol Suzuki, a former chair of the Association of American Law Schools Section on Clinical Legal Education, in her recent article, picked up several examples from the numerous successful cases. *See* Carol Suzuki, *American Law Schools as a Social Innovator: Challenges of Clinical Legal Education* 4 WASEDA LAW SCHOOL JOURNAL 123 (2019). Some cases introduced here owed her article.

⁶ Yale Law School, *Yale Law Clinic Secures Victory in Challenge to Refugee and Muslim Ban Executive Order*, (January 29, 2017) <https://law.yale.edu/yls-today/news/yale-law-clinic-secures-victory-challenge-refugee-and-muslim-ban-executive-order>.

⁷ Exec. Order No. 13769, 3 C. F. R. § 272-77 (2017).

dangers in the U.S. airport.

On the next day right after the order, law students of the Worker and Immigrant Rights Advocacy Clinic at Yale Law School represented two Iraqi men who were targeted for their assistance. They had connections to the U.S. military and were approved for resettlement in the United States. They filed a complaint to seek an injunction of the order at the federal court in the Eastern District of New York. On the same day of the filing, Judge Donnelly granted the motion and ordered defendants to temporarily stay the executive order at the national level⁸. This was a compelling example that the power of students realized justice through the civil litigation process at a national court and save clients' lives.

Another exemplary achievement is "the Supreme Court Litigation Clinic" at Stanford Law School. The students in 2015 helped to represent petitioners in *Obergefell v. Hodges*⁹, in which the U.S. Supreme Court held that the 14th Amendment guarantees same-sex couples a right to marry. Also, this program has achieved numerous successful commitments to social justice since its establishment.

The Supreme Court Litigation Clinic was established to provide educational opportunities for law students to integrate their knowledge in the classroom and practical legal skills in the appellate court¹⁰. Clinicians who initiated this program recognized that while most of the court cases they learned through lectures at law school are decisions of appellate courts, there are few opportunities for law students to acquire their skills required in appellate litigation. In order to address this problem, Stanford Law School initiated this program. Unlike in Japan, in the U.S., a law school is the only institution in which law students learn not only legal knowledge but also legal skills required as a legal professional. The motivation for its initiation of this clinical program was based on social needs. Furthermore, this clinic covers any kind of cases before the U.S. Supreme Court, including civil rights law, criminal or criminal procedure

⁸ *Darweesh v. Trump*, No. 1: 17-cv-00480 2017 WL 388504 (E.D.N.Y. Jan. 28, 2017).

⁹ *Obergefell v. Hodges*, 135 S. Ct. 2584, 2602 (2015).

¹⁰ Pamela S. Karlan, Thomas C. Goldstein & Amy Howe, *Go East, Young Lawyers: The Stanford Law School Supreme Court Litigation Clinic*, 7 J. APP. PRAC. & PROCESS 207, 209 (2005).

law, which actually plays a role as a flexible platform to address critical and high-profile cases on the U.S. Constitution.

What needs to be emphasized here is that the abovementioned programs were designed and tailored to respond to specific legal problems that their clients confront, based on the needs of the community. These examples show that clinical education flexibly provides legal services in response to changing social needs and problems arising in society. It is clear that these clinical programs constituted to be social infrastructure for social minorities.

It should also be noted that these successful examples prioritized the social justice aspect over the educational aspect, and by doing so, it leads to effective accomplishment of the two missions. Lawyers cannot exist in their society without clients, and law schools have a responsibility to teach this reality to their students.

In the next part, I would like to share two programs that I directed at a Japanese law school, inspired by these achievements in the U.S. law schools.

III. Experiments at Waseda Law School

As a member of Waseda Legal Clinic LPC, which is a law firm affiliated with Waseda University, I was involved in clinical legal education. In this section, I would like to share two programs that I established at Waseda Law School; a sports law program and an international human rights program. Although both were just pilot programs, which the students' participation did not award any credits to them, they participated in these programs with a high degree of motivation and actually achieved the outcome of bringing the actual benefit to their clients. *Ho-terasu* does not cover either of these cases we handled, which means law students played an integral part of the realization of social justice.

A. SPORTS LAW PROGRAM

This program was implemented in 2018 with Professor Takao Suami, an expert of EU law at Waseda Law School, as the first and only clinical program in the field of sports law in Japan¹¹. Despite the not-for-credit

¹¹ I published an article with Prof. Suami Takao and some participants, focusing

program, eight students participated in the program.

In this program, students represented a twelve-year-old boy, a soccer player. He was imposed an unlawful disciplinary sanction without due process by a local soccer association. As a result, he could no longer be able to participate in an important game he had been looking forward to. His family did not have enough money to retain an attorney for this matter. To make matters worse, he lived in a rural area of Japan; there were no lawyers in his town at that time. He had substantial difficulty in having access to justice, not only financially but also geographically.

As the first step, clinic students and I traveled to the site and interviewed him and his mother to find what our client's desire was. The intervention of lawyers in individual legal disputes can sometimes have a negative impact, which may generally cause significant changes in the interpersonal and social relationship among these people involved in that community. These changes may be, often irreparable. Our client lived in a small rural town where many of the villagers have never met and talked with a lawyer in their life before. In such an environment, retaining a lawyer to resolve a legal dispute was not an easy option for the client and his family, even if they could afford to do so. Therefore, we needed to have our clients be fully aware of not only the advantages of retaining an attorney, but also the disadvantages. We also had to consider the fact that our client was just a twelve-year-old boy. Prior to the first meeting with him, we had to address a concern that he would be too nervous about speaking to us to express his feeling freely because talking with strange adults other than his schoolteachers were extremely rare in his daily life.

Very fortunately, one of our students had experience working for the Save the Children, one of the leading international NGOs addressing the legal rights of children. She was aware enough that even a mere casual question might unexpectedly hurt his feeling through her professional experience as an expert in interviewing boys and girls who were mentally damaged by abuse or bullying. She took the initiative and arranged for his interview to be as casual and friendly as possible. Specifically, in the

on the details of this program. See Suami takao, Atsushi Shiraki, & et al, *Legal Assistance Clinic for Nuclear Victims in Fukushima and Sports Law Clinic at Waseda Law School*, 12 *LAWYERS AND CLINICAL EDUCATION* 128 (2020).

hearing, before getting into the hearing itself, we played fun games with the boy, as an icebreaker to ease his nerves. She also suggested that the hearing of the juvenile would be better handled by young students, and I gave her my permission. Thanks to the students' efforts, we were able to build a trusting relationship with the boy, which facilitated the subsequent processing of the case. We made an appeal to the Football Association to withdraw the discipline, and after several discussions, it was withdrawn.

This sports clinic served the two abovementioned purposes of clinical legal education. As for the social justice purpose, the program focused on issues that were not covered by the existing legal aid system in Japan. In this case, the use of the sports arbitration system was considered as one of some options, but legal representation through arbitration is outside the scope of *Ho-terasu*. It means that our client was in a situation where the legal aid system was not available to him in the first place. Therefore, our clinical program played a good role of social significance in that it filled the gap in the existing legal aid system.

The program also had a significant educational impact on the students. The students took the initiative in devising ways to smoothly communicate with their client, taking advantage of being as "non-lawyers." Ensuring smooth communication with the client by students was a key component of subsequent lawyering a basis of lawyering. Through this sports law clinic, the students, not as assistants to lawyers, but as an integral part of our team, took the initiative to seek solutions and led their cases to resolution.

B. INTERNATIONAL HUMAN RIGHTS LAW PROGRAM

I would like to introduce another example in which students played a critical role in the process of realizing social justice in the international context.

From 1959 to 1984, more than 93,000 Korean residents in Japan were lured to repatriate from Japan to the Democratic People's Republic of Korea (DPRK). The DPRK designed and implemented this repatriation as a national project known as the "*Paradise on Earth campaign*." Korean residents in Japan were regarded as an attractive labor force for the DPRK to strengthen national power enough to compete with South Korea at that time. In 1958, Kim Il Sung (1912-1994) called for the Korean people living in Japan to return to their home country and to build a new socialist

country together. He also promised to provide free food, residence, clothes, and education for returnees. The offer was very appealing for them because most of them were socially discriminated against in Japanese society and suffering from poverty. As a result, from 1959 to 1984, more than 93,000 Korean people emigrated to the DPRK from Japan. However, what they encountered there was a hell, not a paradise. After the migration, the promise was never fulfilled, but also they were deprived of their basic human rights. The food situation there was so poor that they could not get a satisfactory meal. Moreover, their occupations were designated by the state, and they were not allowed to work in their desired occupations. In 2014, Report of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea recognized this *Paradise on Earth campaign* as a crime against humanity as well as the abduction¹².

Our clients, defectors, were forced to move to the DPRK against their true will as adolescents and were forced to live in an indescribable misery environment. They have family members still living there. When we met with our clients for the first time, their desire was to be reunited with their families who were unable to leave North Korea; they did not ask us to sue the DPRK. Since Japan has no formal diplomatic relations with the DPRK, there are no other ways for them to reunite with their families but for a political solution, for example, enacting a special agreement between the two countries. However, in Japan, as the *Paradise on Earth campaign* is even little known to the general public, lobbying directly to politicians will not work in the short term. After several discussions, we reached a conclusion that the most effective first step for us was to take a measure to get public attention. Therefore, we decided to file an unprecedented lawsuit to make the public aware of the existence of this horrific event.

In August 2018, with Ms. Kanae Doi, a Japan director of Human Rights Watch (HRW), my students and I brought a civil action against the government of the DPRK, representing five defectors from DPRK. This is the first case that defectors file a civil lawsuit directly against the

¹² U.N. Human Rights Council, Rep. of the Comm'n of Inquiry on Human Rights in the Democratic People's Republic of Korea, U.N. Doc. A/HRC/25/63 (Feb. 7, 2014).

government of the DPRK in a Japanese civil court¹³. Students were mainly involved in this litigation through the research and the participation of the meeting with attorneys. Students' creative mind was the asset for our team. Since Japanese sovereignty does not extend to foreign states, no civil action against a foreign state can be brought at a Japanese court¹⁴. Here, Japan, does not recognize the DPRK as a state. Under this circumstance, the case in question, in particular, raised the question of whether the DPRK could fall within the word, "state"¹⁵ and, if so, whether the doctrine of sovereign immunity could be applied to it. Since this was the first case to bring a lawsuit against the DPRK in Japan, there was no precedent to refer. Students were required to think out of the box¹⁶. Through handling this case, in addition to the research skills, sense of ethics, and responsibility as a legal professional, students learned the importance of considering an innovative approach without being bound by existing practices¹⁷. This can be paraphrased as a skill of critical thinking, which is necessary for qualified practitioners¹⁸.

¹³ This lawsuit is still pending at the time of writing this article.

¹⁴ Gaikokutō ni taisuru Wagakuni no Minjisaibanken ni kansuru hōritsu, Law No. 24 of 2009, <http://www.japaneselawtranslation.go.jp/law/detail/?id=1948&vm=04&re=01> (Japan).

¹⁵ *Id.* Art. 2.

¹⁶ Deena R. Hurwitz, a director of International Human Rights Law Clinic at University of Virginia School of Law stressed the meaning that international human rights clinic is one of the best methods for law students to acquire innovative thinking. He argues that: international human rights clinics have to navigate the substantial tensions in the law itself. International law is simultaneously orthodox and innovative, a paradox that, in fact, challenges legal education on the whole. Law students should graduate knowing not only the "black letter" norms and principles but also being able to critique the rules and anticipate changes in the field". Deena R. Hurwitz, *Teaching to the Paradoxes: Human Rights Practice in U.S. Law School Clinics*, 26 MD. J. INT'L L. 18, 18 (2011).

¹⁷ Laurel E. Fletcher, a Clinical Professor of law Director of International Human Rights Clinic of EBCLC evaluates her clinic, stating that: "Through this program, students can have a successful experience that exceeds their expectations. They will tackle complex problems and produce legal products to realize the client's desire" and "a participant student become a legal expert with the confidence that they have the skills to confront and tackle difficult problems". See Jeffery Selbin & Laurel E. Fletcher, *U.S. Law School Clinics as Sites of International and Domestic Law Reform*, 52-1 COMPARATIVE LAW REV. 55, 61 (2018).

This program was also outside the national legal aids. Our application for *Ho-terasu* was rejected because of the unlikeliness of the win. Without our commitment, our clients could not have access to resources to bring the lawsuit. Through their participation the law students were able to recognize themselves as an essential part of this historic lawsuit.

IV. Conclusion

No one doubts that clinical legal education has two goals: student education and social justice mission. Both are equally important for successful clinical programs. However, all of the aforementioned commitments, which showed high educational impacts, were purposely designed to prioritize the social justice aspect. I would like to conclude this paper by explaining two reasons why Japanese law schools should put much importance on the social justice mission.

Firstly, it is because law schools are educational institutions for the legal professional, and the legal profession cannot exist apart from the needs of society. In Japan, clinical legal education is not well recognized by the public in comparison with the U.S. If Japanese law schools strongly hope that clinical legal programs are to be supported by our community, it is required to carefully restructure the program to respond to changing social needs. In order to do so, the clinical programs are needed to be designed to make up for and even strengthen the weak points of the existing national legal aid program. Compared to *Ho-terasu*, clinical education does not have enough resources to widely reach out to people in need. However, it has potential to flexibly address legal matters that arise unexpectedly. Legal clinics in Japan ought to concentrate their limited resources on the most effective cases by taking advantage of the flexibility.

Secondly, it is because the educational effect of legal clinics can be maximized when students realize that they are making a direct contribution to society. In other words, students obtain a sense of ethics and responsibility required as a law practitioner when they are engaged in actual cases as an integral part of the program. Not a few law students aspire to become lawyers, motivated by a desire to help those in need. This is why they can

¹⁸ E.g., Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 *FORDHAM L. REV.* 1929, 1930 (2002).

devote themselves to prepare for a substantial amount of tasks assigned by their professors and to prepare for the final examination under high pressure. It is the responsibility of faculties to provide clinical programs to ignite students' motivation. Law schools in the U.S. have successfully responded to these students' needs by providing opportunities that law students directly contribute to their communities. They offer a wide variety of inter-disciplinary clinical programs based on community needs. To date, unlike in the United States, clinical law programs in Japan have been categorized on a subject-by-subject basis in law¹⁹. However, most of the legal matters that clients bring to the law offices do not remain in one single area of law²⁰. Looking back the past seventeen years, Japanese law schools seemed to have been likely to put much importance on the educational purpose over the social justice mission.

Now, the Japanese Law School system is in the midst of severe backlash. In 2019, a new bill to change the timing of implementing the national bar examination passed both houses of Parliament in Japan²¹. Once the new system is installed, law students are allowed to sit bar examination in the summer break of their last year. Law students would much more focus on bar preparation than ever before. A fewer students would participate in clinical legal programs. It is time for Japanese law schools to prioritize social justice mission of clinical legal education and to take the initiative to drastically restructure existing programs to respond

¹⁹ *E.g.*, Waseda Legal Clinic offers eight types of clinical programs: civil clinic; criminal clinic; administrative clinic; family law clinic, commercial law clinic; labor law clinic; clinic for disables; and clinic for foreigners. See Shigeo Miyagawa et al., *Japan's New Clinical Programs A Study in Light and Shadow*, in *THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE* 105-120 (Frank S. Broch eds., 2011). This article depicts the development of clinical legal education in Japan.

²⁰ In the U.S., a project-based clinical work, which adopts holistic approaches to address clients' problems, not limited to litigation, became more popular in the last two decades. The project model of clinical education needs not to be bound by subject matter. All of examples mentioned in this article fall into this type of clinical program. See Anna E. Carpenter, *The Project Model of Clinical Education: Eight Principles to Maximize Student Learning and Social Justice Impact*, 20 *CLINICAL L. REV.* 39, 40 (2013).

²¹ *Hōkadaigaukin no kyōiku to Shihōshikentō no renkeitō ni kansuru hōritsu no ichibu wo kaisei suru hōritsu*, Law No. 44 of 2019 (Reiwa), (Japan).

changing urgent social needs. If they do this, students' motivation will be maximized and the educational accomplishment will simultaneously follow.