

Essay: The Law Clinic Transformation Law

A modest attempt to democratize law and legal education for social-ecological change

By Isabel Feichtner

The Law Clinic Transformation Law is an experiment in legal education and research. The academic freedom that professors at German universities (still) enjoy, allows for this experiment. Like in other European states, legal education in Germany operates under external constraints. The state examination at the end of four years of study limits law students' willingness and capacities to engage in activities considered not immediately relevant for passing that exam. And third-party funding, also at German universities, has become a standard of excellence, a determinant of reputation and remuneration that impacts and shapes research agendas. Yet, law professors at German universities still enjoy substantial freedom to decide on the methods, content, and formats of their teaching and research. The Law Clinic Transformation Law is an attempt to use this freedom responsibly in light of existential crises and the need for a great social-ecological transformation.

"Transformation" here is meant in two senses. First, it refers to the transformation that law and legal science need to undergo to no longer cement a political economy that perpetuates colonial structures, destroys the bases of life, and increases material inequality. Second, the term "transformation law" alludes to a law and legal science that is transformative of societal institutions and relations, aiming to reconcile freedom and prosperity for all. In the past, law and lawyers have been very effective in consolidating a particular notion of rights as individual freedom from state intervention. Expansive interpretations of private property and economic freedoms, as well as the increasingly sophisticated legal coding of capital, have reduced the scope for the democratic reorganization of political economy. For the aim of a great social-ecological transformation it is crucial to recognize how this law stands in the way of transformation and to recover alternative conceptions of law. Transformative law cannot mean more of the same: more environmental regulation or more international treaties for the protection of human rights. Rather, transformative law must rethink and redesign the institutions and infrastructures at the core of political economy, such as property, money, and the corporation. The German constitution provides some orientation for this endeavor with its mandate that Germany be a social state. This mandate can and should be interpreted to demand not only the satisfaction of basic needs but the democratization of all societal spheres including the economy.

The Law Clinic Transformation Law is both a teaching format and a forum for transdisciplinary research to explore how law may serve as a building block of a democratized political economy. Legal education generally focuses more on applying and enforcing the law than on lawmaking. German law students in the state examination that concludes their university

education usually have to write legal opinions. In criminal law, they are asked to discuss whether a person is guilty of one or several crimes; in public law, the exam question usually reads something like, “Will A be able to successfully sue the municipality or the state for a certain act or omission?” In preparing for this type of exam, students study how to interpret and apply existing law as a judge would do. When, after their studies, they go on to work for ministries or law firms, they realize quickly that there is more to the law – that lawyering is also a creative exercise, for example, when drafting contracts, negotiating international legal instruments, or advising clients which form of legal organization suits their business best. Commercial lawyers, in particular, are in the business of employing and making law in order to turn things, such as resources, into capital that generates value and to protect this capital and its value-generating function over time. Such creative lawyering often perpetuates and expands the value extractions at the heart of social-ecological crises and is not transformative in the sense sketched above. Against this background, the Law Clinic Transformation Law seeks to create a space at the university where students learn and engage in creative lawyering, legal imagination, and design of institutions for social-ecological transformation for the benefit not only of a few but society at large.

The Law Clinic Transformation Law differs from other law clinics, which are by now a well-established format of practical legal education, not only in North America, their place of origin, but also in Germany. Law clinics usually aim at combining two things: one, allowing law students to engage in practical lawyering already during their law school education and thus to learn practical skills in communicating with and giving legal advice to clients; and two, law clinics offer a community service in the form of free legal advice to benefit people who cannot otherwise afford a lawyer. In Germany, the law clinic format has widely spread during the past decade. Since 2015, numerous migration law clinics have been established in addition to the already existing human rights clinics. More recently, the creation of climate law clinics is a welcome development.

The Law Clinic Transformation Law is distinct from these law clinics in that its primary aim is neither to provide legal advice to persons seeking to defend their rights nor to enforce existing law, such as environmental regulation. Rather, we seek to explore the transformative potential of law and legal design of institutions. So far, we have conducted two law clinics at the University of Würzburg. One had as its main subject complementary currencies and their legal design.¹ The other focused on Commons Public Partnerships (CPP). A CPP, in brief, can be defined as a partnership between the state or municipalities and organized civil society for the provision of public goods and the facilitation of practices of *commoning*. A CPP may be formed by a cooperation agreement that

¹ For a brief report from a student participant’s perspective, see B. Hautmann and N.-S. Preiss, *Transformationsrecht an der Universität: Ein Rückblick auf die erste Law Clinic Transformationsrecht mit Schwerpunkt “Klimawährungsdesign,”* 2022, <https://fordemocracy.hypotheses.org/3405>.

allows the civil society partner to use public resources, such as urban space and infrastructures, and turn these resources into a common: e.g., an urban garden or a communal transformation center. In both law clinics, we worked closely with civil society initiatives in understanding the transformative ambitions of their respective projects and the role that law can play in furthering them. In the first law clinic, we partnered with the Klimabonus—a complementary climate currency initiative. In the second, we cooperated with the Hansa Forum Münster—a civil society initiative that engages in projects of urban commoning in cooperation with the city of Münster and financially supported by the German federal government. We engaged with our partners to explore the legal framework of their projects and the legal scope to realize their ambitions. We then identified individual legal questions that small groups of students and researchers could productively work on during the course of one semester. We presented the results of our work to our practice partners in the form of reports and on the occasion of a public workshop.

The Law Clinic Transformation Law not only wants to integrate social-ecological transformation into legal education, but we also see it as an opportunity to practice creative lawyering and experience a sense of self-efficacy when looming catastrophes tend to paralyze us. Furthermore, the Law Clinic Transformation Law, apart from promoting democratic law, is an experiment in democratizing the university. Through its collaboration with civil society organizations the Law Clinic opens the university to societal knowledge produced outside the university. It engages in the coproduction of knowledge on social-ecological transformation and the legal framework it requires. This is why we consider the Law Clinic a forum for transdisciplinary research and democratized knowledge production. The Law Clinic Transformation Law aims to be a space where all status groups—students, researchers, administrators, and professors—work together, where we aim to soften hierarchies and practice democratic debate and decision-making, for example with respect to the questions we want to tackle. In this respect, too—namely democratic practices and culture—we learn a lot from our civil society partners. Their methods of learning, communicating, and organizing at times starkly contrast with academic customs and habits.

The Law Clinic Transformation Law is a work in progress. We are in the process of further refining the concept, acquiring stable funding, documenting and archiving our findings, integrating the Law Clinic into the curriculum, and building a network of like-minded law clinics and supporting lawyers. Recently, the Law Clinic found a provisional institutional home in the University of Würzburg's newly founded sustainability lab (WueLAB) for transformation experiments. From 2022 to 2025, it will also form part of a joint research project of several Bavarian universities that explores pathways towards the carbon neutrality of universities (REKLINEU).

If you are interested in learning more and joining forces, please email us at feichtner@jura.uni-wuerzburg.de or p-oerecht@jura.uni-wuerzburg.de.