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A NEW DAY: PRIME TIME TO ADVANCE AFGHAN CLINICAL EDUCATION

*Stephen A. Rosenbaum*¹

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ABSTRACT

In a previous issue of the *Journal*, Richard Grimes discussed the role that legal clinics can play in facilitating access to justice in a post-conflict society, such as Afghanistan's, wracked by decades of civil war, external military intervention, and consequential regime changes. 1 *ASIAN J. LEGAL EDUC.* 71 (2014). As foreign military forces withdraw, this Central Asian nation faces renewed security concerns and uncertainty about its politico-economic future. Yet, there is now a critical mass of law and Shari'a professors trained in the principles of experiential education, a few legal clinics are in place, and many deans are keen on hosting a clinic, with a vigorous nod of approval from the higher education ministry. Piloting a clinical programme requires a team of faculty members who remain in continuous contact with their peers across the nation and across the globe. This should include a partnership with a reputable law school abroad; support from in-country administrative staff; and periodic visits by consultants.

In addition, legal faculties and university administrators need to nurture clinical education by facilitating the development of new curricula, service-learning, and interdisciplinary and inter-university collaboration and exchange. While they needn't reinvent policies, protocols or perhaps even priority assessments, they must remain vigilant that clinical legal education not be divorced from the rest of the curriculum. The temptation to purchase durable goods will be great, but the clinic staff should be much more strategic and frugal about ways for students, staff, and clients to access information and a space for consultation, training, and work. Finally, an essential but elusive goal is to maintain a relationship with donors that is marked by candour and coordination of activities with other funders.

Key words: Afghanistan, Legal Education, Clinical Legal Education, Law School Clinic, Rule of Law, Law and Development

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Introduction

Afghanistan faces an uncertain future, with the official departure of foreign combat troops and a resurgence by Taliban and other anti-government forces.² The political and economic survival of this Central Asian nation is being closely monitored by international diplomats, military officers, human rights NGOs and development specialists. ‘New Day’ (*Nowruz* in Farsi) is an allusion to the holiday that marks the beginning of the Persian New Year and Spring Equinox. This past year, the celebration of *Nowruz*, observed in parts of the world under the cultural influence of Iran, took on a special significance in Afghanistan ‘as the country embark[ed] upon a new path of peace and independence.’³ This turning point presents an opportunity for furthering legal education innovation in which the participants’ consumption of time and assumption of risk take on a new meaning.

² The NATO-led International Security Assistance Force (ISAF) formally ended its mission in December 2014. In several parts of the country, the Taliban insurgency and political control has never actually subsided since the demise of the Islamic Emirate of Afghanistan in December 2001. In fact, civilian casualties have increased and Taliban attacks have spread to new provinces since a smaller number of American and international troops replaced ISAF in January 2015. Joseph Goldstein & Mujib Mashal, *Taliban Capture an Afghan Prize*, NEW YORK TIMES, 29 Sept. 2015, *available at* LEXIS, The New York Times File. In addition to other anti-government militants, there are also fundamentalist threats to democratic governance posed by the more recent influx of fighters aligned with the Islamic State (*Daesh*). Sudarsan Raghavan, *Foreign Fighters are spilling into Afghanistan, Helping the Taliban*, THE WASHINGTON POST, 14 Apr. 2015.

³ Sayed Jawad, *Afghanistan Celebrates Nowruz*, KHAAMA PRESS, 21 Mar. 2015, *available at* <http://www.khaama.com/afghanistan-celebrates-nowruz-new-year-9946>. The Commander of the new Resolute Support mission evoked these same words in his holiday message and further declared: ‘Nowruz is the time to celebrate...the rebirth of the world around us. Rebirth and renewal are fitting sentiments for Afghanistan...This year, we look forward to seeing this ancient land continue to become a stable, peaceful and prosperous country. Manana Tashakur.’ *Id.*

The law and Shari'a faculties⁴ now have a critical mass of professors who are familiar with the principles of interactive teaching and experiential education,⁵ and a number of students eager to practise professional lawyering skills and to assist real clients. Many deans and other administrators are keen on the idea of hosting a legal clinic or an innovative educational initiative.

Piloting a clinical programme requires a team of dedicated professors who are willing to be engaged and accountable, and to exercise leadership—some of whom have a background in practice or relevant field of substantive law. This team of junior and senior faculty members should remain in continuous and long-term contact with their peers and practitioners across the nation, and with clinicians in the Global South and North, through conferences, Skype calls and on-site exchanges for work, study and observation. This should include a partnership with an established law school for study, clinical practice, and clinic tutorials and periodic visits by consultants who offer hands-on technical assistance and critique. This kind of continuous, contemporaneous, face-to-face contact with veteran clinicians from the USA, Europe, Australia, or Asia is invaluable in helping to keep neophyte clinical instructors “on track.”

In addition, the legal faculties and university administrators need to nurture clinical education by facilitating changes in policy and practice that spur the development of new curricula, service learning, and interdisciplinary and inter-university collaboration and exchange. An advisory body can also be

⁴ The terms ‘legal programme’ or ‘legal faculties’ may be used when referring jointly to the faculty of law and political science and to the Shari'a faculty.

⁵ Education and training of these professors has been overseen in large part by LESPA, a collaborative effort of the US State Department, Afghan Ministry of Higher Education (MoHE), and various public Afghan legal faculties, as administered by the UW School of Law. <https://www.law.washington.edu/Programs/LESPA/>. Other NGOs actively involved in supporting Afghan clinical legal education have included the Open Society Foundations, Global Rights, International Law Foundation and TetraTech DPK. See, *infra* text accompanying notes 24-28.

helpful. This grouping of legal, professional, governmental, and/or community stakeholders can assist in identifying the clinic's important substantive law issues. The advisors can facilitate contacts with other governmental and non-governmental players and explore the feasibility of short-term externships or field placements. The advisory body can also help with public relations on- and off-campus, fundraising and overall administration, and direction of the clinical programme.

Many policies and procedures can be plucked from clinics operating elsewhere in Afghanistan, or adapted from those in Central or South(east) Asia or across the globe. As for the actual clients and socio-legal issues to be addressed, data are already available from governmental, non-profit and academic sources, both international and Afghan. This should allow the start-up clinic to focus on (1) service areas (*e.g.*, criminal, women's issues, human rights) without reinventing the wheel on documenting the problem and (2) modes of advocacy and service delivery (*e.g.*, individual representation, mediation, lay education, policy analysis, externships).

The temptation to purchase durable goods will be great, whether donor-driven or grantee-generated. Rather than routine acquisition of equipment, new furniture and surplus books, the clinic should be much more strategic about ways for students, staff, and clients to access information and to access a space for consultation, training, and work. Instead of reaching for funders' off-the-shelf options, would-be clinicians should think about what infrastructure will truly serve their students and their clients. A basic floor of technology can be a tremendous asset, *viz.* (1) laptops or desktop computers, a printer, photocopier, reliable Internet service, (2) a work space that is within easy reach of clients, staff, and students, and (3) a fund for local and long-distance travel.

An essential, but arguably elusive, goal for successful clinicians is to maintain a relationship with donors marked by candour and coordination of

activities with other funders.⁶ Accountability on the part of grantees and contractors alike must go beyond ticking off boxes and producing glossy brochures. It also means that international governmental organizations (IGOs) and governmental organizations (NGOs) should strive to quell the turf battles, secrecy, and competition for funds. Genuine communication, cooperation, and collaboration must be the order of the day for the rule of law (ROL) internationals and their local partners.

Finally, clinical legal education cannot be divorced from the rest of the curriculum.⁷ It is constructed through skills-based, interactive education, moot exercises and competitions, and in clinics, both inside and outside the classroom. Clinical teaching ability is not something one develops by attending a single workshop, and the legal clinic is more than a room with a sign on the door.

In this article, I acknowledge the difficult period ahead, in which security and regime stabilization will be of paramount concern to law teachers, students, lawyers, judges, and the population at-large. Nonetheless, there is room for advancing the progress made to date in the development of clinical education.⁸

⁶ Since the fall of the Taliban regime in 2001, ‘impressive amounts of money have been spent in the effort to “restore” or “develop” Afghanistan...’ Jon Eddy, *Rule of Law in Afghanistan: The Intrusion of Reality*, 17 J. INT’L COOPERATION STUD. 1,1 (2009). (citing a mix of military and civilian ‘reconstruction’ and rule of law funding).

⁷ As elsewhere, educators, lawyers, jurists, and government officials in Afghanistan continue to debate the law school’s emphasis on theory vs. practice. Nafay Choudhury, *Pluralism in Legal Education at the American University of Afghanistan*, 37 SUFFOLK TRANSNAT’L L. REV. 249, 251 (2014). While I do not question the importance of the former, this article is intended to emphasize the latter, and contribute to the literature on how Afghan faculties can build legal capacity through applied and experiential educational methodology.

⁸ Professor Richard Grimes, Director of Clinical Programmes at York University School of Law, conducted periodic reviews of the inaugural legal clinics, between 2009 and 2012, under the auspices of the Open Society Foundations’ Afghan affiliate. His focus in this *Journal* was on the value of clinical education in post-armed conflict societies—with case studies of Afghanistan and Georgia. Richard Grimes, *Accessing Justice: The Role of Law School Legal Clinics In Conflict-Affected Societies*, 1 ASIAN J. LEGAL EDUC. 71 (2014). In

First, I explain how a foundation must be carefully laid for clinical education, whereby clinics are not defined primarily by physical or architectural characteristics, nor are they built according to unrealistic timetables. Second, I describe the importance of consciously recruiting and nurturing a dedicated core faculty of teachers, practitioners, and directors. Third, I argue that the attention to infrastructure must eschew a preoccupation with bricks-and-mortar, fancy fixtures, and durable goods. Fourth, I urge that relationships across Afghan universities and across clinics in other nations be continuous and strengthened. Fifth, there must be *bona fide* efforts between clinicians and the various governmental and non-governmental donor agencies (and amongst the agencies themselves) to share information about planning, funding, and programme goals, objectives, and outcomes. Finally, I recommend the adoption of some basic, commonsensical short-term measures in a 15-point plan of action.

Laying A Clinical Foundation

It may seem obvious at this point in time, but in an environment where indirectness and embellishment flourish, it is worth restating what is actually meant by the term ‘Clinical Legal Education.’⁹ Described simply as ‘learning

this article, my particular attention is on what might be described as ‘*post-post* conflict’ Afghanistan, and the pedagogical, administrative, and material dimensions its education establishment faces now that the legal capacity for developing and maintaining clinics has been attained. For an account of the challenges to the nation’s legal system and legal education process posed by decades of conflict and authoritarian rule, see Geoffrey Swenson & Eli Sugerma, *Building the Rule of Law in Afghanistan: The Importance of Legal Education*, 3 HAGUE J. ON RULE L. 130, 130-35 & accompanying notes (2011).

⁹ A former development operative describes the ‘very Afghan way’ of refusing a donor’s proposed project— *i.e.* ‘doing everything to signal [not being] interested short of actually saying “no” to the donor’s face.’ Sarah Han, *Guest Blog: Working in Aid: donor rule, funding flows and awkward ‘no’s* [sic], Afghan Analysts Network (Apr. 2012) (*Working in Aid*) <https://www.afghanistan-analysts.org/guest-blog-working-in-aid-donor-rule-funding-flows-and-awkward-nos/>. Han continues: ‘Why didn’t we just say “no”? First,

law by doing law... a method of instruction in which students engage in varying degrees in the actual practice of the law,'¹⁰ this term has also been defined as 'professional skills training, experiential learning, and instilling professional values of public responsibility and social justice.'¹¹ As one veteran clinician has observed: '[I]f the goal is for [students] to leave law school with a personal and professional responsibility to act as problem-solvers for social justice issues, there is no substitute for actively engaging them in trying to solve some of those problems as law students.'¹²

The clinical concept, which has gained a foothold in common law and civil law societies in the Global North and Global South, encompasses many

we wanted a relationship with that donor and worried that we'd risk never getting support from them in the future if we refused the project in question. Second, we didn't want to admit our simple lack of capacity to take on another project. And third, culturally, saying "no" does not come easy to many Afghans; even if they know they will not be able to produce what the donor wants. In any case, a straight, "no" might not have even gotten through – the donor seemed determined to have us run the project whether we wanted to or not.' *Id.*

¹⁰ T.O. Ojienda & M. Oduor, *Reflections on the Implementation of Clinical Legal Education in Moi University, Kenya*, 2 INT'L J. CLIN. LEGAL EDUC., 49, 49 (citation omitted)(2002).

¹¹ Frank S. Bloch, *Access to Justice and the Global Clinical Movement*, 28 WASH. UNIV. J. L. & POL'Y, 111, 121 (2008). Professor Bloch, the 'Grandfather of Global Clinical Education,' adds that 'access to justice is widely accepted as a central component' of clinical education. *Id.* at 111. *See also*, Frank S. Bloch, *Global Legal Education: The Role of Clinics in Legal Education Reform*, __ in EXPERIMENTAL LEGAL EDUCATION IN A GLOBALIZED WORLD: THE MIDDLE EAST AND BEYOND (Mutaz M. Qafisheh & Stephen A. Rosenbaum eds., forthcoming 2015).

¹² Katherine R., Kruse, *Biting Off What They Can Chew: Strategies for Involving Students in Problem-Solving Beyond Individual Client Representation*, 8 CLIN. L. REV. 405, 433 (2002). The primacy of social justice in a clinical programme has been passionately defended by some and tacitly sidestepped by others. Whether deemed essential or not, a social justice mission is generally recognized as a core clinical programme value. *See, e.g.*, David McQuoid-Mason, *Teaching Social Justice to Law Students Through Clinical Legal Education and Community Service* in Qafisheh & Rosenbaum, *supra* note 11.

formats, ranging from in-house, live-client¹³ settings in law schools to field placements or externships, to simulation classes.¹⁴ In concrete terms, ‘clinics must provide law students with opportunities to work on actual court cases or otherwise assist real clients with their legal problems ... [and] give students as much responsibility and client contact as possible while providing close supervision and guidance...’¹⁵

Pedagogically, financially, and logistically, the leap to an in-house clinic is great — at least in the initial stages of experiential education. ‘Legal Clinic’ or ‘interactive teaching’ may be bandied about like buzzwords, understood in name only— particularly in conversation with consultants or reports to funders. There is no university-level or national agreement on the use of interactive teaching techniques, as some do doubt the effectiveness of these teaching tools and how appropriate they are in the law school setting. Class size¹⁶ and standardized curriculum should not inhibit innovation.

¹³ For an explanation of the ‘live-client’ clinical concept and detailed pedagogical guidance, see generally DAVID F. CHAVKIN, *CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS* (2002).

¹⁴ AALS Section on Clinical Legal Education, *Clinicians’ Desk Reference*, n. 2 (Apr. 2009). See also, Stephen A. Rosenbaum, *Beyond the Fakultas’ Four Walls: Linking Legal Education, Practice and the Legal Profession*, 23 *PACIFIC RIM J. L. & POL’Y* 395, 406, n. 63 (explaining broad definition of clinical education and training) (2014); Suzanne M. Rabé & Stephen A. Rosenbaum, *A ‘Sending Down’ Sabbatical: The Benefits of Lawyering in the Legal Services Trenches*, 60 *J. LEGAL EDUC.* 296, 297, n. 2 (2010)(on the divide between ‘live clinic’ and ‘skills’ clinicians); and JEFF GIDDINGS, *PROMOTING JUSTICE THROUGH CLINICAL LEGAL EDUCATION* 75-114 (2013).

¹⁵ ‘Standards for Law School Clinics,’ 2011, adapted from Open Society Justice Initiative. See also, Richard J. Wilson, ‘Ten Practical Steps to Organization and Operation of a Law School Clinic’ (Feb. 2004)(on file with author), a succinct and straightforward guide for new clinicians, which has been translated into Farsi and Dari.

¹⁶ See, e.g., ROY STUCKEY AND OTHERS, *BEST PRACTICES FOR LEGAL EDUCATION* 132-33 (2007)(setting out methods of instruction including brain-storming, buzz groups, demonstrations, free group discussion, problem-centred groups, syndicate method). These innovations are all adaptable to a large classroom.

A more useful term for what clinical educators desire—or what is feasible due to bureaucratic hurdles or the lack of teachers with a practitioner background—is ‘applied legal education,’ *i.e.*, a reflective and experiential learning process without the economic and efficiency pressures of the workplace, to help students understand how the law works in action.¹⁷

The groundwork must first be laid through skills-based, interactive education.¹⁸ Clinical teaching ability is not something one develops by attending a single workshop or Training-of-Trainers (ToT). Moreover, clinical education cannot be divorced from the rest of the curriculum, confined to one professor’s *ad hoc* course load or an NGO-directed sideshow, but must be endorsed and embraced by the legal faculties and university administration.

There are three fundamental components of a successful clinical legal education programme:

● First, designated professors and other teaching staff must be involved in the development and implementation of curriculum that incorporates interactive and other innovative teaching methods, including professional skills acquisition.

¹⁷ See, e.g., *The 2010-11 Survey of Applied Legal Education*, CENTER FOR THE STUDY OF APPLIED LEGAL EDUCATION (6 May 2012), <http://www.csale.org/files/CSALE.Report.on.2010-11.Survey.5.16.12.Revised.pdf> (stating that ‘applied legal education’ includes live-client clinics under supervision of faculty member who is also a licensed attorney as well as ‘off-site’ field placement programmes in which students are simultaneously taught and supervised by law school faculty and practicing lawyers). On the importance of adopting different models, see e.g. Philip G. Schrag, *Constructing a Clinic*, 3 CLIN. L. REV. 175, 245 (1996); Leah Wortham, *Aiding Clinical Education Abroad: What Can Be Gained and The Learning Curve on How to Do So Effectively*, 12 CLIN. L. REV. 601, 617 (2006); and Stephen A. Rosenbaum, *Clinique ToGo: Changing Legal Practice in One African Nation in Six Days*, INT’L J. CLIN. LEGAL EDUC. (Issue 17) 59, nn. 85, 120 & 128 (2012).

¹⁸ The undue emphasis on the clinic as a *space* is perhaps best manifested by fixation on the fixtures, rather than the clinic as an educational and legal assistance strategy. Stephen A. Rosenbaum, *The Legal Clinic is More Than a Sign on the Door: Transforming Law School Education in Revolutionary Egypt*, 5 BERKELEY J. MIDDLE EAST & ISLAMIC L. 39, 43, 57 (2012).

● Second, students must be engaged in classroom, co-curricular, and extracurricular activities that allow them an applied educational experience.

● Finally, there must be institutional support from the dean or other senior faculty or university administrators, and appropriate financial, personnel, and/or material resources.

Facing Continuing Challenges In Afghan Legal Education

Normalizing curricular innovation is a long-term process that depends on a tenacious and mutually supportive group of colleagues. These are the people responsible for piloting new curriculum and who need extensive help to do so.¹⁹ A cadre of Afghan law and Shari'a faculty are in the forefront of the nation's nascent clinical movement, many of whom obtained their LL.M.s at the University of Washington through the Legal Education Support Program – Afghanistan and its antecedent.

Sadly, no clear and consistent picture emerges as to what is happening on the ground 'clinically' at the legal faculties. Determining the physical existence of a legal clinic or the parameters of an instructional and experiential programme depends on who one talks to and when. Typically, a general verbal account of the clinic's status will be provided by a member of the faculty.²⁰

¹⁹ It is worth recalling that as recently as 2007, the post-Taliban judicial reform plan hammered out following the 2001 Bonn Conference was criticized for its failure to address legal education and access to justice, among other 'huge gaps.' ASTRI SUHRKE, WHEN MORE IS LESS: THE INTERNATIONAL PROJECT IN AFGHANISTAN 200 (2012) (citing 'devastating' report by former UN Special Rapporteur Cherif Bassiouni's team of experts).

²⁰ Most of my information is based on in-country conversations with faculty members and with LL.M. students enrolled at UW, between 2012 and 2014. For a detailed description of activities conducted by the 'first wave' of Afghan clinics, see Grimes, *supra* note 8, at 82-84 and Democracy International, Inc. (Jon Leeth, Terry Hoverter & Aman Tajali), *Rule of Law Stabilization, Formal Section Component Program Evaluation, USAID Final Report 12-15* (2012) (hereinafter *USAID Final Report*), available at http://pdf.usaid.gov/pdf_docs/PDACU496.pdf.

Sometimes there is a brochure, a handout, or a room with books, equipment, and furniture to attest to activity. Often, there is a reference to the material and technical support lent by key legal reform NGOs.

Still, it is difficult to distinguish what is sporadic, or peculiar to a particular faculty member, from what is operational and institutionalized.²¹ The one exception may be the Legal Clinic at Herat University, owing in large part to multi-year fiscal and technical support from Open Society Afghanistan (OSA).²² The clinic is distinct for (1) being housed, staffed, and engaged in a multi-subject advocacy model and (2) offering a classroom component over a period of several years. Veteran UK Clinician Richard Grimes has high praise for the Herat Clinic and offers a glimpse about what is happening at other Afghan university clinics.²³ Nonetheless, even his descriptions leave one

²¹ In their recent assessment of Afghan legal clinic activity, USAID analysts noted ‘a disconnect between the monthly reports prepared by [the USAID contractor] about student participation in the clinics and how developed legal clinics actually were and what was actually happening outside Kabul. One interviewee reported being shocked to find out that USAID/Kabul was reporting that a legal clinic at a provincial university was up and running when, in fact, it was not.’ *Id.* at 15, n. 13. Two other analysts write: ‘While donor reports regularly showcase figures of students and professors benefitting from their programs, the reality on the ground shows little positive change.’ Rohullah Azizi & Charles A. Ericksen, *Legal Education Reform in Afghanistan* 31 (2015) (unpublished paper on file with author).

²² OSA is an affiliate of the Open Society Foundations, focusing on access to justice, women’s rights and independent media. Its website boldly declares: ‘We are committed to supporting and defending civil society through the coming years of political and security transition in Afghanistan.’ <http://www.opensocietyfoundations.org/about/offices-foundations/open-society-afghanistan>.

²³ Professor Grimes conducted detailed reviews of the Herat clinic in 2009 and 2010, under the auspices of the Foundation Open Society Institute Afghanistan [sic]. This included a ‘personal eye witness account’ and interviews with practitioners. The survey of another four clinics (Al-Beroni, Kabul, Balkh and Nangahar) was based on his attendance at a meeting convened by Open Society in May 2012. Grimes, *supra* note 8, at 82. It is worth studying the factors that have made the Herat clinic successful, notwithstanding that other Afghan faculties or universities may be reluctant to acknowledge the ‘superiority’ of a programme outside of their own. *See, e.g., USAID Final Report, supra* note 20, at 18 (noting ‘inter-university rivalries and jealousies’ and ‘friction’ in moot court competition context and awarding of grants). Inter-university competition may also be exacerbated by disparity in budgets and instructor-to-student ratios.

wanting to know if there really is a *there* there when it comes to other universities' efforts.

There are a plethora of access to justice and rule of law organizations that provide technical assistance or training to law students, or offer a practicum in which students are enrolled on a short-term basis. Some of them—*e.g.*, Global Rights,²⁴ International Legal Foundation,²⁵ and TetraTech DPK²⁶—operate clinics. These vary from on-going classes to occasional workshops. To the extent the NGO-affiliated clinics, practica, or workshops operate in a parallel universe, but are not 'owned' by (or integrated into) the legal faculties, they will remain on the fringe, not treated as a full partner in the educational enterprise.²⁷ It is incumbent on all faculties to establish relationships with

²⁴ I sensed from my February 2014 conversations with Attorney and Al-Beroni Assistant Professor Abdul Mahir Hazim, and his fellow lawyers affiliated with the Global Rights Young-Lawyers-in-Training Programme in Mazer e-Sherif and Kapisa (<http://www.globalrights.org/afghanistan>), that they are working outside the structure of the university, or are running a 'parallel' clinic in which law students participate on a short-term basis.

²⁵ The International Legal Foundation (ILF) has been providing representation to indigent defendants in the criminal justice system (<http://theilf.org/our-programs/ilf-afghanistan>) and supporting clinics. Grimes, *supra* note 8, at 79.

²⁶ According to its website, TetraTech DPK (DPK) works with faculties of law and Shari'a, under USAID's Rule of Law Stabilization Program, to implement core curriculum and develop legal skills training, including moot court and legal clinics. Website visitors are informed that '[t]his legal education component is to be instrumental in creating a cadre of Afghan lawyers that have the much-needed professional competencies and legal skills that are critical to the development of a vibrant civil society.' <http://www.tetratedpk.com/en/countries/11-asia/72-afghanistan.html>. See also, *USAID Final Report*, *supra* note 20, at 14-20 (evaluation of DPK's legal education activities 2010-12).

²⁷ An overabundance of international ROL organizations can be counter-productive, as when projects are identified or affiliated with particular universities, but are not actually "'owned" and implemented by [them] as a capacity strengthening strategy.' Rickard Zajac Sonnerholm, 'In Search of a User Manual: Promoting the Rule of Law in Unruly Lands' in *RULE OF LAW PROMOTION: GLOBAL PERSPECTIVES, LOCAL APPLICATIONS* (Per Bergling, Jenny Ederlöf & Veronica Taylor, eds.) 208 (2009).

NGOs operating in the same catchment area as their clinics, *e.g.*, IDLO, Norwegian Refugee Council, and *Da Qanoon Gushtonky*.²⁸ The uncertainty of continued funding for universities and future technical assistance from donor agencies is reason alone for clinics to share space, equipment and/or practitioner staff and to coordinate student training and delivery of legal services.²⁹ It is also incumbent on donors to hold their beneficiary institutions accountable for meeting the terms of a grant.

Obstacles to developing law school clinics may have more to do with continued reliance on traditional legal *educational* models than with the country's particular legal traditions, socio-cultural milieu, overall reforms, or reverence for the rule of law. Classes are still almost exclusively devoted to theory, with minimal to no student interaction or opportunity for practical training.³⁰ The focus is on the rote learning of a large number of subjects and

²⁸ The IDLO trains Afghan lawyers and paralegals throughout the country to provide civil and criminal legal assistance to the indigent (<http://www.idlo.int/what-we-do/initiatives/legal-aid-all-afghans>); the Norwegian Refugee Council (NRC) runs provincial Information, Counseling and [Civil] Legal Assistance Centers, with support from the UN High Commissioner for Refugees <http://www.nrc.no/?aid=9147716>; and Da Qanoon Gushtonky (DQG) provides free legal representation in criminal and family law cases and awareness-raising (<http://www.dqg.org.af/pages.php?pid=338>). Although these organizations operate independently of university legal clinics, the issues they address and the tasks their staff undertake are perfectly amenable to the clinical format.

²⁹ A United Nations humanitarian affairs officer reported that 90% of the civil-military teams had been closed down by the beginning of 2014. In 2012 alone, the US government spent \$22 billion on contracts to sustain civilian operations intended to generate stability through development. Aidan O'Leary, *2014 and beyond: implications for displacement*, FORCED MIGRATION REV. (Issue 46) 4, 4 (May 2014), available at <http://www.fmreview.org/en/afghanistan/oleary.pdf>. 'The security transition thus marks the end of foreign military spending on development. While much of this spending was arguably poor value for money, it nevertheless oiled the machinery of governance and enabled Provincial Governors to deliver some services.' *Id.* Afghan universities are not financially independent; they rely on centralized funding.

³⁰ Professor Nafay Choudhury of the recently-established American University of Afghanistan describes a pedagogical approach in both the law and Shari'a faculties that has changed little since the days before the Soviet invasion. Choudhury, *supra* note 7, at 259-61.

students are taught ‘in an educational culture that is not student-centered, that is lecture-based, and that favors passivity and deference...’³¹ This is not exceptional in post-Soviet Central Asia, where the widely used model of formal lectures is ‘generally focused on teaching students the rule of law rather than how to question, challenge or reform the authorities.’³² Another team of analysts writes: ‘There is little student engagement and a concomitant critical lack of development of legal research, analysis, and reasoning skills.’³³

The partition of Afghan legal education may be perhaps its ‘most salient feature...’³⁴ While the faculties of Islamic Law and of Law and Political

See also, M.G. Weinbaum, *Legal Elites in Afghan Society*, 12 INT’L J. MIDDLE EAST STUD. 39, 43 (1980). ‘Course materials used for learning are often outdated and largely theoretical.

³¹ Kirsten A. Dauphinais, *Training A Countervailing Elite: The Necessity of an Effective Lawyering Skills Pedagogy for a Sustainable Rule of Law Revival in East Africa*, 85 N.D. L. REV. 53, 95 (2009). ‘One [Afghan] graduate likened her experience of studying law at a public university to a “dictatorship” where 90-minute classes would largely consist of one-way lecturing by the instructor with a limited number of questions being permitted at the end of class. Some professors even disliked being asked too many questions.’ Choudhury, *supra* note 7, at 260-61.

³² Michelle Leighton & Baktybek Keldibekov, ‘Reflections on Teaching Law: A Brief Comparison of Legal Education and Teaching Methods in the United States’ (SSRN <http://ssrn.com/abstract=2156927>) (describing recent experience in Kyrgyzstan) 5-6 (2011). Of course, law schools in the former USSR republics are not alone in their adherence to the theoretical, lecture-oriented method of teaching.

³³ Swenson & Sugerman, *supra* note 8, at 138. Professor Choudhury observes that ‘stagnant teaching methods, such as formal lectures and rote memorization, are a cultural phenomenon, and cultural change is always slow moving. Compounding these problems is the reality that much of Afghanistan’s legal history has been destroyed by generations of conflict, and the task of piecing together the remaining bits of information is incredibly daunting.’ Choudhury, *supra* note 7, at 261. Under Taliban control, ‘most government institutions, including the formal justice system, [were left] in a terribly dilapidated state.’ *Id.* at 254.

³⁴ Weinbaum, *supra* note 30, at 42. Anecdotally, it appears that many of Professor Weinbaum’s observations are still valid. For more recent observations about the status of the bar, the judiciary, the legal education establishment, and post-Taliban efforts at national legal reform, *see. e.g.*, SUHRKE, *supra* note 19, at 193-203, *USAID Final Report*, *supra* note 20, at 1-23, Choudhury, *supra* note 7 at 25-66, and Swenson & Sugerman, *supra* note 8, at 135-45.

Science are logical outgrowths of dual systems of jurisprudence, their curricula largely fail to prepare students for the co-mingling of statutory law and Shari'a principles applied in most Afghan courts. Several courses offered in the two faculties in fact overlap in content, but, historically, few professors have held joint appointments.³⁵ Members of the two faculties have not had frequent contact, professionally or socially, and their graduates have pursued distinct career paths.³⁶

Moreover, both faculties have long neglected to train students for vocations as lawyers or judges, and students have been frustrated by courses

An independent research organization recently released a detailed report on the legal aid and defence lawyers' structure, politics and history in Afghanistan. Sarah Han, *Legal Aid in Afghanistan: Context, Challenges and the Future*, Afghan Analysts Network (Apr. 2012), <https://www.afghanistan-analysts.org/?s=sarah+han>. To better inform legal capacity building at the various legal faculties and planning by the ministries of Higher Education and Justice, it would be worthwhile to revisit the conclusions of Weinbaum's 1980 study by collecting current qualitative and quantitative data. While bemoaning the elusiveness of 'rule of law' and 'scant existing literature' on the country's legal education process, a team of Stanford Project Fellows concludes that 'nobody, including the Afghan government, knows how law is practiced in Afghanistan.' Swenson & Sugerman, *supra* note 8, at 132.

³⁵ In an effort to grapple with the country's pluralistic legal traditions, one recently established law school is 'pursu[ing] a uniquely heterodox and poly-jural approach to legal education where civil law, Islamic law, and traditional justice each form integral components of the curriculum...' Choudhury, *supra* note 7, at 250, and where '[t]he sheer reverence of Islamic law throughout Afghanistan cannot be understated.' *Id.* at 256. Professor Livingston Armytage describes a 'traditional Islamic legal system[] where jurisdiction is divided between the scholars' law and ruler's law. This duality of legal systems has created almost two separately complete legal systems.' Livingston Armytage, *Justice in Afghanistan: Rebuilding Judicial Competence After the Generation of War*, 67 HEIDELBERG J. INT'L L. 185, 194 (2007).

³⁶ Public prosecutors who graduated from the secular faculty have been assigned traditionally to a statutory court or one of the many district or appellate courts that hear civil and criminal cases. Their counterparts from the Islamic faculty were not ordinarily asked to represent the government before statutory tribunals, but would be appointed as judges or to posts in MoHE. Private attorneys have become general practitioners, who tend to identify largely with the Shari'a tradition, and only a handful have been fully conversant with Afghanistan's statutory laws. Weinbaum, *supra* note 30, at 41, 46.

that they view as too general and impractical.³⁷ Ill-prepared for either critical or creative thinking, this deficiency has been reflected in the quality of legislative drafting and legal research, as well as interpretation of laws.³⁸ Students are writing capstone papers and some instructors are penning journal articles. However, questions remain about students' research methodology and guidance, and whether faculty writing is tied to the curriculum or to jurisprudential development in Afghanistan.³⁹

As part of an undergraduate institution whose mission is not simply training future attorneys, the Afghan law and Shari'a faculties have a duty to impart knowledge, skills, and values to professionals who may serve society in many ways, and to generally prepare a citizenry for an inquisitive, informed, and active life. Teaching students to think boldly and critically should be a priority in a society seeking to undo decades of autocratic or feudal rule, acquiescence, or skepticism.⁴⁰

³⁷ One surveyed student declared several years ago: 'We learn a little about everything and nothing well.' *Id.* at 43. Professor Choudhury suggests that the same critique could be repeated in Afghanistan today. Choudhury, *supra* note 7, at 261. An LLM graduate with the rank of *pohanyar* has suggested that since employers want to hire the most prepared graduates, they should give preference to students who have had clinical experience. Legal faculties therefore could tap into the current student demand and enthusiasm and be 'incentivized to invest in clinics.' E-mail from Nasiruddin Nezaami, Asst. Professor, Kabul University Faculty of Law and Political Science (28 July 2015)(on file with author).

³⁸ Weinbaum, *supra* note 38,

³⁹ Legal English Specialist Eisa Khan Ayoob Ayoobi observed recently that Afghan university students tend to excel in oral and aural skills, but few to none have conducted 'qualitative research.' LESPA, *An Introduction to Human Rights* vii (2012). Again, it would be useful to have a *current* assessment of how students are trained for drafting and research, and how much the scholarship produced by professors is encouraged and valued.

⁴⁰ Choudhury writes elegantly about the need to prepare both legal professionals and educated citizens. On one level, students must learn to 'operate within the Afghan legal system. On another level, however, legal education aspires to impart knowledge so that students can think independently and become the catalysts of change.' Choudhury, *supra* note 7, at 270.

To keep pace with the changing curriculum and encourage students to embrace new methodologies and meet new competencies, the grading and evaluation of students must evolve beyond the conventional final exam. This means adopting an evaluation tool that measures performance.⁴¹

A critical mass of faculty members has now graduated from the UW Comparative Clinical Law Tutorial with hands-on knowledge, technical understanding of teaching methodology, and an esprit de corps developed during their time together in Seattle. They have designed interactive course plans for subjects ranging from lawyering skills and civil procedure to international criminal law, women's rights, and ethics.⁴² Moreover, the Class of 2014 LLM students produced their first version of an *Afghan Legal Clinic Manual* which has the potential to be a valuable guide for budding clinicians.⁴³

⁴¹ On the limitations of the examination and grading process, see Azizi & Ericksen, *supra* note 21, at 24-25, 42. See also Ann Marie Cavazos, *The Journey Toward Excellence in Clinical Legal Education: Developing, Utilizing and Evaluating Methodologies for Determining and Assessing the Effectiveness of Student Learning Outcomes*, 40 SOUTHWESTERN L. REV. 1, 1 *et seq.* & appendices (2010) (describing a clinic model emphasizing apprenticeship methodology and assessment pedagogy). The Afghan Ministry of Higher Education, *National Higher Education Strategic Plan 2010-2014* ('Strategic Plan') underscores the importance of the faculty 'continually interrogat[ing] the art of teaching in order to improve and transform it. Once the quality assurance system is under way, evaluation of teaching and examinations will be a major part of its requirements.' *Id.*, PROGRAMS: Sub-Program I-2: Curriculum and Materials Revision and Development <http://www.mohe.gov.af/?lang=en&p=plan>.

⁴² In 2012-13, University of Washington LLM students prepared sample plans or manuals and in 2013-14 their successors prepared a joint comprehensive *Afghan Legal Clinic Manual* (on file with author). See also, Charles Robert Davidson, *Introduction to Curriculum Development and Interactive Teaching Methods*, CURRICULUM DEVELOPMENT MANUAL: INTEGRATING INTERACTIVE TEACHING AND LEARNING IN EGYPTIAN LEGAL EDUCATION (ABA ROLI) (2011) (discussing curriculum development process and interactive teaching methodology), available at http://www.eltnd.com/index.pl/plans_courses. The ABA manual contains six sample course plans prepared by law faculty members from nine different universities. See also, GIDDINGS, *supra* note 14, and David McQuoid-Mason & Robin Palmer, *African Law Clinicians' Manual* (2013) (on file with author).

⁴³ *Afghan Legal Clinic Manual* (2014). After my LLM tutorial students spent the better part of a term discussing and drafting, I learned that the Herat legal clinic had already published a manual. The LESPA leadership team seemed oblivious to the duplicative efforts and even a

There is also an increasing number of deans who are familiar with the subject matter and supportive of the clinical concept.

However, knowledge and support do not always translate into action. For that reason, I recommend below a number of concrete steps—such as intensive networking, conferencing, on-line communication, and visitor exchanges; materials collection amongst clinicians; campus technology upgrades; and genuine collaboration between the relevant NGOs, donor organizations, and government ministries.

Building Core ‘Clinical’ Faculty

A successful clinical programme requires: (1) introducing interactive teaching into the law and Shari’a curricula; (2) conducting a needs assessment of community and client needs with the help of local stakeholders; (3) engaging practitioners (lawyers and judges) in clinical activities; (4) determining the clinic formats; (5) establishing regional, national, and international networks of clinicians, and continuing to communicate with other clinicians and conduct on-site exchanges; (6) convening an advisory board composed of relevant stakeholders; and (7) meeting periodically with the deans and university

one-time member of the Herat staff was clueless. This is not unique in the realm of law and development. *See e.g.*, Azizi & Ericksen, *supra* note 21, at 31 (commenting on donor initiation of programme already launched by another donor or by the government, and failure to ensure programme sustainability after funds and contracts have lapsed). The Afghan students’ manual drafting could be dismissed as busily unproductive or instead be viewed as an organic work product crafted by a new cadre of clinicians. The manual’s focus is on start-up clinics and is not meant to supplant other guidelines or procedural protocols. To be truly useful, however, the manual should be translated into Dari (and Pashto) and revised annually, if not more frequently. The *Strategic Plan*, *supra* note 41, actually places very high importance on translation of textbooks and other materials, and suggests that Afghan scholars working abroad or those studying or teaching in-country could be called upon to translate for a stipend. *Id.*, *PROGRAMS: Sub-Program I-2: Curriculum and Materials Revision and Development*.

administration. Faculties that gloss over some of these steps will have a harder time thriving.

Preferably, a working group composed of senior and junior members from both legal faculties is established. It could also include representatives from the prosecutor's office and local civil society. Outreach to the bar and bench is also important.⁴⁴ Traditionally, Afghan legal elites have exhibited little desire or capacity to organize and articulate their common interests.⁴⁵ However, in recent years, the Afghan Independent Legal Aid Board (AILAB)⁴⁶ and Afghanistan Independent Bar Association (AIBA)⁴⁷ have shared a

⁴⁴ Based on a literature review, analysis, and interviews, Analyst Sarah Han has provided a detailed overview of legal aid and defence attorney operations in contemporary Afghanistan, as well as the regulatory scheme and historical overview. Han, *supra* note 34.

⁴⁵ Weinbaum, *supra* note 30, at 41. In 1980, Professor Weinbaum noted that '[o]nly with an emerging respect for the rights of ordinary citizens and the growing complexity of statutory law' have more defined roles for the private bar and the prosecutor's office been developed. *Id.* However, 'neither [of these] special[ies] is highly esteemed, and the functions of private attorneys are poorly understood both within the legal community and by the wider public,' he wrote. *Id.* at 42. Whether this suspicion or indifference endures is a subject for further inquiry.

⁴⁶ The AILAB was established in 2009 to coordinate and provide oversight of the delivery of legal aid services. Grimes, *supra* note 8, at 82-83. The AILAB differs from the Legal Aid Organization of Afghanistan (LAOA), whose mission is to deliver legal aid to the indigent through training the legal community and conducting research and advocacy 'to improve the Afghan legal system.' <http://www.laoa.af/>. Established in 2006, the latter's donors have included the UNDP, UNICEF, Justice Sector Support Project, NRC, ILF, IDLO, Italian Cooperation, and GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit).

⁴⁷ The AIBA is an independent, statutory body responsible for licensing, discipline, organization, and 'general regulation' of defence counsel under the terms of the Advocates Law. It is governed by a general assembly of defence attorneys, and is not under the auspices of the Ministry of Justice (MoJ). The term 'defence' does not seem to be restricted to attorneys handling *criminal* matters. The Bar also establishes 'effective legal education programs' regarding national and international legal standards for advocates; ensures legal aid for individuals in criminal, civil and commercial matters and free legal services for indigent suspects; and provides 'a variety of public legal awareness programs.' AIBA By-Laws, art. 2 (http://www.aiba.af/english/index.php?rcv_main=about%20us.html). Professor Grimes observes: 'From personal discussions I have had with the chair of the Education Committee, the AIBA is highly supportive of the concept of legal Clinics and is willing to support Clinics through supervision and placements.' Grimes, *supra* note 8, at 84.

complicated and controversial role in licensing, and in the oversight of legal education and clinics.⁴⁸

The working group's mandate is to develop a clinic concept and implementation plan for a pilot clinic and substantive focus, and to consider whether the format should be a simulated clinical programme (where students develop skills through hypothetical case studies), in-house services to 'live clients,' an externship field placement clinic, or a combination of all the above.⁴⁹ Co-curricular and extracurricular activities that are complementary to the legal clinic should also be encouraged, chief among them moot competitions.⁵⁰ Courtroom observation⁵¹ is another activity that engages students who lack the time or may not yet be eligible for the clinic.

⁴⁸ For a detailed account of national legal aid policy and funding, and the role of the Legal Aid Board (AILAB), AIBA, and MoJ, *see* Han, *supra* note 44 at 9-20. In a blistering blog posted the same date her study was issued, Analyst Han charges that the Board 'was born through a scantily researched paper, produced by a consultant with no Afghanistan experience and who did not adequately consult with NGOs ...to determine how the proposed changes might affect them.... Not surprisingly, the Legal Aid Board has continued this trend and has consistently made decisions that attempt to limit the [NGOs'] influence in the field, belying the current strained relations within the legal aid community.' Han, *supra* note 9.

⁴⁹ Rosenbaum, *Beyond the Fakultas' Four Walls*, *supra* note 14, at 409-12 (describing various forms in which schools adopt clinical legal education).

⁵⁰ A variety of local, regional, and national competitive team advocacy opportunities can be sought—specialized courts, negotiation, mediation, etc.—in addition to the well-established Philip C. Jessup International Law Moot Court Competition. The Jessup contest has proven particularly popular with Afghan students and faculty. *USAID Final Report*, *supra* note 20, at 17-18. The competition also functions as a sort of incubator for LLM candidates. *Id.* at 18.

⁵¹ Students could attend one orientation meeting where they would be provided a written checklist and guidance. After their observation and note taking, they might be required to conduct a peer review with one or more classmates. For some of the benefits of this activity, *see e.g.* Emily Hughes, *Taking First-Year Students To Court: Disorienting Moments as Catalysts for Change*, 28 WASH. UNIV. J. L. & POL'Y 11 (2008). Perhaps court observation should be offered exclusively to first and second year students, who are otherwise ineligible for clinic or moot competition.

An advisory board composed of allies and other stakeholders could be very useful to the clinic. Its role could include advising on substantive law issues; facilitating contacts with government, NGOs, and legal professionals; exploring short-term externships or field placements; public relations inside and outside the university; and overall administration and direction. Provided there are no internal or external restrictions, an advisory body could also assist in fundraising for such things as: pedagogical and administrative materials, manuals, and handouts in Dari or Pashto; photocopying; translation; a travel fund for students and faculty (local or beyond); amenities and refreshments; part-time administrative staff stipends; etc. Lastly, the advisory board, together with the university administration and other allies, could help the Clinic handle controversies that may arise in the community, or opposition from government or religious authorities.

Due to the typical top-down selection process, it may be difficult to assure that the chosen faculty members have sufficient preparation and not simply political connections or seniority. At a minimum, they should have an LLM awarded from a law school programme that includes experience in a clinic and a tutorial in clinical or interactive teaching pedagogy. Mere enrolment in a clinic abroad is not adequate preparation for actually administering or teaching in a clinic, much less piloting a new clinical programme. The LLM student's clinical experience should be concurrently supplemented by a tutorial or seminar, and then followed by observations, mentoring, and inter-university exchanges with other clinicians in the Global (North and) South.⁵² In addition, each LLM graduate who plans to teach in a clinic upon return to his home university in Afghanistan should be assigned an

⁵² See, e.g., Wortham, *supra* note 17, at 677-78 (human relationships and long-term collaboration are key to creating and sustaining clinical programmes) and Rosenbaum, *Beyond the Fakultas' Four Walls*, *supra* note 14, at 414-18 (importance of faculty-practitioner collaboration and mentoring).

experienced clinical faculty member or practitioner, based abroad, who would commit to a year-long mentoring relationship.⁵³

The clinical instructor should (1) have some knowledge and experience in the subject matter to which the clinic is dedicated or (2) collaborate in directing the clinic with a lawyer or academic staff who has a substantive law background. Retaining staff who have the motivation and time necessary to sustain the clinic beyond the tenure of an academic or NGO consultant is equally important.⁵⁴ The clinics should also work more closely with the faculty-embedded English-language instructors and workshop leaders to strive toward an alignment of curriculum, subject matter, written materials, staffing and instructional techniques.⁵⁵

While the concept of inaugurating a legal clinic in the abstract is attractive to deans and university administrators, there may be a disconnect between the professors assigned to the clinic and their (senior) colleagues.

⁵³ The commitment could be as simple as agreeing to Skype monthly with the returning Afghan faculty member and/or correspond regularly by email. This contact model has been used effectively in another Afghan context. *See*, National Alliance for Women's Rights (<http://www.aiwr.org/programs>) (expert volunteers in the US use Skype to regularly mentor individual women attorneys and other professionals in Afghanistan).

⁵⁴ Professors should be evaluated by their peers and by their students, a suggestion that may be novel in the Afghan context. For a comprehensive treatment of this subject, *see*, University of California, Berkeley Academic Senate Task Force on Teaching Evaluation *Final Report* (2009), available at <http://academic-senate.berkeley.edu/issues/online-evaluation-courses-and-teaching>. *See also*, Philip B. Stark & Richard Freishtat, *An Evaluation of Course Evaluations* (2014), available at (https://www.scienceopen.com/document_file/6233d2b3-269f-455a-ba6b-dc3bccf4b0a8/ScienceOpen/teachEvalSciOpen14.pdf).

⁵⁵ 'A high proficiency in English is an undeniable asset' for today's legal professional. Choudhury, *supra* note 7, at 284. Student knowledge of English facilitates study abroad, access to legal literature and data, and can attract international faculty to teach in Afghan clinics or other courses. But, English should not be studied to the neglect of legal Dari (and Pashto) for anyone intending to practice where familiarity with the national languages is required in order to read legal commentary and negotiate the mixed legal traditions. *Id.*

There may be little genuine peer support for their trailblazing efforts and it is easy to underestimate the various disincentives for their participation. Helping to develop a clinic is not necessarily compensated by promotion in rank, release time from other teaching obligations, or financial remuneration. Moreover, reforms that introduce new structures and practices are likely to be impeded by existing hierarchies of status and influence at the university.⁵⁶

Lack of compensation, in particular, can be a real obstacle in a country where the professoriate is not well-paid and volunteerism is not its own reward.⁵⁷ And, of course, security concerns in Afghanistan override almost all interests, professional or social, particularly in this climate of politico-military transition, including a new Presidency and ISAF's departure.⁵⁸ Cliché or not, the professors who undertake clinical teaching must do so because they are

⁵⁶ Weinbaum, *supra* note 30, at 45. In particular, Professor Weinbaum cautioned that Shari'a *students* may be 'suspicious of new approaches or the application of non-Islamic legal principles.' *Id.* at 44. Curricular change also 'threatens the senior faculty, who use their political positions to block efforts that would allow the younger ambitious faculty to progress.' Eddy, *supra* note 6, at 20. 'Older faculty lack the incentives, energy and sometimes ability' to produce new texts or benefit from advanced training. *Id.*

⁵⁷ Many instructors are earning pay at private law schools to supplement their meager public university salary. Choudhury, *supra* note 7, at 261. *See also*, Azizi & Ericksen, *supra* note 21, at 32-33 (low salaries at public universities create incentive for professors to look for supplemental employment—despite ostensible MoHe prohibition—and has negative impact on their involvement in teaching and scholarship).

⁵⁸ Before the departure of the security forces, Analyst Khalid Koser described the mood of the nation: '[M]any Afghans have expressed reservations about the focus of the international community on 2014 as pivotal for their country's immediate prospects. One reason is the risk of suspending action while waiting to see what unfolds.... Another reason is resistance to the idea that Afghanistan's fate is effectively in the hands of the international community; Afghans instead tend to view 2014 as a staging-post in a long-term project of state-building, and part of a broader transition between the past and the future.' Khalid Koser, *Transition and displacement*, FORCED MIGRATION REV. (Issue 46) 44, 44-5 (May 2014), available at <http://www.fmreview.org/en/afghanistan/koser.pdf>. *See also*, O'Leary, *supra* note 29, at 4-6 (detailing overwhelming humanitarian and development needs, and continuing security concerns).

individually inspired or motivated and have the requisite competence—and not because they have visions of self-aggrandizement or territorial expansion.

Involvement of the faculty and university leadership must go beyond periodic courtesy visits over cups of *chai* and congratulatory speeches at formal receptions. The dean, university chancellor, and other top administrators need to be on board with such things as revisions to curriculum and grading policies, easing restrictions on fundraising, opening the campus to the community and non-academic speakers, supporting critical thinking by students, intellectual exchanges amongst faculty, interdisciplinary teaching, research and service, adjunct teaching by legal professionals (such as lawyers, judges and ministry officials), and supporting clinic advocacy that may ruffle the feathers of clergy, the business sector, or government.

Reinventing Needs Assessment: Just Say No

It may be tempting to emulate clinics that faculty members participated in while pursuing their LLM degree abroad. It would be a mistake, however, to transplant a clinic wholesale to Afghanistan, without taking stock of community needs, social and legal culture, lawyer and jurist training, and student expectations and demand.

That said, Afghan clinics are not starting from *tabula rasa*. Faculty and stakeholders should review some of the comparative law and other papers written over the years by students who received their LLM abroad. Some of the alumni have written about social and legal problems that may be tackled by students working under supervision. Problems range from coerced and underage brides to police misconduct, from children's access to education and social services to the free exercise of political rights, and from the rights of detainees in penal institutions to women's inheritance of property. These papers

should be kept in a centralized repository and scanned for easy sharing on the Internet.

In addition, numerous surveys, studies, and reports have been prepared by IGOs and Afghan governmental and non-governmental entities on these same and other issues—whether characterized as human rights, women’s rights, criminal justice, customary justice, rule of law, or access to justice. There is no shortage of national and localized data to guide the work of any clinic. This is not to say that there are off-the-shelf playbooks for clinics. But stakeholders have plenty of material to review when designating timely and worthy issues to be addressed by their respective clinics.

Finally, many schools have adopted (at least ‘on paper’) a structure for handling cases.⁵⁹ These typically fall under the rubrics of criminal, civil, and Street Law.⁶⁰ The tendency may be to appropriate these models wholesale. Individual clinics should instead thoughtfully adopt, adapt, and pilot clinical models that fit their needs—as determined by problem areas, staff and student capability, funds, locale, and politico-legal constraints. Moreover, the formal justice sector should not be privileged over the informal as a practice area.⁶¹

⁵⁹ Herat University reports that 16 students are enrolled each term in the Civil Clinic, 12 take part in the Criminal Clinic, and an additional 20 students are in a Street Law programme run in conjunction with local schools. Since 2008, over 300 students have worked in the various clinics at the University. Grimes, *supra* note 8, at 83. Other legal faculties aspire to do the same. *Afghan Legal Clinic Manual* 8-15 (adopting same clinic structure). *See also*, Mustafa Saqib, ‘Adding Women’s Rights Units to the Current Legal Clinics in Afghan Universities: The Need for a Women’s Domestic Violence Legal Clinic’ (recommending establishment of separate domestic violence legal clinic and substantive DV law course)(2014)(manuscript on file with author).

⁶⁰ *See generally*, LEE P. ARBETMAN & EDWARD L. O’BRIEN, STREET LAW: A COURSE IN PRACTICAL LAW (8th ed., 2010). ‘Street Law’ is a registered trademark. The terms ‘community legal education’ or ‘public legal education’ are often used to describe the same instructional model designed for lay and activist audiences. *Id.* at ii.

⁶¹ Given the emphasis by legal educators and foreign donors and advisors on the *formal* justice sector, and the conventional criticism of customary law or Shari’a tribunals, it is easy to overlook or dismiss the latter as unworthy of examination—beyond pure academic interest

The Huqooq Directorate, for example, created to preempt and prevent ethnic, tribal, and family disputes—and to promote the maintenance of public order—offers an opportunity for student field placements or partnership with clinics. Resolution of disputes may take the form of reconciliation or court referral.⁶²

In building a strong advocacy component, it is important that the activities be teachable and manageable. For example, Street Law or public legal education, field monitoring and research, and externships with NGOs or government agencies are all suitable activities. Once the clinic takes on clients, and perhaps even before, it may face resistance and outright opposition from industry, government, clerics, the general public, and possibly from the university itself. At a time when maintenance of internal order remains a high regime priority, the discrediting of traditional legal norms is certain to be counterproductive. The experience of Afghan modernizers has repeatedly shown that legal reforms that anticipate or lead social change will either be ignored or be politically destabilizing.⁶³

or comparative law study. *But see*, Erica Gaston, Akbar Sarwari, & Arne Strand, *Lessons Learned on Traditional Dispute Resolution in Afghanistan* (2013) (analyzing effectiveness of series of US Institute of Peace pilot projects attempting to link formal justice and governance sectors with traditional dispute resolution actors), available at <http://www.usip.org/publications/lessons-learned-traditional-dispute-resolution-in-afghanistan>; Choudhury, *supra* note 7, at 256 (noting widespread importance of customary law or ‘traditional justice,’ particularly in rural areas); and Swenson & Sugerman, *supra* note 8, at 131-2 & 134 (mindful of a pluralistic legal system that blends customary, tribal, and Islamic law with civil codes). Clinical students can play an important role in helping to harmonize the law and procedures of the *jirga* or *shura* with contemporary universal human rights norms. SUHRKE, *supra* note 19, at 211-17.

⁶² Originally established several centuries ago as the Huqooqiyah Directorate, the role of this MoJ department is ‘to facilitate the adjudication of disputes and civil right[s] cases arising between citizens and real and legal persons... and to effectuate resolution through tribal elders, or patriarchs, and chiefs.’ <http://moj.gov.af/en/page/7943/7944/1672>. *See also*, Grimes, *supra* note 8, at 81.

⁶³ Weinbaum, *supra* note 30, at 55. Maintaining internal order remains as high a concern today as it has for the past few decades.

Augmenting Infrastructure

It is true that public universities are ‘vastly under-resourced.’⁶⁴ Bricks and mortar are important, but the donor-driven or grantee-generated urge to purchase clinic space, furniture, and books must be resisted. Funds may be more wisely spent upgrading Internet access and connectivity, subsidizing off-campus transportation or printing classroom readings, client informational materials, and office forms.⁶⁵

In 1980, Professor Weinbaum observed: ‘Aside from a few (often politically and culturally suspect) Iranian books, no law texts in Persian are available, and the modest library collection of French, English and German volumes go unread. Although many students have studied a Western language in secondary schools, few have an adequate reading comprehension.’⁶⁶

⁶⁴ Choudhury, *supra* note 7, at 261. In their recent assessment of Afghan law faculties, Stanford’s Legal Education Project Fellows refer to the ‘meager funds, unusable facilities, [and] minimal reference materials...’. Swenson & Sugerman, *supra* note 8, at 135.

⁶⁵ In his critique of donor expenditures in Afghanistan, Professor Jon Eddy observed that ‘substantial sums of money have been spent on various forms of physical asset support for the justice sector: new courthouses, projected new prisons, vehicles, filing cabinets, and computers...’ without necessarily evaluating the utility of each expense. Eddy, *supra* note 6, at 19. There may also be a perception that donors favor certain universities over others.

⁶⁶ Weinbaum, *supra* note 30, at 43. On the need for updating textbooks and other reading materials, *see* Azizi & Ericksen, *supra* note 21, at 42. However, as noted above, a bricks-and-mortar library may be a less cost-effective manner of transmitting knowledge about clinical practices than a collection of digitized materials and widespread, reliable Internet access.

Certainly, the English literacy rate among Afghan law and Shari'a students today is higher than in 1980, and university study abroad has increased. Still, it appears that students are exposed to very little in the way of classroom or research materials in Western languages (outside of English language classes)—or to new and innovative legal texts published in Farsi or Dari.⁶⁷

Legal Materials Specialist Eisa Ayoobi noted a few years ago that '[m]ore and more Afghan legal classrooms are equipped with computer technology...'⁶⁸ Nonetheless, university campuses are not uniformly blessed with reliable Internet access and many lack a sufficient number of video monitors, desktop computers, laptops, or projectors in classrooms and libraries. The Ministry of Higher Education's (MoHE) five-year plan is replete with references to upgrading information and communication technology.⁶⁹ Securing computer access for faculty and students, maintaining informational websites, desktop publishing, and off-campus clinic-related travel are precisely what is required to advance the research, instructional, training, and professional collaboration agenda for students and teachers.

Designing and maintaining websites for legal clinics is also necessary for communicating with prospective clients, other clinicians, funders, the general public, and with the student participants themselves. This requires reliable computer/Internet access, as well as personnel to maintain the site. Several law

⁶⁷ According to MoHE's *Strategic Plan (Introduction)*, *supra* note 41, 'Outdated curricula, under-qualified faculty members, lack of proper classrooms and laboratories, under resourced libraries and the lack of adequate information technology are among the acute and pressing problems faced by the higher education sector.' The MoHE plan also calls for foreign language instruction, especially English. *Id.*, *VALUES: High Quality Tertiary Education & PROGRAMS: Sub-Program I-2: Curriculum and Materials Revision and Development*.

⁶⁸ LESPA (Ayoobi), *supra* note 39, at v.

⁶⁹ MoHE, *Strategic Plan*, *supra* note 41: *VALUES: High Quality Tertiary Education & Promote National Unity; PROGRAMS: Sub-Program I-3: Infrastructure and Teaching and Learning Facilities*.

or Shari'a schools already have websites, as do some clinics, but they tend to be static, no-frills, outdated, and/or under-visited. Facebook pages are also important for communicating with students and with certain clientèle. They are easier to maintain than websites, but still require active monitoring. Website and Facebook administration can be assigned to faculty members or upper-level students on a part-time and rotating basis.

Donor funds could be sought for travel and office space. Travel for faculty members within Afghanistan and abroad for short-term exchanges would be a priority. The latter should include working visits to clinics in neighbouring countries, the USA, and Europe—not 'study tours,' where sometimes the touring trumps the studying. Students, as well, need travel funds to participate in off-site clinics, externships or for periodic court observation or shadowing of professionals in the city centre. In some instances, clinic space must be rented (if not donated in-kind) off-campus to serve clients who are prohibited from entering university grounds, or where travel to campus is remote, costly, or too difficult to negotiate.⁷⁰

Funds could also be used for printing and distributing classroom training materials, posters, tracts, factsheets, booklets, in-house manuals, and administrative forms such as client retainers, intake checklists, and confidentiality guidelines. To subsidize publication costs or facilitate distribution, one university or NGO could be the repository for a number of exemplars, sample forms, and manuals.

⁷⁰ In recounting a recent move of the Herat clinic to the city centre, Professor Grimes observed that the change of venue 'immediately resulted in an upturn in client numbers. Clearly clients felt more able to approach the Clinic in this new setting, one that is proximate to the courts and main government administrative buildings.' Grimes, *supra* note 8, at 80. Moreover, '[t]he relative anonymity of a city centre venue to a degree protects against th[eir] concern [about being seen outside their usual environment]. In a country which is, by custom and reputation, deeply conservative, such perceptions and their implications are extremely important.' *Id.*

Donor Coordination

Finally, donors with a legal capacity or ROL focus must genuinely coordinate and cooperate. While every IGO and NGO funder gives lip service to this operational guideline, it is honoured more often in the breach. Competition for grants⁷¹ amongst development and technical assistance organizations and the race for innovation and distinction⁷² breed overlap, redundancy, turf battles, waste, and an air of obfuscation and secrecy.⁷³ Would-be grant recipients⁷⁴ are primed to please every prospective donor, and funders

⁷¹ See, e.g., Elena A. Baylis, *Function and Dysfunction in Post-Conflict Judicial Networks and Communities*, 47 VAN. J. TRANSNAT'L L. 625, 667 (2014) (ROL funding and contracting structure sets up competitive relationships between implementing organizations and between individuals within organizations). 'Because funding is granted in short cycles of 1 to 5 years with the expectation of particular outputs, implementing organizations must be able to demonstrate tangible short-term outcomes to donors....to justify their use of funds, but also in anticipation of future funding....In environments in which tangible outcomes can be difficult to come by, there can be intense competition for ownership of projects and unwillingness to share credit.' *Id.*

⁷² Legal Consultants Rohullah Azizi and Charles Ericksen characterize this as 'competition between agencies in launching recognizable and fashionable projects.' Azizi & Ericksen, *supra* note 21, at 30. Other obstacles to donor coordination include differing priorities and time schedules, varying internal practices, and the costs of information exchange, all of which constitute 'insufficient incentives to coordinate.' *Id.*

⁷³ Notwithstanding theoretical advantages to inter-organizational competition, e.g., improving quality of outcomes, one ROL contractor confides: '...[Y]our own work product becomes your ticket to do your next job, right?... [I]t's quite easy for someone to just steal your work and call it their own....[R]ather than incentives for sharing knowledge, [it creates] incentives for hoarding knowledge that can be really counterproductive.' Baylis, *supra* note 71, at 667. Another interviewee reveals: '...I was told by some people that...other people would steal our work and...it would set us back in terms of our competitive position for funding....' *Id.* at 668. Because ROL written work products 'are often considered private and kept hidden, even when they would be useful for others,...the field of ROL does not gain all the benefits...' *Id.* at 675. These benefits would include 'the regular issuance of assessments and applications of [the field's] norms that can be forwarded and discussed, the concomitant reconnection with others in the field, the sense of connection to the process and its result, and the reified product that can be encountered by others outside the field.' *Id.*

⁷⁴ The key players in legal education reform, clinics, and capacity building appear to be Global Rights, DPK, ILF, ILDO, NRC, GIZ, USAID, and Checchi & Co. Consulting. (It is

and contractors tend to operate on their own.⁷⁵ Moreover, many donor organizations are more accustomed to dictating project goals to country-based grantees and partners, than to listening or consulting.⁷⁶ This is not to suggest that donors should maintain a hands-off attitude vis-à-vis grantees. Once goals and objectives are agreed upon, funders should carefully oversee their execution.

The International Network to Promote the Rule of Law (INPROL), which works on rule of law reform in post-conflict and developing countries, has adopted a different approach insofar as it ‘shares a desire to learn and innovate together as a community in order to improve the[] rule of law knowledge and

unclear, however, whether Checchi is *currently* involved with legal education activities, under its AID-funded *Afghanistan-Support II* grant). *See*, http://www.checchiconsulting.com/index.php?option=com_projects&country_id=29&Itemid=8#108). The Max Planck Foundation has also funded legal capacity building projects in Afghanistan, including a 2014 legal studies conference in Kabul to strengthen academic exchanges and scholarship both domestically and internationally. *See*, <http://www.mpfpr.de/news/details/id/166/>.

⁷⁵ In her case study of ROL networks, Baylis describes the barriers to information exchange: ‘...[The] transnational community [of ROL contractors] is bifurcated between casual interactions over social and career matters and deliberate participation in formally organized online communities and in-person conferences to discuss work matters.’ Baylis, *supra* note 71, at 650. She offers additional interviewee disclosures: ‘People were very unwilling to give you details of what they were doing.... So every organization was repeating the work of lots of other organizations ... There was no institutional memory, there was no coordination or no effective coordination between the various different funding bodies like the UN, the US, the EU and other organizations.... I went to a lot of coordination meetings, but I didn’t notice any actual coordination going on.’ *Id.* at 665 (footnotes omitted).

⁷⁶ Again, Han provides solid, candid advice: ‘Aid, particularly in the rule of law sector, has become much more about what donors want to see happen in Afghanistan than what Afghan organizations are able to implement or even want. There has been more money dumped into rule of law over the last few years than could ever have been effectively absorbed and used. While the coming draw down in aid resources will certainly rattle Afghanistan’s economy, it need not mean less-effective aid, particularly if donors pledge to read the signals sent by the Afghan organizations they are meaning to help.’ Han, *supra* note 9. ‘I wonder, when a potential aid recipient has refused to engage with the donor in planning how a particular project will be built and implemented, if the donor ever asks – “who wants this more, us or them?”’ *Id.*

practice.’ Membership is free and open to individuals currently working on ROL assistance in a policy, practice or research role.⁷⁷ Notwithstanding the logistical, personal, and professional barriers, there are signs that this burgeoning concept of what the United Nations calls ‘practitioner networks’ or ‘communities of practice’ is gaining acceptance within the rule of law sector.⁷⁸

Strengthening Inter-University and Inter-Clinical Relationships

Change cannot take place in an administrative vacuum. In addition to support within the faculty and university, the clinical enterprise needs backing in various degrees from the MoHE, Ministry of Justice, AILAB, AIBA, and the Joint Coordination Committee.⁷⁹ This is essential to the survival of any curriculum change made to accommodate the clinics, particularly those that might involve a reallocation of teaching resources and other funds, or the awarding of (increased) academic credit.

Collaboration is an important aspect of developing an interactive or clinical curriculum. This should occur not only at the department or faculty level, but also across faculties and universities in Afghanistan and abroad,

⁷⁷ <http://www.inprol.org/>. One of Professor Baylis’ interviewees furnished a positive testimonial to INPROL: ‘[S]taff will use th[e] information to collate and put together a kind of concept note...that is then made available to everybody. And so you have research notes on how to build the capacity of bar associations, issues relating to pre-trial detention, how to build the capacity of law schools...’ Baylis, *supra* note 71, at 670. *See also*, U.S. Institute of Peace, Rule of Law Center, <http://www.usip.org/ruleoflaw/index.html> (institute conducts research, identifies best practices, and develops new tools for policymakers and practitioners working to promote rule of law, with emphasis on fragile and post-conflict societies).

⁷⁸ Baylis, *supra* note 71, at 671-72.

⁷⁹ The MoHE bureaucracy alone ‘exacerbates these challenges’ for law faculties that are lacking in autonomy and subject to ‘rigid regulations...,’ Swenson & Sugerman, *supra* note 8, at 136, but this can be addressed and will ultimately benefit Afghan students. *Id.* at 145. *See also*, Azizi & Ericksen, *supra* note 21, at 33-37 (describing domination of newer and provincial legal faculties by MoHE and Kabul University on staff hiring and advancement, textbook selection, and other matters of academic autonomy—notwithstanding strategic plan language).

including Central, South(east) and Western Asia.⁸⁰ Those who collaborate should be selected for their competence, energy and creativity—not their political connections, seniority or penchant for power. The Afghanistan National Development Strategy (ANDS) calls for establishment of a higher education accreditation system; its fundamentals are set out in elaborate detail in the MoHE's *Strategic Plan*.⁸¹ Indeed, a few years ago, the Ministry organized a symposium for all 19 law and Shari'a faculties, where, supposedly for the first time, representatives from universities, government, NGOs, and international donors engaged in a strategic dialogue on the future of Afghan legal education.

A key outcome of the May 2013 gathering was the establishment of a governance body for legal education, the Joint Coordination Committee, comprised of leading deans and professors 'who will work to build cooperation between universities on system wide reforms.'⁸² Ostensibly, the assembled

⁸⁰ See, e.g., Bruce A. Lasky & M.R.K. Prasad, *The Clinical Movement in Southeast Asia and India*, in THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE (Frank S. Bloch ed.) 44-50 (2011)(decades-old experience with law clinics at several Indian universities, strengthened with mandate from Bar Council of India); and Lisa Radtke Bliss & Supamas Chinvinijkul, *Preparing Law Students for Global Practice: An Innovative Model for Teaching Lawyering Skills and Social Justice in a Large Enrolment Class*, 1 ASIAN J. LEGAL EDUC. 1 (2014)(describing border-crossing collaborative experiment in Thailand). See also, Azizi & Ericksen, *supra* note 21, at 39, 42-43 (noting importance of partnership with universities in developed countries and sustainable relationships between Afghan universities).

⁸¹ The accreditation process for all public and private post-secondary education institutions is to be 'formally approved' pursuant to the revised Higher Education Law, including MoHE 2009 Criteria for Self-Assessment, with reaccreditation to take place every five years. *Strategic Plan*, *supra* note 41, (PROGRAMS: Sub-Program II-4: Accreditation and Quality Assurance). 'In the long run the accreditation process will fit into a national qualifications framework and a national skills development program.' *Id.* It remains to be seen whether this very detailed action plan amounts to more *plan* than *action*.

⁸² *Universities Agree to Governance Body to Lead Legal Education Reform*, <http://www.tetratedhpk.com/en/news-and-resources/newslatest/545-afghanistan-symposium-2013.html>. It is unclear whether the Joint Committee is in effect the 'accreditation agency' envisioned under the *Strategic Plan*, *supra* note 41 (PROGRAMS:

group committed to adopting a credit system for both law and Shari'a faculties and to refine the core curriculum to include more practical legal coursework, such as legal clinics and moot court competitions.⁸³ The Joint Committee and the Justice and Higher Education ministries may also need to be 'lobbied' so that professors can receive incentives and added professional status for their contribution to this effort. It remains to be seen whether the Committee will function as a serious oversight body and engine for change, or as an ineffective, ceremonial, politicized, or bureaucratic entity.

Notwithstanding the formation of the Joint Committee, there is a need for an association of junior legal educators, whose sole mandate is to serve as a clearinghouse for ideas and materials to advance innovative and practical legal education. Through this informal network, training could be conducted on clinical techniques to enable professors to share curriculum plans and teaching strategies.⁸⁴ This association has the potential to stimulate discussion and create a new pedagogical culture. More cooperation internationally with other clinicians and law faculty, and between academia and the bar, should also be encouraged.⁸⁵ The Global Alliance for Justice Education (GAJE)⁸⁶ and the

Sub-Program II-4: Accreditation and Quality Assurance), or whether it will function as a parallel institution.

⁸³ *Id.*

⁸⁴ This body should eschew election of officers, bylaws drafting, and conferences and devote itself to collecting materials and regularized dialogue—all of which could be conducted via the Internet.

⁸⁵ International exchanges are also endorsed in the *Strategic Plan*, *supra* note 41 (*PROGRAMS: Sub-Program I-1: Professional Faculty/Staff Development*).

⁸⁶ With members from over 50 countries, GAJE facilitates cross-national educational exchange programmes and joint research projects amongst law schoolteachers, judges, legal practitioners, and activists. Its goals include support for 'innovative justice education, especially in developing countries' and serving as a teaching methodology and materials clearinghouse. <http://www.gaje.org>.

International Journal of Clinical Legal Education (IJCLE)⁸⁷ hold periodic conferences and are important networks, particularly for clinicians and faculty outside of Europe and North America.⁸⁸

Conclusion

With few to no bureaucratic barriers, Afghan legal faculties are able to implement innovative education initiatives, including those centred on professional skills. Teaching and practice are complementary. As it may be difficult to recruit faculty able to engage in both teaching and law practice, one response is to hire adjunct practitioners—be they lawyers or judges at the courts of first instance or appellate courts. If there are bureaucratic hurdles to hiring adjunct staff, these individuals should be engaged as guest speakers, advisors, or mentors. The ranks of professors and lecturers can also be bolstered by teaching assistants and senior students who assume greater responsibilities inside and outside the classroom.

Co-curricular and extracurricular activities include moot court oral advocacy and legal writing competitions. Faculty members can undertake these

⁸⁷ http://www.numyspace.co.uk/~unn_mlifl/school_of_law/IJCLE/. The Open Society Justice Initiative sponsors an invitation-only, on-line resource, the Legal Clinics Community, <https://karl.soros.org/communities/clinics-community/> has protocols and guidelines available for downloading.

⁸⁸ See Wortham, *supra* note 17, at 675-78. See also, Kimberly D. Ambrose, William H.D. Fernholz, Catherine F. Klein, Dana Raigrodski, Stephen A. Rosenbaum & Leah Wortham, *Cross-Border Teaching and Collaboration*, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD (Deborah Maranville, Lisa Radtke Bliss, Carolyn Wilkes Kaas & Antoinette Sedillo López eds., 2015) 155-57 (importance of transnational on-site working exchanges with faculty counterparts). For a candid exchange on perceived and real inequities in cross-border relationships between legal academics, see Daniel Bonilla, *Legal Clinics in the Global North and South: Between Equality and Subordination—An Essay*, 16 YALE HUM. RIGHTS & DEV. L.J. 1 (2013) and James J. Silk, *From Empire to Empathy? Clinical Collaborations Between the Global North and the Global South—An Essay in Conversation with Daniel Bonilla*, *id.* at 41.

activities in addition to regular teaching duties; members of the bar and bench could donate their time *pro bono*. Short-term externships during the summer, or part-time during the school year, should also be encouraged, and can be the building blocks of a clinical programme. Informal outreach or ‘awareness raising’ on local issues can also take place with the support of NGOs. Finally, courtroom observation is an activity that can supplement the classroom component—at the students’ own convenience and without labor-intensive faculty oversight. More ambitious and expensive options are student exchange programmes and international conferences and competitions.

In addition, the legal faculties and university administrators will need to nurture the clinics (or more broadly, clinical education) by facilitating changes in policy and practice at the ministerial level that trigger the development of new curricula, service learning, and interdisciplinary and inter-university collaboration and exchange.

The first stage will involve skills-based, interactive education— inside and outside the classroom. It will also require more student guidance and discipline, and serious attention to the fieldwork advocacy component and ‘real world’ application of the law. By continuing to network with practitioners, NGO activists, community members, government officials, and other faculty members, the legal clinic can build a base of allies, skilled presenters, mentors, and clients—all necessary for its credibility and survival.

Cost savings can be accomplished through a study tour within Afghanistan—*e.g.* a week or fortnight at Herat University— or to clinics in India, Malaysia, Indonesia, Pakistan, or Singapore for a few weeks of hands-on learning with veteran clinicians familiar with regional politics and educational bureaucracies.⁸⁹ Visits abroad are not all about perks; on-site, continuous cross-

⁸⁹ Contact with nascent clinical legal programmes in Iran, *e.g.*, Mofid University should also be considered. *See*, Sahar Maranlou, *Modernization Prospects for Legal Education in Iran*, in

clinical collaboration is the way that professors develop skills needed to grow their clinics.

Student enthusiasm can also be tapped into, in light of their expectations about learning practical skills and serving real clients. Beyond guidance, encouragement, and training from knowledgeable, patient, and attentive instructors, they need transparent selection procedures and written policies on attendance, assignment submissions, grading, and recordkeeping.

Lastly, there must be continuous cooperation and coordination of funding and technical assistance amongst foreign governments, IGOs, and NGOs engaged in rule of law, access to justice, and development activities. This is essential to the survival and success of Afghan clinical legal education, particularly when there is uncertainty about the future of external subsidies, support, and attentiveness. Afghans know they cannot count forever on the largesse or interest of the international community; the New Day is here and now is the time to seize the opportunity for sustained growth and change.

Qafisheh & Rosenbaum, *supra* note 11 (clinic at Mofid has provided assistance to indigent clients on family law, labour law, and criminal law since 2007); <http://www.youtube.com/watch?v=M7YQ0l1tfpo> (ten-minute videotaped interviews in Farsi of clinic staff, accompanied by mix of classical piano and South American pan flutes) (Sept. 2011).

RECOMMENDATIONS (‘15 POINT PLAN’)

1. Facilitate monthly short-duration Skype conference calls between all Afghan faculty members who are conducting legal clinics, or who plan to initiate clinics. Rule of law and access to justice NGO and IGO representatives may participate as needed.
2. Establish an informal, non-bureaucratic network of interested law and Shari’a faculty members, narrowly focused on *regularized* web-based exchange of information on innovative and practical legal education (training; conferencing) and collection of materials, including PDFs of relevant LLM papers and journal articles, sample exercises, grading policies, and administrative forms. A repository of hard copy documentation should continue to be maintained for books and other non-digitized materials.
3. Establish (with *pro bono* technical assistance) a national website (in Dari, Pashto, and English), Facebook page and listserv for clinicians and prospective clinicians.
4. Dedicate infrastructure funding to: upgrading reliable Internet connectivity on all campuses; computer access for faculty and students; Desktop publishing (course reading; clinic handouts); and off-campus clinic-related transportation.
5. Offer a Clinical Law Tutorial to LLM candidates abroad, with additional *pro bono* instruction and mentoring provided by other clinicians and practicing attorneys who make a commitment to post-graduate conferencing and mentoring (See No. 7 below).
6. Translate the Spring 2014 *Afghan Legal Clinic Manual* into Pashto and Dari and establish a means of *regularly and systematically* revising and updating the manual.
7. Facilitate bi-monthly (or more frequent) Skype conference calls between each Afghan faculty member who is conducting legal clinics and a designated clinical liaison/mentor or practitioner/mentor based abroad.

8. Consciously link the law and Shari'a faculty-embedded English classes to the development and maintenance of clinical programmes—through *curriculum planning, written materials, staffing and instructional techniques*.
9. Facilitate short-term legal faculties exchanges between Afghans and English proficient clinicians in South(east) and Central Asia (eg India, Malaysia, Singapore, Indonesia, Pakistan) and USA/UK; Sponsor professors to attend the GAJE (Global Alliance for Justice) and ICLE (International Clinical Legal Education) conferences.
10. Engage the Joint Coordination Committee (legal education quality control), Ministries of Higher Education and Justice, Attorney General, AILAB (Afghan Independent Legal Aid Board), Supreme Court and Afghanistan Bar Association in continuing discussions about curriculum electives, mandatory courses, (increased) academic credit, grading, student practice guidelines, externship opportunities, etc.
11. Convene a small-scale, non-ceremonial summit of the hands-on staff of the legal education capacity building projects, IGOs and donor agencies who are dedicated to ROL, access to justice and human rights in Afghanistan and Central/Western Asia. Thereafter, systematically and regularly coordinate funding and consultation activities with key members of this Afghan legal education capacity building community.
12. Allow each university/faculty to develop a clinical educational programme at its own pace, acknowledging that there will not be uniform progress or identical activities across the various campuses. The key to progress is: support from the administration and participation of knowledgeable and interested teaching staff.
13. Initiate modest fundraising for clinics (photocopying, supplies, travel, amenities, refreshments, part-time administrative staff stipend, etc.)
14. Conduct an annual evaluation of the legal clinics.
15. Update M.G. Weinbaum's 1980 study on the Afghan legal profession, the state of legal education—and include data on the status of NGO-operated legal services and university-based legal clinics.

