

VALUES-AMBIGUOUS CLINICS

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ABSTRACT

As law school clinical programs have grown in recent decades, many of the newer offerings focus on business law, entrepreneurship, intellectual property, and technology. It is commonly presumed that social justice values, such as the amelioration of poverty or the protection of fundamental rights, are not foundational goals of these non-traditional clinics. This Article calls these clinics “values-ambiguous” to highlight the frequent uncertainty and skepticism about their relationship to traditional clinical social justice values. Importantly, “values-ambiguous” does not describe a quality of the clinic itself, it describes a quality of perception of the clinic. In other words, “values-ambiguous clinics” are clinics that are typically not perceived as having a social justice mission, whether or not they in fact do. As values-ambiguous clinics have grown in number and in importance, the broader clinical community has struggled to come to terms with their presence. While it is generally accepted that these clinics provide important student opportunities and contribute to the overall rise of the status of clinics within the legal academy, they have also been seen as replicating hierarchy, undermining the established goals of clinical pedagogy, and neglecting the foundational social justice imperative of clinics. This Article sidesteps the usual arguments about how non-traditional clinics can and should be reconciled with traditional clinical social justice imperatives. It instead focuses the conversation on the ways in which the rise of values-ambiguous clinics presents opportunities for all clinicians to critically (re)consider their own preconceptions about the nature, role, and relationship of values, skill, and theory in clinical legal education. Using quantitative and qualitative analysis and storytelling, this Article surfaces and describes tensions and themes in current scholarship, and

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suggests avenues for further conversation about the future of clinical legal education.

The last several decades have seen a trend of law schools offering increasing numbers of “values-ambiguous” clinics, by which I mean clinics that are commonly perceived as not having the pursuit of public interest, the protection of fundamental rights, the amelioration of poverty, or other social justice values as foundational goals.¹ These values-ambiguous clinics are often transactional legal clinics, such as business law or entrepreneurship clinics, but can also be non-transactional clinics, such as intellectual property and technology (IP/T) clinics that engage in litigation and advocacy.² Importantly, by describing certain clinics as values-ambiguous, I am not describing an underlying quality of the clinic itself. I am instead describing a quality of perception of the clinic.³ Thus by values-ambiguous clinics I simply mean those clinics, often but not always transactional and IP/T clinics, that are typically not perceived as pursuing the traditional clinical “social justice imperative,”⁴ whether or not they in fact do.

In this Article I argue that the emergence of values-ambiguous clinics has been a disruptive force in clinical education and has resulted in divisions within the clinical community.⁵ I further claim that the presence (and increasingly the prominence) of values-ambiguous clinics provides an opportunity for us to consider important but challenging questions about the nature and role of values in clinical legal education. Understanding and discussing these divisions, and addressing the challenging questions they present, is critical if we want to move toward a

¹ On the definition of values-ambiguous clinics *see infra* Part I(B).

² Cynthia L. Dahl & Victoria F. Phillips, *Innovation and Tradition: A Survey of Intellectual Property and Technology Legal Clinics*, 25 CLINICAL L. REV. 95 (2018) (describing intellectual property and technology clinics as “varied and multidimensional legal practice from purely transactional to advocacy undertaken through education, policy and litigation.”); *see also infra* Part I(B).

³ The focus on perception invites the question: the perception of whom? At the most general level I mean the perception of actors within the broader law school community, including law students, clinicians, doctrinal faculty, and administrators. As the Article progresses I occasionally focus on a more specific subset of this community. For a more extended discussion of perception *see infra* Part I(B).

⁴ *See* Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461 (1998) for use of the term “social justice imperative.” *See infra* Part III(B)(1) for the definition of social justice in the clinical setting.

⁵ I intentionally use the term disruptive to invoke both the traditional association of disruptive with “troublesome” as well as the business context association of disruptive with “leading to innovation.” *See e.g.*, Alina S. Ball, *Disruptive Pedagogy: Incorporating Critical Theory in Business Law Clinics*, 22 CLINICAL L. REV. 1, 3 (2015) (“In business and technology literature, ‘disruptive’ describes innovations that improve products or services in unanticipated ways, typically by designing for new kinds of consumers—often overlooked by an industry.”); CLAYTON M. CHRISTENSEN, *THE INNOVATOR’S DILEMMA: WHEN NEW TECHNOLOGIES CAUSE GREAT FIRMS TO FAIL* (1997).

more integrated clinical community that is capable of pursuing its many shared goals.⁶

It seems clear that values-ambiguous clinics are here to stay and also clear that this development has been greeted with something short of universal enthusiasm in the broader clinical community. On the one hand, these clinics may be seen as an important part of the overall rise of the status of, or at least attention to, clinics generally within legal education,⁷ but on the other hand they are perceived as replicating hierarchy, undermining established goals of clinical pedagogy, and neglecting the foundational values mission of clinics in favor of a narrow conception of skills development.⁸

It is perhaps not surprising that scholarship discussing the relationship of transactional or IP/T clinics to social justice commitments often focuses on correcting misperception. The existing literature is dominated by explanations of the ways in which these non-traditional clinics can, or in fact already do, operate in a manner that is consistent with traditional clinical social justice value-commitments.⁹ Rather than initiating another round of conversation about whether transactional, IP/T, and

⁶ These shared goals might relate to student education or employability, institutional reputation, the strength and stature of clinical programs, or outcomes related to broader social goals. For a discussion of goals in the context of clinic design, see DONALD NICOLSON, JONEL NEWMAN & RICHARD GRIMES, *HOW TO SET UP AND RUN A LAW CLINIC: PRINCIPLES AND PRACTICE* 19–44 (2023).

⁷ See Peter A. Joy, *The Uneasy History of Experiential Education in U.S. Law Schools*, 122 DICK. L. REV. 551 (2018); Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 FORDHAM L. REV. 1929 (2002); Patience A. Crowder, *Designing a Transactional Law Clinic for Life-Long Learning*, 19 LEWIS & CLARK L. REV. 413, 415 (2015) (“The combined effect of increased student demand for different types of transactional experiential opportunities and the publication of two very influential reports, the 1992 ABA MacCrate Report and the 2007 Carnegie Foundation Report, challenged law schools to begin providing more exposure to transactional practice and interdisciplinary work.”).

⁸ See, e.g., Minna J. Kotkin, *Clinical Legal Education and the Replication of Hierarchy*, 26 CLINICAL L. REV. 287 (2019).

⁹ See, e.g., Lauren Carasik, *Justice in the Balance: An Evaluation of One Clinic's Ability to Harmonize Teaching Practical Skills, Ethics and Professionalism with a Social Justice Mission*, 16 S. CAL. REV. L. & SOC. JUST. 23 (2006); Dubin *supra* note 4; Laurie Hauber, *Promoting Economic Justice Through Transactional Community-Centered Lawyering*, 27 ST. LOUIS U. PUB. L. REV. 3 (2007); Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 CLINICAL L. REV. 195 (1997); Lynnise E. Phillips Pantin, *The Economic Justice Imperative for Transactional Law Clinics*, 62 VILL. L. REV. 175 (2017). There is also a large body of scholarship, some of which is discussed below, that makes broader and more general claims regarding the primacy of the social justice mission for all clinics, including advocacy and litigation clinics. But I mean here to just be describing a more narrow body of literature that is concerned with the subset of clinics that I describe as values-ambiguous, but that in the existing literature is usually referred to as transactional. Additionally, there is a much smaller body of literature, also discussed below, that claims that transactional clinics need not primarily, or even secondarily, concern themselves with social justice or public interest values, but should instead focus on practical skills training. See Praveen Kosuri, *Clinical Legal Education at a Generational Crossroads: X Marks the Spot*, 17 CLINICAL L. REV. 205 (2010); Stephen F. Reed, *Clinical Legal*

other values-ambiguous clinics should, can, or already do operate in service of social justice goals, this Article attempts to examine the context of these conversations more broadly and to give sustained attention to the implicit and explicit assumptions they contain.

The goal of this Article is to introduce new frameworks for discussion, to examine the divisions between different types of clinicians, and to move toward an inclusive and hopeful conversation about the future of clinical legal education—a future that seems certain to contain values-ambiguous clinics. In pursuit of this goal I use quantitative and qualitative analysis as well as storytelling—providing fictional “vignettes” told in segments throughout the Article—to anchor the discussion.

This Article proceeds in three parts. Part I introduces the vignettes and then defines the focus of the inquiry, explores the terminology used, and discusses empirical trends related to the growth of values-ambiguous clinics. Part II provides the next segment of the vignettes and then explores the claim that the growth of values-ambiguous clinics has resulted in a problematic divide. Part III turns to a discussion of some of the many challenging subjects that the rise of values-ambiguous clinics force us to confront, including the different ways we might conceptualize the relationship between values, theory, and skills training in clinical legal education. I conclude with a possible ending to the vignette segments presented in Parts I and II.

I. INTRODUCTION

To introduce the subject of this Article, I begin with two vignettes that offer a more individual-level perspective on the intersection between different types of clinics. The vignettes are presented from the perspectives of two clinicians who are colleagues at the same law school; one a director of a values-presumed poverty law clinic (the “Traditional Clinician”) and the other the director of a values-ambiguous transactional clinic (the “Transactional Clinician”). These vignettes are purely fictional, and while they are informed by conversations I have had with many clinicians over the years, they do not reflect my own or anyone else’s specific story. I include these vignettes not because I am primarily concerned with the personal challenge any individual clinician might experience in relating to another clinician or with their interpersonal difficulties in feeling understood, seen, or respected by one another. Rather, I include them because I believe that some of the tensions that are experienced on the individual level may provide insight into the broader set of macro-level challenges that are the subject of this paper. Additionally, I include these vignettes because I think the subject

under discussion can have a tendency toward the theoretical and that it is helpful to give examples to anchor the conversation.¹⁰ Finally, I include these stories because, despite the prevalence of the issues they discuss, there is relatively little explicit discussion in existing scholarship of these disparate experiences and what they may tell us about the present and future of clinical education.

A. *The Introduction Story*

1. *The Traditional Clinician*

When the Traditional Clinician was in law school, she took all the clinical offerings available to her and they absolutely changed her life. It was the only place in law school where she felt she belonged, and where she received mentorship, a vision of what it meant to be a lawyer, and an understanding of how this profession could truly matter. After this incredible and transformative clinical experience, she went on to have a satisfying career working in, and then later running, a legal aid office. She eventually became a clinical professor herself, taking over as director of an established poverty law clinic. She aspires to have the same impact on the next generation of law students that her mentors had on her and considers it a great privilege to work in the same community as some of the clinicians she worked with as a law student.

She has a deeply held commitment to social justice, and her work is centrally concerned with helping those who have been oppressed. She of course knows that not all her students will go on to have a career in the public interest; in fact, very few of them will, and she doesn't blame them. After all, she understands all too well what a difficult path that can be. But the fundamental skills training—for example client counseling, legal writing, reflective thinking, and professional identity formation—that they encounter in her clinic transfer to all practice settings. And more importantly, wherever they go after they graduate, even if it is to do corporate work at a large law firm, her students will be informed by the perspectives on law that they were exposed to in the clinic. In her clinic they will have to grapple with the very human side of poverty law, and most of them will be transformed by this in one way or another. In some ways she knows her clinic is even more important to the students who won't go on to do public interest because this clinic might be the

¹⁰ See Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1988); Binny Miller, *Telling Stories About Cases and Clients: The Ethics of Narrative*, 14 GEO. J. LEGAL ETHICS 1, 20 (2000) ("Stories can build bridges across gaps of race, class, gender, sexual orientation, and other differences. Circulating the stories and perspectives of the 'other' can open the eyes of the majority to those perspectives. . . . Personal experience almost always makes a concept more powerful than abstractions.").

only place in law school or in their legal careers that they encounter these essential perspectives.

Her work is rewarding and meaningful, but exhausting. There are occasionally wins for clients, but those are few and far between. She is painfully aware of the horrific unmet need for legal services and the high stakes of her clinic's cases. She knows the clinic's work is often the only thing preventing horrific and unjust human suffering. She is drained from her constant exposure to broader social problems, from the racism of the criminal justice system to the tragedies of economic inequality. She is desperate to have more support for her work, but she knows that clinics are expensive, and funding is hard to come by, so she just gives it everything she's got and soldiers on, making plenty of personal sacrifice along the way.

So she was surprised then when the Dean of the law school, after saying it would be too expensive to get her the help she needs in her clinic, announced that the school was planning to start a brand new "business law" clinic.

2. *The Transactional Clinician*

After a successful and mostly satisfying career doing corporate work at a large law firm, the Transactional Clinician had been ready for a change. She wanted to give back to her community by providing high quality legal services to the types of small business clients who could never have afforded her firm's services. She also was excited about helping to mold the next generation of law students into ethical and skilled transactional lawyers. What better way to do this than by teaching a transactional clinic!

There were no transactional clinics when she was in law school; in fact there was almost no coursework at all that discussed transactional lawyering, and the creation of a business law clinic feels like a real sign of progress in legal education. Moving to clinical teaching meant a dramatic pay cut and enduring some academic bureaucracies, but she felt called to do this meaningful work. She loves the idea of sparing the next generation of transactional lawyers from having to learn practical skills on their own like she did or from rolling the dice with a law firm supervisor who may or may not have the time to provide thoughtful mentorship. She's also aware that transactional law has a diversity problem. She hopes that by making this clinic available and demystifying transactional law practice she can help empower groups who have historically been underrepresented in transactional law, including women, first-generation law students, and racial minorities. Doing good work for small businesses who truly need her assistance to thrive is the icing on top!

When she initially set up her new clinic, the first of its kind at her law school, there had been a steep learning curve, but she innovated as fast as she could, adapting everything from client intake procedures, to interviewing guidelines, to reflective learning exercises, to her practice area. Her attention was immediately focused, however, on an unfortunate realization: there hadn't been as much progress as she'd thought in law schools, and transactional law was still wildly under-represented in the legal academy relative to its prominence in practice. Getting students from zero to anywhere even in the vicinity of "practice ready" suddenly felt like a very tall order.

Her work is rewarding and meaningful, but exhausting. It takes her clinic much longer to get work product to clients than she thought it would because the students have to learn a whole set of technical writing skills and get up to speed on so many new substantive subjects before they can contribute. She painstakingly chooses clients who can benefit from their services, who can accommodate the long turnaround times, and who have legal issues that are neither too basic nor too complex to be great learning opportunities for students. She's giving this everything she's got, and she isn't sure whether to laugh or cry when she thinks back on how she thought clinical teaching would be like a vacation relative to firm practice. But she's more convinced than ever that this work is essential to legal education, so she soldiers on, making plenty of personal sacrifice along the way.

So she was surprised when she learned that some of her clinical colleagues think that starting a business law clinic hadn't been the best decision for the law school and that they aren't sure if her clinic is aligned with the values mission of their clinical program.

B. Terms And Trends

This Article argues that the emergence and growth of values-ambiguous clinics (again, meaning clinics that are commonly perceived as not having foundational social justice goals) has been disruptive to the clinical community and that, in trying to come to terms with the professional integration of these clinics, we encounter some very challenging questions. I will thus begin by locating this inquiry in a particular part of the experiential/clinical universe, providing additional discussion about what I mean by values-ambiguous clinics and why I believe this new terminology is necessary, and summarizing some trends surrounding the growth of these clinics.

1. Locating the Inquiry: In-house Clinics

In this article I am primarily discussing "in-house" law school clinics, rather than externships, simulation courses, or other experiential

opportunities.¹¹ This focus is not because I think these issues do not come up in other settings; on the contrary, the ongoing debates about corporate counsel externships and private law firm externship placements are rich sources for this inquiry, and I will at least tangentially reference some of this discussion.¹² However, I will be primarily discussing in-house clinics—for a few reasons. Most of the existing literature on related subjects is also carried out in terms of in-house clinics, and this is the literature I wish to engage with. I also believe it matters that more law school resources are typically required for in-house clinics than other experiential opportunities and that in-house clinics are seen as setting standards for the broader category of experiential legal education.¹³ Finally, in-house clinics are what I have the most first-hand experience with and what I personally find most compelling. I founded an in-house business law clinic in 2011 that I would describe as a values-ambiguous clinic, and I continue to serve as the director of that clinic. My experience teaching an in-house clinic and interacting with the broader clinical community in this capacity in part motivates the inquiry.

2. *Defining Values-Ambiguous Clinics*

I propose the new terminology of “values-ambiguous” clinics because I do not believe there is an existing term that describes the group of clinics that I am interested in, and I also believe we have been stymied in our conversations by this lack of terminology. I am aware that in suggesting new terminology I am inviting challenges, not least of which is the difficulty of engaging with existing literature in a consistent way. I am also aware that the specific term I have chosen is imperfect.¹⁴

¹¹ I also am limiting the focus of my inquiry to clinics based in the United States. For a discussion of the global clinical movement see, for example, *THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE* (Frank S. Bloch ed., 2011); RICHARD WILSON, *THE GLOBAL EVOLUTION OF CLINICAL LEGAL EDUCATION: MORE THAN A METHOD* (2018); NICOLSON ET AL., *supra* note 6.

¹² For a summary of discourse regarding the relationship between private practice externships and social justice goals, see Kristen Uhl Hulse, *The Foundations for (Private) Practice: Building Professional Identity Through Law Firm Externships*, 89 UMKC L. REV. 583 (2021). See also Dubin, *supra* note 4, at 1469–70 (noting “the emerging emphasis on clinical education’s skills training and professional competency functions has led to law schools’ increased reliance on less resource intensive models of instruction that downplay social justice and public service concerns. These models include non-client simulation courses . . .”).

¹³ Praveen Kosuri, *Losing My Religion: The Place of Social Justice in Clinical Legal Education*, 32 B.C. J.L. & SOC. JUST. 331, 338–39 (2012) (“Clinics are the top of the pyramid in terms of experiential learning.”).

¹⁴ Other terms I considered included values-contested and values-not-presumed. These options struck me as, respectively, less accurate and more awkward.

When I began thinking about this subject my focus was initially more simply on transactional clinics, and this would have been consistent with common usage and with most of the scholarship on related subjects. Although there is no universal method of referring to clinics,¹⁵ authors have found it to be a useful shorthand to (implicitly or explicitly) split clinics into two rough groups. One group is “transactional clinics” where the lawyering activity involves “the development of organizations, businesses, and structures for clients to own and use.”¹⁶ The second group is “traditional” or “litigation legal services” clinics that engage in advocacy, litigation, or dispute resolution.¹⁷

Here, where our concern is perception of values commitments, using transactional—a word that generally describes a type of law practice—to communicate about the presence of clinics that are perceived to not have social justice values commitments, is clearly problematic.¹⁸ Drawing a line around transactional clinics is both over- and under-inclusive for the current inquiry and, more importantly, somewhat misses the point. Transactional clinics certainly are frequently values-ambiguous, in the sense that it frequently isn’t apparent whether a transactional clinic has a foundational values commitment. But transactional clinics are also often *not* values-ambiguous and, conversely, non-transactional clinics may also be values-ambiguous.

To give an example of the over-inclusivity of a focus on transactional clinics, consider two transactional clinics, a Community Economic Development (CED) Clinic and a Business Law Clinic. The two clinics might do a similar or even identical set of transactional legal tasks—for

¹⁵ Melissa L. Kidder, *The Future of Rural Lawyering: How Law Schools Should Embrace a General Practice Legal Clinic Model to Address the Current and Future Legal Needs of Rural and Smaller Communities*, 70 DRAKE L. REV. 83, 111 (2022) (“there is not one common set of vocabulary for how law schools identify or label their clinical programs.”).

¹⁶ Paul R. Tremblay, *The Emergence and Influence of Transactional Practice Within Clinical Scholarship*, 26 CLINICAL L. REV. 375, 375 (2019).

¹⁷ Paul R. Tremblay, *Transactional Legal Services, Triage, and Access to Justice*, 48 WASH. U. J.L. & POL’Y 11, 12 (2015) (contrasting transactional legal services (TLS) with litigation legal services (LLS)); Susan R. Jones, *Promoting Social and Economic Justice Through Interdisciplinary Work in Transactional Law*, 14 WASH. U. J.L. & POL’Y 249, 263 (2004) (comparing “the transactional context” with how “[t]raditional clinics have historically raised questions.”); Kotkin, *supra* note 8, at 302 (describing the “classic legal services style practice”); Jones, *supra* note 9, at 195 (describing “transactional clinics in contrast to more traditional clinics”). Because this language is common, it is also what I use in the vignettes. I label the clinicians as being traditional and transactional, rather than values-presumed and values-ambiguous, because I am trying to reflect the reality of typical usage, rather than trying to be precise in my categorization.

¹⁸ Others have discussed definitional challenges with the use of “transactional.” *See, e.g.*, Tremblay, *supra* note 16, at 375 n.1 (“In the law firm and law school worlds the distinction between litigation and transactional work is quite common, but articulating the precise difference is not self-evident.”); Praveen Kosuri, *“Impact” in 3D—Maximizing Impact Through Transactional Clinics*, 18 CLINICAL L. REV. 1, 5–6 (2011) (“‘Transactional law’ and ‘transactional clinic’ are incredibly broad terms.”).

instance, forming businesses or drafting contracts—and they might perform these tasks for a similar or identical type of clients—for instance micro-entrepreneurs within a certain city.¹⁹ But despite these similarities the CED Clinic would be more likely to be presumed to be carrying out this work for a social justice purpose, while the Business Law Clinic's underlying values-commitments might be seen as ambiguous. It may be the case that in fact the Business Law Clinic had the same social justice orientation as the CED Clinic, or a different but equally foundational values commitment, or no social justice orientation at all.²⁰ But whatever the case may be, we would likely not presume, absent additional information, that the Business Law Clinic had a foundational social justice commitment. I would therefore describe the Business Law Clinic, but not the CED Clinic, as values-ambiguous. Tellingly, although CED clinics usually are transactional, CED clinics are often excluded from values-based critiques of transactional clinics.²¹

The category of transactional clinics can also be under-inclusive for purposes of the current inquiry. For instance, advocacy- and litigation-based intellectual property and technology clinics or securities arbitration clinics also tend to share this quality of being perceived as having an ambiguous commitment to social justice, even though they are often grounded in a non-transactional advocacy or dispute resolution practice.²²

Commentators writing about clinics with unclear values commitments, many of which are transactional, address the over-/under-inclusivity of terminology in a few ways. For instance, some specify that by transactional they mean just those transactional clinics that are not community lawyering or CED clinics.²³ Similarly, others specify that

¹⁹ Priya Baskaran & Michael Haber, *Transactional Clinics As Change Agents in the Trump Era: Lessons from Two Contexts*, 26 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 335, 336 (2017) (describing how a CED Clinic and an Innovation and Entrepreneurship clinic do similar substantive legal work).

²⁰ For a discussion of CED practice as distinct from other types of transactional practice with respect to values orientation, see Kosuri, *supra* note 18, at 8 (“CED lawyers are advocates. They are political lawyers who help community clients organize and build institutions that hopefully help to improve neighborhoods. Though CED lawyers often represent clients in transactions, they are not transactional lawyers—CED lawyers’ focus is on communities and community desires.”).

²¹ See *infra* note 23. See also Kosuri, *supra* note 18, at 12 (noting CED “has long been heralded as a way for transactional lawyers to engage in transformative work by helping to create institutions that would then engage in or promote the many needed components necessary to drive economic development.”); Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399, 437, 447–57 (2001) (noting the widespread appeal of CED but criticizing some forms of CED that are more market-based).

²² Dahl & Phillips, *supra* note 2.

²³ There are several different ways authors have tried to separate out CED clinics. For instance, Praveen Kosuri groups transactional clinics into the groups CED and “general

when they say transactional they primarily mean startup and entrepreneurship clinics²⁴ or clinics that are “market-based.”²⁵ Some suggest or state that clinics, even if they have what we would typically call a transactional practice area, are actually not transactional clinics if they are focused on “community outcomes” rather than “deals.”²⁶ Many others do not bother to make additional distinctions at all or, understandably, use terms inconsistently—sometimes using transactional clinics to describe a practice type that is in contrast with litigation or advocacy and other times using the term to describe a specific subset of that practice area that does not appear to be mission- or values-driven.²⁷ Others deal with a narrower subject area subset, such as intellectual property clinics, regardless of whether the clinics are transactional or not.²⁸ Still others

services clinics” where small business and nonprofit organizations clinics comprise the general services transactional category. Kosuri, *supra* note 18 at 9. Tremblay groups transactional clinics into those that are and are not “grounded in community lawyering.” Tremblay, *supra* note 16, at 380. Minna Kotkin describes her concern as being limited to “new business-oriented clinical subjects, excluding those grounded in community lawyering.” Kotkin, *supra* note 8, at 303. Etienne Toussaint describes business law clinics as “distinct from so-called Community Development Law Clinics that teach similar transactional lawyering skills but focus on the needs of community-based and marginalized clients.” Etienne C. Toussaint, *The Purpose of Legal Education*, 111 CALIF. L. REV. 1, 11 n.43 (2023). See also Alina S. Ball & Manoj Viswanathan, *From Business Tax Theory to Practice*, 24 CLINICAL L. REV. 27, 32 n.19 (2017) (“While transactional lawyering has been used in other lawyering scholarship to describe a broad range of skills that include almost any non-litigation-based practice, this Article narrows the use of the term to the representation of business entities where the legal team interprets, analyzes, and advises on private ordering, statutes, regulations, and case law to assist their clients in realizing their transactional goals and business objectives.”).

²⁴ Kotkin, *supra* note 8, at 304 (focusing on “transactional law, particularly that involving entrepreneurs”).

²⁵ Cummings, *supra* note 21, at 409 (describing transactional CED as being either market-based or aligned with progressive political action); see also Paul R. Tremblay, *Rebellious Strains in Transactional Lawyering for Underserved Entrepreneurs and Community Groups*, 23 CLINICAL L. REV. 311, 323 (2016); Tremblay, *supra* note 17, at 13 (distinguishing between “collectivist” and “entrepreneurial” transactional legal services).

²⁶ Kosuri, *supra* note 18, at 8 (“CED lawyers are advocates. They are political lawyers who help community clients organize and build institutions that hopefully help to improve neighborhoods. Though CED lawyers often represent clients in transactions, they are not transactional lawyers—CED lawyers’ focus is on communities and community desires.”).

²⁷ This challenge is also reflected in the survey used by the Center for the Study of Applied Legal Education (CSALE), that provides a comprehensive, and commonly relied upon, set of data regarding trends in clinical legal education. See, e.g., Robert R. Kuehn et al., *2022–23 Survey of Applied Legal Education*, CTR. FOR STUDY APPLIED LEGAL EDUC. (2023), [hereinafter CSALE 2022–23]. For instance, the CSALE 2022–23 sub-survey asks clinical program representatives to describe their offerings by “type of clinic” and the mutually exclusive response options include transactional, entrepreneurship, or CED. Later, the sub-survey asks them to describe their practice type in terms of the percentage of the work they do that is transactional, litigation, or advocacy. Both of these inconsistent meanings of “transactional” reflect common usage.

²⁸ See, e.g., Dahl & Phillips, *supra* note 2.

paint with a broader brush, describing the clinics of interest as “business oriented” or “specialty” clinics.²⁹

None of the above descriptors quite capture the concept that I believe to be at the heart of the current discussion. Perhaps the descriptor in the existing literature that comes closest to the group of clinics I mean to be discussing is Minna Kotkin’s refreshingly direct description of “business-oriented clinics with questionable social utility.”³⁰ I depart from this description, not only in terms of the embedded critique but also in the focus on perception of values alone, rather than a combination of business orientation and uncertain values. While it is again true that business-orientation, like a transactional practice style, is a very common feature of these clinics, I believe business orientation is perceived as problematic only insofar as it is paired with values-ambiguity.

Having defended the need for a new category and provided a rationale for the specific choice of term, I now address some of the possible concerns with “values-ambiguous” as a descriptor. The first of these is that the words value and values have dual meanings. They can refer to a commitment to an ideal or principle, as in social justice values, and this is the meaning I am trying to evoke. They can also refer to an assessment of worth or importance, as in an assessment that a clinic contributes nothing of value. While I do not mean to be evoking the latter usage, there is potential for confusion, particularly when I am separately discussing the ways in which we might evaluate the relative “worth” of clinics.³¹ A second issue with the word values is that it may be overbroad. When I say values, I do not mean all possible ideals one might be committed to, for instance the ideal of loyalty. I mean the subset of values that might be termed “social justice values” as they are imagined within the clinical community.³²

Concerns may also be raised by the word ambiguous. As noted above, when I discuss the ambiguity of a clinic’s values commitments, I mean to be specifically highlighting the tendency toward uncertainty in the *perception* of a values commitment, rather than making any sort of assessment of the actual underlying reality of a values commitment.

²⁹ Kotkin, *supra* note 8, at 302. For a broad approach, see also NICOLSON ET AL., *supra* note 6, at 7. Nicolson, Newman, and Grimes describe clinics in the two groups of “clinics that focus on the education of students” as “educationally oriented” in contrast to “social justice oriented clinics which have social justice as their main, but not necessarily exclusive focus.” While this is a helpful approach, it does not fit the present argument where I am concerned primarily with perception, rather than clinic design.

³⁰ Kotkin, *supra* note 8, at 304.

³¹ Adding a layer of confusion, some argue that a clinic that has no values (in the sense of social justice commitments) also has no value (in the sense of worth). See *infra* Part III(B)(2).

³² For the challenges of defining “social justice” see *infra* Part III(B)(1). This use of “values” as shorthand for “social justice values” as a clinical goal is common in existing commentary. See *infra* Part III(B)(2).

In other words, the ambiguity I assign to a clinic is describing the likelihood of an observer of the clinic having the experience of being uncertain as to whether the clinic is oriented to social justice values, rather than describing an inherent quality of the clinic itself. Put more simply, I mean to be highlighting the fact that some clinics are likely to be presumed to be operating for social justice purposes, while others are not.³³

For example, I teach a business law clinic, and even though I personally believe my clinic operates in service of social justice values, I would label it as a values-ambiguous clinic because I do not believe that any given member of the law school community would immediately and confidently assume that this was the case. I do not view this as a negative assessment of myself or my clinic. If there is any embedded criticism in the label at all it is a criticism of our collective reluctance to more fully and openly discuss the issues that are the subject of this Article.

It is also worth noting that I am generally treating values-ambiguity as a binary quality of a clinic, in the sense that I am suggesting any given clinic either is or is not values-ambiguous. We could, and perhaps should, instead think of a clinic's values-ambiguity as being a matter of degree, type, or audience. For instance, we might say that a CED clinic, particularly one that focuses on individual entrepreneurs, might be more values-ambiguous than a general civil legal services clinic, in the sense that we might be less sure of its values commitments. Or, a First Amendment Clinic that does work for a wealthy conservative politician might leave some in doubt of its values-commitments, even though the clinic is obviously fundamentally concerned with protecting rights.³⁴ Or, a tax clinic might be considered values-ambiguous by a member of the general public—but when the legal academy is the audience it is generally understood that most tax clinics serve low income tax payers in a way that is presumed to be in furtherance of social justice.

Beyond noting which audience I mean to be discussing (generally, that of the legal academy, including law students, clinicians, other faculty, and administrators) and later discussing the challenges of defining social justice values, I have chosen to not elaborate further on these finer distinctions of degree, type, or audience. I do not pursue this inquiry in this Article both for the sake of simplicity and because I believe the fundamental premises of the Article work equally well if we decide it is worthwhile to subsequently refine the lines of which clinics fall within and without the values-ambiguous designation.

³³ For discussion of the sense in which this perception could be seen as accurate, see *infra* Part III(A).

³⁴ Jack Stripling, *Why Is an Arizona State University Law Clinic Defending Kari Lake?*, WASH. POST (Sept. 30, 2023), <https://www.washingtonpost.com/education/2023/09/30/arizona-state-kari-lake-lawsuit-defamation/>.

Another difficulty of using the term values-ambiguous is that it doesn't lend itself easily to a counterpart or a term to describe those clinics that are not values-ambiguous. For that I will use the term values-presumed, although it is not an exact opposite to values-ambiguous. By values-presumed, again, I do not mean that the clinic necessarily does have a values commitment. Nor do I mean that we presume we know which specific version of social justice values the clinic might be advancing. I simply mean that, absent information to the contrary, we generally will presume that these clinics operate in service of social justice values.

Having thus explained the use of the term values-ambiguous I will conclude with the note that in this Article I will often by necessity use the groups of transactional and IP/T clinics to pursue a point. This practice will particularly be used when I am summarizing or engaging with existing literature or data sources, as I do in portions of the next sections.

3. *The Growth of Values-Ambiguous Clinics*

This Article asserts that there has been a trend toward values-ambiguous clinics, in the sense that they have grown in number more rapidly than other types of clinics. Insofar as the values-ambiguous category overlaps with transactional, entrepreneurial or IP/T clinics, a growth trend has been well documented in the existing literature.³⁵ While authors are not always in exact agreement about numbers, there is widespread agreement that transactional and IP/T clinics have “grown exponentially.”³⁶ Relatedly, there is an abundance of scholarship declaring a more general trend away from certain types of clinics that are presumed to be very strongly identified with a social justice mission. Authors have noted, for instance, the proliferation of clinical “programs that replicate the more elite elements of private and public practice”

³⁵ See, e.g., Kotkin, *supra* note 8, at 302–03; Susan R. Jones & Jacqueline Lainez, *Enriching the Law School Curriculum: The Rise of Transactional Legal Clinics in U.S. Schools*, 43 WASH. U. J.L. & POL'Y 85, 92–96 (2013); Kosuri, *supra* note 18, at 10; Tremblay, *supra* note 16, at 379; Dahl & Phillips, *supra* note 2, at 99; Ball, *supra* note 5, at 10; Kidder, *supra* note 15, at 84–85.

³⁶ Jones & Lainez, *supra* note 35, at 92–93. For instance, it has been noted that, between 2007-2008 and 2016-2017, the percentage of schools reporting offering a “entrepreneur/start-up/small business” clinic rose from 0% to 29%, and that the percentage reporting offering an intellectual property clinic rose from 11% to 23%. Kotkin, *supra* note 8, at 302–03. Kosuri notes that as of 2011 “there are approximately 80 live-client transactional clinics spread over 200 law schools in the U.S.” Kosuri, *supra* note 18, at 10. Tremblay similarly notes that “[b]y 2014, virtually every law school in the country offered at least one, and often more than one, clinic focusing on for-profit business enterprises, nonprofits, CED, or similar transactional practice.” Tremblay, *supra* note 16, at 379. Relatedly, Dahl and Phillips’s study of intellectual property and technology clinics described them as “one of the fastest growing substantive areas of focus for new law school clinics.” Dahl & Phillips, *supra* note 2, at 99 (citing Robert R. Kuehn & David A. Santacroce, *2013–14 Survey of Applied Legal Education*, CTR. FOR THE STUDY OF APPLIED LEGAL EDUC. (2014)).

rather than “classic legal services style practice”³⁷ and the rise of “special and distinct areas of practice clinics” rather than “classic legal aid or general practice style legal services in-house clinics.”³⁸

While none of these categories of inquiry capture the exact question addressed by this Article, they do provide an important starting point, both because they discuss categories commonly associated with values-ambiguity and because they demonstrate a widespread perception and discussion of trends that may contribute to the division that will be discussed in Part II of this Article. In looking to data to shed additional light on the subject of values-ambiguous clinics, I thus begin by describing the methodology and data sources used in this inquiry and then turn to discussion of trends in the growth values-ambiguous clinics.

a. Methodology and Data Sources

The following analysis is based on a dataset that originated with a selection of raw survey data from the Center for the Study of Applied Legal Education CSALE.³⁹ I then supplemented these data with information gathered through additional research and altered it to resolve reporting discrepancies.⁴⁰ To understand the need for this new dataset and why it may provide slightly different results from those previously reported, it is necessary to first describe the CSALE data and some of the challenges of using them to describe trends in types of clinics offered.

³⁷ Kotkin, *supra* note 8, at 302.

³⁸ Kidder, *supra* note 15, at 84–85. Additionally, there is scholarship documenting a growth of the presence of these types of clinics not just in numbers but also in prominence within academic literature discussing clinics. Transactional clinician Paul Tremblay, after conducting a review of the published issues of the Clinical Law Review, observes that, although writing about transactional topics is minimal, articles covering these subjects have “increased demonstrably between 1994 and 2019.” Tremblay, *supra* note 16, at 375–76.

³⁹ The 12 individual CSALE raw datasets used as inputs are: *2007–08 Master Survey Responses*, CTR. FOR THE STUDY OF APPLIED LEGAL EDUC. (2008); *2010–11 Master Survey Responses*, CTR. FOR THE STUDY OF APPLIED LEGAL EDUC. (2011); *2013–14 Master Survey Responses*, CTR. FOR THE STUDY OF APPLIED LEGAL EDUC. (2014); *2016–17 Master Survey Responses*, CTR. FOR THE STUDY OF APPLIED LEGAL EDUC. (2017); *2019–20 Master Survey Responses*, CTR. FOR THE STUDY OF APPLIED LEGAL EDUC. (2020); *2022–23 Master Survey Responses*, CTR. FOR THE STUDY OF APPLIED LEGAL EDUC. (2023); *2007 Sub-Survey Responses*, CTR. FOR THE STUDY OF APPLIED LEGAL EDUC. (2007); *2010 Sub-Survey Responses*, CTR. FOR THE STUDY OF APPLIED LEGAL EDUC. (2010); *2013 Sub-Survey Responses*, CTR. FOR THE STUDY OF APPLIED LEGAL EDUC. (2013); *2016 Sub-Survey Responses*, CTR. FOR THE STUDY OF APPLIED LEGAL EDUC. (2016); *2019 Sub-Survey Responses*, CTR. FOR THE STUDY OF APPLIED LEGAL EDUC. (2019); *2022 Sub-Survey Responses*, CTR. FOR THE STUDY OF APPLIED LEGAL EDUC. (2023). All datasets on file with author, and available by request from CSALE.

⁴⁰ Records of all specific inputs and alteration to data, on file with author. For use of this technique *see* Kosuri, *supra* note 18, at 10, observing that there is not a definitive way of “counting” transactional clinics and noting his reliance on calling schools as well as using CSALE data. Praveen Kosuri and Bernice Grant are currently in the process of creating an updated database of transactional clinics using a similar technique.

CSALE has collected data in six biannual survey periods, beginning in 2007-2008, and ending in 2022-23.⁴¹ Following each of these periods CSALE publishes a summary of some survey data and also makes selections of raw data for each survey period available by request.⁴² The raw data are available in two primary forms, reflecting the two types of surveys CSALE issues: “program level” data, where one person describes the entire set of experiential and clinical offerings at a school, and “individual level” data, where a representative of an individual externship or clinic reports on behalf of just that course.⁴³ The program level data are more complete in the sense that a much higher percentage of schools respond to the survey, while the individual level data are more detailed, in the sense that each respondent provides more types of information about that clinic. Both types of data, however, reflect inevitable reporting discrepancies that make them difficult to use as a source of quantitative data that demonstrate the magnitude of a shift in trends of how many of a certain “type” of clinic is being offered over years. These issues include the following: many representatives do not report data in all periods; program level representatives often describe clinic types differently from individual representatives; program level representatives inconsistently report total numbers of clinics year over year; program level and individual level respondents inconsistently describe clinic type; and survey categories change over time.⁴⁴

⁴¹ For ease of discussion, I will henceforth refer to the survey period by the initial year only. For instance, I will describe the 2007–08 survey period as “the 2007 survey period.”

⁴² Some authors who report trends use the published summaries, and others appear to use raw data. The potential issues described below are reflected in both sources.

⁴³ Additional data beyond what I describe is collected. Note also that what I call “program level data” CSALE calls “Master Survey Responses,” and what I call “individual data” CSALE calls “Sub-Survey Responses.”

⁴⁴ The reporting of my own school, the University of Georgia School of Law, provides an example of these difficulties. A program level representative reported the total number of clinics offered, and the type of clinic offered in every survey period, and most individual directors reported in every survey period as well. However, in one year a program level representative input the total number of experiential offerings where the survey requested the total number of in-house clinics, and in another year a program representative described all of the kinds of work each clinic did, rather than assigning each clinic to a “type.” These two entries made it look like in one year UGA Law had an increase of nine new clinics, and that in another year we had a CED, a transactional, and an entrepreneurship clinic. Neither of these were true. My own individual director level responses were similarly problematic. In one year I failed to report at all, in two years I described my clinic as a transactional clinic, and then I switched to describing it as an entrepreneurship clinic for two surveys after that. Uncorrected, it would appear that UGA Law created a new entrepreneurship clinic. I know that I simply was inconsistent in my reporting and conflicted about how to describe my clinic, and I apparently made different choices each year. I say this not to disparage myself or my school – both produced an above average set of survey responses. I say it to illustrate why I felt it necessary to create a new dataset and to identify and resolve discrepancies where possible.

In order to identify errors, I first narrowed the list of data I was looking at to include only law schools that were ABA accredited in 2023, and I only looked at raw data describing in-house clinics, and reports from program representatives or clinic directors. I then normalized the data categories across all survey periods and made 190 individual datasets that included all available information for each school across all 12 CSALE datasets.⁴⁵ Once these data were grouped by school, I identified apparent pattern discrepancies in program level data, for instance large jumps in numbers of clinics reported or a clinic type that appeared to be oscillating between two different categorizations. For each identified discrepancy, I attempted to resolve the concern by first cross-checking individual level CSALE data; then looking for additional information on the school's website, from news sources or from other means of reporting about the status or creation of a clinic; and then by contacting a representative of the school for additional information.⁴⁶ Where I was unable to resolve the discrepancy with additional information, I relied on a set of protocols for correcting the outlying data, or I eliminated the data from the final sample.⁴⁷ I then reordered data into a new dataset. Unless otherwise noted, this is the dataset I use below.⁴⁸

I am certain that there remain many inaccuracies in this dataset, and I hope to further refine and supplement it for future work, but I believe it is sufficient to support the claims I make in this Article.⁴⁹

b. Defining Categories

As noted above, there is considerable variability in the way commentators have referenced clinic type when discussing clinics that are perceived as not having a social justice commitment. IP/T clinics, entrepreneurship clinics, and transactional clinics are the most commonly discussed.

⁴⁵ For example, if any clinic type was offered as an option in any year I included it as a data category for every year. I then recategorized to reflect these new options. For instance, if a clinic self-described as "other: entrepreneurship" in a year where selecting entrepreneurship wasn't an option, I added it to the "entrepreneurship" column.

⁴⁶ Documentation of sources for altered data on file with author. All described data supplementation and alteration was only completed for the total number of clinics reported, and for the types of clinics discussed below. I thus did not, for instance, attempt to identify discrepancies in the reported distribution of Immigration Clinics or Veterans Legal Clinics.

⁴⁷ Documentation of each identified discrepancy and of each resolved discrepancy on file with author.

⁴⁸ Dataset on file with author.

⁴⁹ Discrepancies that I know to remain stem from sources that include schools describing what counts as an "in-house clinic" differently (e.g. what one school describes as an in-house clinic another school might describe as an externship) and schools grouping clinics differently (e.g. a startup clinic and a technology clinic being collectively described as one Innovation Clinic).

In looking at growth trends in values-ambiguous clinics, I include all clinics that identify as IP/T clinics and entrepreneurship clinics in the category of values-ambiguous clinics. When it comes to the more general category of “transactional clinics” however, it becomes necessary to confront the delineation between what I argue values-presumed transactional clinics and what I argue are values-ambiguous transactional clinics. There is of course no way to draw this line precisely, dealing as we are with complex questions of perception, so I simply will draw it transparently.

In this Article, in addition to entrepreneurship and IP/T clinics, I include the following transactional clinics in the “values-ambiguous” category: business law clinics and a collection of specialty clinics such as entertainment law clinics. I do not include clinics that are described as transactional CED clinics. Where a clinic might be simultaneously described as both a business law and a community economic development clinic, for instance a “Small Business and Nonprofit Clinic” or a “Business & Community Clinic,” I included it in the values-ambiguous category, but where it is described only as nonprofit or community development clinic, I did not.⁵⁰

To summarize, in the category of values-ambiguous clinics I include: IP/T, entrepreneurship, a relatively small number of securities law clinics, and those transactional clinics that are not exclusively described as nonprofit or community economic development clinics.⁵¹

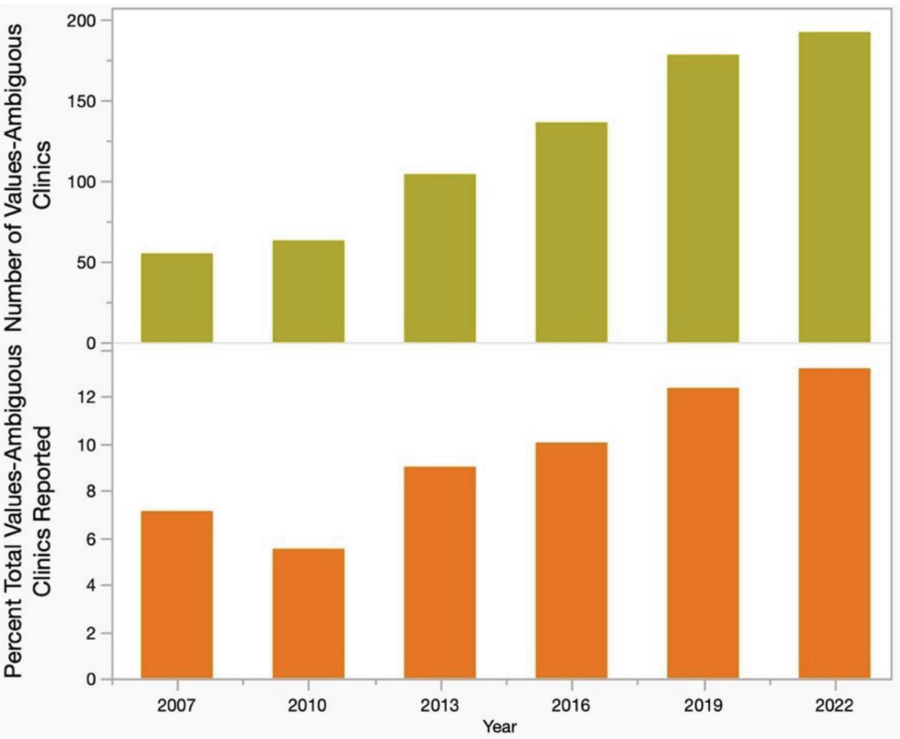
c. Summary based on Data

At the most general level, the data confirm that values-ambiguous clinics are on the rise, both in absolute numbers, and as a percentage of all clinics. Values-ambiguous clinics have quadrupled in absolute number from 2007-2022, while the percentage of all clinics that are values-ambiguous has roughly doubled in the same time period.⁵²

⁵⁰ Absent additional information, I included all clinics in the transactional category where a program representative classified a clinic that was transactional (in the sense of a transactional practice type) as “transactional” given the binary choice of “transactional” or “community economic development.”

⁵¹ For this Article I did not separately validate these chosen categories as being values-ambiguous, in the sense that I did not, for instance, ask a selection of people to report whether or not they presumed that these clinics had foundational values commitments or what degree of confidence they had in this presumption, etc.

⁵² In 2007 there were 55 values-ambiguous clinics, while in 2022 there were 192. The percentage of all reporting clinics that were values-ambiguous clinics was 7.1% in 2007 and 13.2% in 2022. This general trend is not dramatically different if we exclude CED clinics from the category of values-ambiguous, as I have, or if we include them. However CED clinics have not experienced growth of the same magnitude. In 2007 there were 36 CED clinics, while in 2022 there were 54. The percentage of all reporting clinics that were CED clinics was 4.7% in 2007, while in 2022 the percentage was only 3.7%.



This growth trend is largely caused by the addition of entrepreneurship and IP/T clinics, rather than by the addition of general transactional clinics.⁵³ IP/T clinics made a relatively steady climb in number and percentage over this period, while entrepreneurship clinics had a significant “jump” between the 2017 and 2019 survey periods, followed by much more modest growth after 2019.⁵⁴

Beyond simply establishing an accurate baseline for purposes of the broader discussion, which is my primary intention, these data suggest many interesting questions, most of which are beyond the scope of the current inquiry.⁵⁵ Before leaving the data behind however, I want to

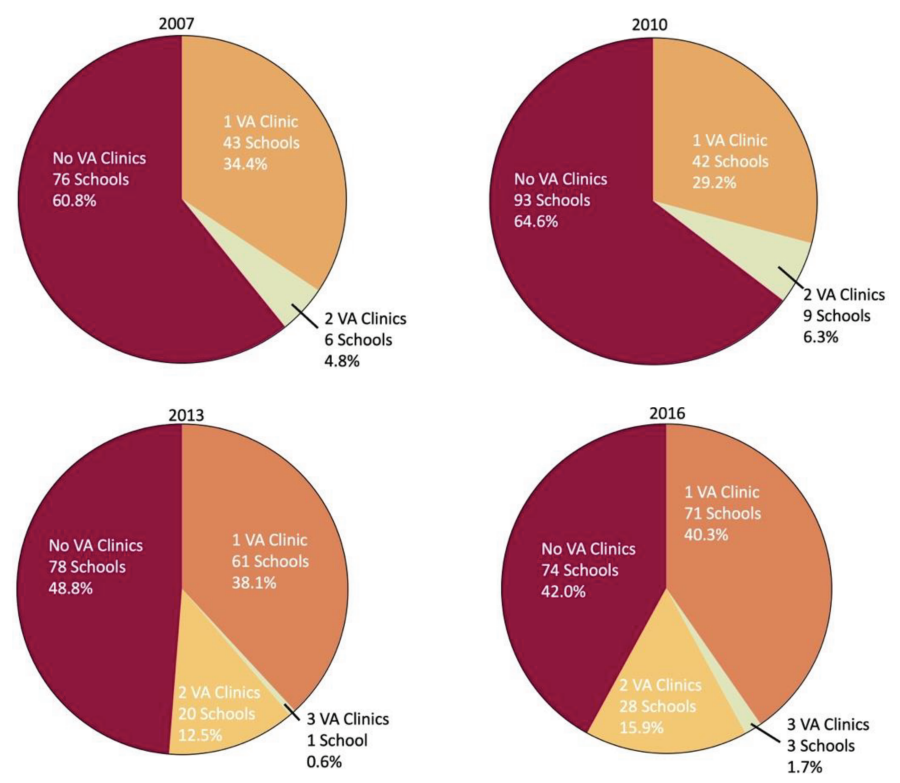
⁵³ Values-ambiguous transactional clinics, unlike entrepreneurship and IP/T clinics, have experienced only very slight growth as a percentage of reporting clinics over the survey periods. Entrepreneurship clinics grew from less than 1% in 2007 to 4.8% in 2022; IP/T grew from 1.9% in 2007 to 4.9% in 2022. Transactional clinics grew from 2.9% in 2007 to 3% in 2022. For a much more detailed and nuanced picture of the growth of IP/T clinics based on survey data, see Dahl & Phillips, *supra* note 2.

⁵⁴ Some but not all of the “jump” can be explained by the fact that in 2019 the CSALE survey added entrepreneurship as a named category that respondents could select for the question of clinic type. Previously, a respondent would have to write this category in (which some did) or choose another classification such as transactional (which others did).

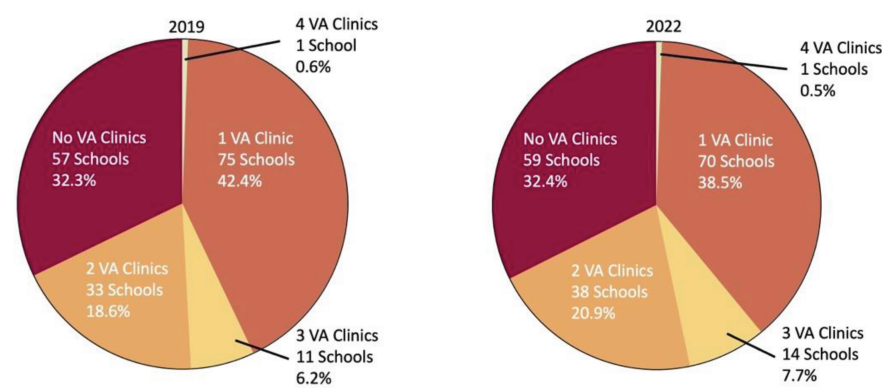
⁵⁵ For instance, we might also wish to know to what extent are certain clinic types supplanting other clinic types, to what extent are they simply supplementing them, and what is driving schools to add values-ambiguous clinics.

briefly explore two additional qualities of this growth trend that may be relevant to this discussion. The first of these, demonstrated above, is that, growth notwithstanding, it obviously remains the case that values-ambiguous clinics are very much in the minority of all clinics in terms of “market share,” representing at their highest point only 13.2% of all reported clinical offerings.

Secondly, as I show below, the growth of values-ambiguous clinics has generally been dispersed, in the sense that it has been driven by many schools adding one or two values-ambiguous clinics, rather than a smaller number of schools adding many values-ambiguous clinics. The following graphs show the patterns of growth of values-ambiguous clinics described above. Each graph depicts a survey year, and each segment identifies the raw number of schools, and the percent of total of schools, that have the specified number of values-ambiguous clinics.⁵⁶



⁵⁶ For depicting the dispersion of growth among schools I used a slightly different sample of the dataset than I used above. I again included only law schools that were ABA accredited in 2023, but here I further limited the data to depict only those schools that had one or more clinic of any type in the survey period.



As these graphs show, the number of values-ambiguous clinics has grown, and the number of schools that offer one or more values-ambiguous clinics has grown as well. However, the percentage of schools offering only one values-ambiguous clinic remains high, representing by far the largest category (other than schools with no values-ambiguous clinics at all) in each of the survey periods. A full exploration of the implications of this type of growth is beyond the scope of this paper, as is a more nuanced look at what populates each of the categories depicted. However, this basic depiction of both the overall growth of values-ambiguous clinics and the dispersed nature of the growth of values-ambiguous clinics may help illuminate the following discussion.

As shown above, values-ambiguous clinics are very much in the minority in the broader clinical community, are relatively isolated within most individual school, and are often newer and less established than their values-presumed counterparts. These qualities may be useful in understanding the nature of the divide and the proposed discussions in Parts II and III of this Article.

II. THE DIVIDE

Part I of this Article discussed terminology and growth trends related to values-ambiguous clinics. In Part II, I turn to a discussion of what I believe is a problematic, and under-discussed, divide between clinicians that centers around perceptions of values commitments. I begin with another segment of the vignette, and then present some themes related to the division.

A. The Divide Story

1. The Traditional Clinician

After the initial shock upon learning about the new business law clinic wore off, the Traditional Clinician was determined to keep an

open mind. She does not think transactional legal help is what is most needed to address the immediate needs in their community, nor does she think transactional skills training is what law students most critically need. But she has some friends who teach community economic development clinics at other schools, so she knows transactional clinics can be allies in a social justice mission, and she is cautiously optimistic that this will be the case at her school as well.

However, once the new business law clinic has been operating at her school for a while, she starts to think she was justified in her doubts. This business law clinic provides free legal services to relatively privileged entrepreneurs and business owners, including university students and even faculty members, who want help with tasks like forming corporations, registering trademarks, and drafting and reviewing investment contracts.

She is of course aware that this kind of transactional work is something that many students—including her own clinic students—will go on to do in their future legal careers, but do they really need a clinic dedicated to this? She finds it disconcerting to see so much clinic work dedicated to the pursuit of private gain and with no apparent consideration of if these services are going to those most in need. The director of the transactional clinic doesn't seem to even make the smallest concession to social justice, rejecting even the idea of having strict income limits as part of the client intake process, because, she says, she wants students to have the chance to work on a "wide range of deals." Does she really think that clinical education can be reduced to providing corporate law skills-training to law students who just want a leg up in their lucrative "BigLaw" jobs after graduation?

The Traditional Clinician can't help but notice that the director of the transactional clinic doesn't attend much of the school's clinic-wide programming or help with the many public interest committees and events the clinical faculty coordinates. If the transactional clinician is trying to figure out how to become integrated in their community, it sure doesn't show. When all the clinicians at their law school go together to the annual clinical conference, the director of the transactional clinic again seems completely unengaged. For the Traditional Clinician and her other colleagues, the clinical conference is a family reunion, an affirmation, a source of inspiration, and a place they go to find the information, community, and support they need to push forward through the many challenges the year will bring.

It all seems lost on the director of the transactional clinic, who (she couldn't help but notice) was chatting with other corporate lawyers in the lobby during the keynote address. The Traditional Clinician doesn't want to judge, but she privately thinks the director of the transactional clinic is probably the person who *most* needed to hear that impassioned talk! The speech had been honoring a preeminent clinician who was

retiring and reminding the audience of their responsibility to carry her social justice work forward.

To add insult to injury, on the last day of the conference the Traditional Clinician received an email from the law school administration, sent to all of the clinical faculty at their school, announcing that they have decided to start a new intellectual property clinic. The email describes the intellectual property clinic as “building on the successes of the Business Law Clinic” and as a way to help students develop their “professional identity” and “get practice ready.”

The Traditional Clinician tries to see the positive in this—more clinics are a good thing, aren’t they? But she’s troubled by both the reality of this new clinic and the messaging around it, which seems to affirm a vision of clinics as being simply the “trade school” portion of law school. More importantly, law students have the rest of their lives to practice law for the “haves,” and with more and more clinics that don’t challenge them to think deeply about social justice they might never understand how the law can be a tool for meaningful social change.

It starts to feel like the same hierarchy that exists in the practice of law: the business lawyers are winning the day; and the poverty lawyers are doing all the hard work and losing status and losing ground.

How could this be happening here in the clinical program, the very place where reflecting on inequality and on the function of law is supposed to be happening?

2. *The Transactional Clinician*

After the initial shock upon learning about her colleagues’ doubts about her clinic wears off, the Traditional Clinician is determined to not get defensive. She hates the thought of her colleagues having a low opinion of her, and she can see how they might not understand the way her work can have broad and important social impacts. But the more she thinks about it, the more conflicted she becomes. The Transactional Clinician actually isn’t sure if the version of social justice her colleagues seem to understand really is what she is—or should be—doing. She’s torn between wanting to defend herself by explaining all the good that has come of her clinic’s work and wanting to question what is starting to seem like a set of unspoken rules of clinical education.

Is the pursuit of a specific vision of social justice, not hands on practical learning, what is essential to a law clinic? Is there room for versions of social justice that aren’t explicitly aligned with the political left? Why is it that only the clinical faculty, and not the doctrinal faculty, are supposed to be doing this social justice work? How is she supposed to know or explain which of her client projects really should be seen as “social justice” work? And what exactly do people mean by social justice anyway?

One thing she is clear on though is that all these questions can't be resolved by something as simple as using strict income limits for client selection. She knows a few other traditional clinics don't use them either so that can't be the problem. And she does help indigent entrepreneurs, she just doesn't exclusively do this work because its often not the best practical training for her students. So many transactions they need to know about only really happen when there is some money at stake, and they need to understand the mechanics of a wide range of deals. She's also not positive the work she does for the most under-resourced clients is her most important work in terms of impact on society or on students: isn't it the for-profit clients who have enough capital to get things off the ground (if not a budget for all the legal services needed) and who are actually building viable businesses and potentially contributing to the economic health of the area? And isn't it the work that actually results in real-world outcomes for a viable business where students get to experience the power of law and their responsibility to that ideal? Of course she wants to do social good and also to be seen as doing social good, but it doesn't seem so simple.

She knows she isn't winning any popularity contests with the other clinicians at her law school and she wants to get more engaged, but they sure don't make it easy. She doesn't attend a clinic-wide session on trauma-informed litigation techniques because she is busy and it is not something she understands as directly relevant to her work. And she doesn't volunteer for any public interest award committee work or to assist with public interest events because they seem to have less to do with experiential legal education generally and more to do with a specific vision of a litigation-based, poverty-centered social justice lawyering movement. She honestly isn't sure why these committees and events are the clinical program's responsibility anyway.

When she joins her clinical colleagues at their favorite clinical conference, she is disappointed to find that everything from the conference theme, to the keynote speech topic, to the kind of professional awards given, to the scholarship discussed seem to be more of the same. Everyone seems to be imagining a shared profession that she does not see herself in. She can see her colleagues feel like they are at a family reunion, but she feels more like she's at a middle school dance. She starts to notice that some people who have been teaching clinics like hers for a while also seem to be hanging back from the full group conversations. They invite her to join them for a chat during the keynote address, which she wasn't going to attend anyway, and when she shares her quandary with them they nod knowingly and tell her not to let it bother her. They say she should just join them at the Transactional Clinical Conference, where she'll be understood. She does not want to give up on participating in what she understands to be her broader profession, but she also isn't sure how to proceed.

On the last day of the conference, however, she receives an email containing some great news: the law school administration – citing the successes of her clinic – announced that they are planning to add an IP clinic to the program offerings! In addition to being excited about the new clinic, she’s excited to see that the administration isn’t just describing the need for this clinic in terms of social justice, they are describing it in terms of student’s educational needs to develop their “professional identity” and to “get practice ready.” She couldn’t agree more. She knows one more clinic won’t do much to address the backlog of demand from students or clients but this is a step in the right direction. Maybe it will also help her colleagues appreciate the contributions of her kind of clinical work. But she still wonders why that’s something she has to defend. Shouldn’t that be obvious here in the clinical program, the very place where learning practical lawyering skills is supposed to be happening?

B. *The Divide*

While I suspect that some aspects of the above vignette segments will be recognizable to readers of this article, and many are indeed based on trends documented in existing literature,⁵⁷ division or tension between values-ambiguous (by any name) clinicians and other clinicians is rarely explicitly discussed in academic literature in any sustained fashion.⁵⁸ There are a few exceptions to this phenomenon, but perhaps even more telling are the ways in which the literature does not directly or thoroughly explore this subject. In particular, very little scholarship that is written by non-transactional or IP/T clinicians describes a division

⁵⁷ E.g., Darian M. Ibrahim, *How Do Start-Ups Obtain Their Legal Services?*, 2012 WIS. L. REV. 333, 335 (2012) (describing the difficulty in obtaining legal services for newly forming businesses); Rachel S. Arnow-Richman, *Employment As Transaction*, 39 SETON HALL L. REV. 447, 447–50 (2009) (describing the dearth of transactional offerings); Robert R. Statchen, *Clinicians, Practitioners, and Scribes: Drafting Client Work Product in a Small Business Clinic*, 56 N.Y.L. SCH. L. REV. 233 (2012) (describing the legal drafting work done in business law clinics); Paul R Tremblay, *Social Justice Implications for “Retail” CED*, 27 J. AFFORDABLE HOUS. & CMTY. DEV. L. 503 (2019) (describing different ways different individuals might understand social justice in different settings); Danielle R. Cover, *Good Grief*, 22 CLINICAL L. REV. 55 (2015) (describing burnout associated with social justice lawyering); Nantiya Ryan, *Papercuts: Hierarchical Microaggressions in Law Schools*, 31 HASTINGS WOMEN’S L.J. 3 (2020) (describing status hierarchies in legal education); Eric J. Gouvin, *Teaching Business Lawyering Skills in Law Schools: A Candid Assessment of Challenges and Some Suggestions for Moving Ahead*, 78 UMKC L. REV. 429, 430–31 (2009) (describing the tendency to focus on litigation skills although a majority of students do not go on to become litigators).

⁵⁸ I want to emphasize again that these stories are fictional, do not reflect my own career trajectory or my own experience at UGA Law, and that I have generally emphasized tensions to highlight a dichotomy.

or expresses concern about growth trends regarding values-ambiguous clinics.⁵⁹

On the other hand, a large body of writing from transactional and IP/T clinicians either explicitly references a divide or writes in response to an assumed or perceived divide. In other words, most of the discussion of the existence of an issue comes from transactional or IP/T clinicians themselves. These expressions range from mild observations that someone else has a concern, to more explicit warnings in the face of a perceived issue. Transactional clinician Paul Tremblay for instance gently notes “the uneasy relationship between teaching small business law in a clinical setting and the social justice mission of clinical teaching generally” and “the not-infrequent curiosity about whether [small business and startup] practice has any, or any significant, social justice value.”⁶⁰ Transactional clinician Patience A. Crowder similarly describes the “perennial question chasing transactional legal clinics: whether transactional law clinics are truly grounded in public service, social justice goals, and service delivery.”⁶¹

Cynthia Dahl and Victoria Phillips, directors of intellectual property clinics, more directly note that, because of increasing numbers of transactional and IP/T clinics “some commentators are expressing concern about the future of clinical education . . . and its underlying social justice values.”⁶² They are specifically writing to reassure those who have these concerns, but despite the fact that these concerns are understood by them to be (and I believe are) quite pervasive, they weren’t at that time able to cite any commentators that explicitly expressed concern about the effect of growing numbers of certain types of clinics on the future of clinical legal education.⁶³ Even when transactional clinicians occasionally have written in defense of not having a traditional social justice mission in certain types of clinics, they are writing with an understanding that this stance is controversial, but can’t cite much by way of direct criticism. Perhaps unsurprisingly then, this scholarship has also not subsequently garnered much explicit push-back in scholarship.⁶⁴

⁵⁹ But see Kotkin, *supra* note 8.

⁶⁰ Tremblay, *supra* note 16, at 388–89.

⁶¹ Crowder, *supra* note 7, at 417.

⁶² Dahl & Phillips, *supra* note 2, at 98.

⁶³ *Id.* at 98 n.11, citing Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355, 356 (2008) (Ashar argues generally that the dominant case-centered, skill-centered clinic model is ineffective in serving the interests of poor people and proposes an alternative model centered on collective mobilization.) See also John O. Calmore, “Chasing the Wind”: Pursuing Social Justice, Overcoming Legal Mis-Education, and Engaging in Professional Re-Socialization, 37 LOY. L.A. L. REV. 1167 (2004) (discussing the need for professional re-socialization).

⁶⁴ Although these articles are regularly cited, these points do not seem to have been directly or robustly engaged with.

It is possible that this relative lack of scholarship can all simply be explained by the plentiful nature of a different type of scholarship. There is of course a tremendous body of scholarship discussing the primary importance of social justice to clinical education generally, some of which describes or decries an apparent general trend toward placing pedagogical goals and skills development above progressive values-based missions in all types of clinics.⁶⁵ Even when these articles do not directly mention transactional, IP/T, or other frequently values-ambiguous clinic practice-types (and they usually do not), the inference that a values-ambiguous clinic would be frowned upon according to the criteria is abundantly clear.

Turning to the exceptions, the authors who do explicitly decry the trends of what I am calling values-ambiguous clinics, their concerns are often expressed strongly. For instance, Etienne C. Toussaint, notes “the dangers of neoliberalism are visible in the growing popularity of transactional law clinics that prepare law students for venture capital and start-up law practice . . . such clinics can undermine the *public* purpose of law school if they fail to engage the experiences of historically marginalized populations differentiated across racial and class divides.”⁶⁶ In the only article I am aware of where concern regarding the rise of values-ambiguous clinics is expressed in any direct or sustained way, Minna Kotkin makes a powerful argument that the growth trend in transactional clinics is problematic because it replicates hierarchies found within the practice of law and further erodes “the poverty law foundation of clinical education, and its emphasis on values—local community empowerment, social justice and law reform.”⁶⁷

⁶⁵ For the claim that clinics generally are moving toward educational goals, *see, e.g.* NICOLSON ET AL., *supra* note 6, at 20 (noting “it is now probably true to say that more law clinics are oriented toward educating students than serving the community.”). For a discussion of criticisms of this trend, *see infra* Part III. There is a related conversation, that I do not directly engage with here, regarding whether certain kinds of “direct service” or “retail” service providers are less allied with social justice than those who engage in “representative” or other types of lawyers. *See, e.g.,* Rebecca Sharpless, *More Than One Lane Wide: Against Hierarchies of Helping in Progressive Legal Advocacy*, 19 CLINICAL L. REV. 347, 347 (2012) (noting the problematic pattern in scholarship where “direct service attorneys—those who engage in the representation of low-income individuals—serve as a foil for better social justice lawyers.”).

⁶⁶ Toussaint, *supra* note 23, at 11–12. Toussaint also makes a distinction between CED and clinics that I would describe as values-ambiguous. He describes business law clinics as being distinct from “so-called Community Development Law Clinics that teach similar transactional lawyering skills but focus on the needs of community-based and marginalized clients.” *Id.* at 11 n.43.

⁶⁷ Kotkin, *supra* note 8, at 288. More frequently, rather than directly advancing a direct claim that values-ambiguous clinics are problematic, clinicians tend to write as though the practice areas that primarily comprise this designation simply don’t exist within the clinical universe. Paul Tremblay, after analyzing twenty plus years of scholarship in the Clinical Law Review, notes that this tendency to ignore or exclude can be seen in everything from the relatively small numbers of articles written about transactional subjects to the way the broad term lawyering is used in the literature. He notes of clinical scholarship, “it appears that

That criticisms exist does not necessarily mean that a division does, but despite the relative dearth of writing directly addressing this issue, I believe the existence of a division is an open secret—one that scholars who direct values-ambiguous clinics are most likely to indicate in scholarship. Transactional Clinician Praveen Kosuri explicitly describes a division between clinicians, wondering if the friction between clinics that are and are not seen as mission driven has reached the point that “the clinical community has outgrown a single house”⁶⁸ and stating that if clinical programs do not proactively reconcile this, they “risk a schism” brought about by outside pressure from law school administrators.⁶⁹ Kosuri further notes his belief that the clinicians who founded the modern legal movement are threatening to destroy clinics by trying to exclude clinics that don’t share their version of social justice. Similarly, transactional clinician Steve Reed opines of a divide and its significance:

The differences in opinion manifest in small ways: a conversation after a clinical faculty meeting where someone quickly changes the subject to avoid unpleasantness, a public email exchange that flames briefly and then is forgotten, a conference planning committee meeting that strikes an “everyone is equal” compromise. But we must make no mistake: when the current generation overseeing legal clinics retires, the most powerful advocates of the public interest agenda will be gone.⁷⁰

Spoken or not, explicit or implied, confronted or ignored, some sort of division between values-ambiguous and values-presumed clinics appears to be alive and well. While the division appears to be pervasive and persistent, I believe it is not inevitable, and need not be permanent. The tendency in existing scholarship, discussed in the next section of this Article, has been to imagine solutions in terms of suggesting that transactional or IP/T clinics can or should operate or communicate differently to resolve this ambiguity. While I think this is an extremely important body of work, and while I am hopeful about a more unified and integrated future in clinical education, I argue that persisting in this manner is unlikely to lead to the desired outcome. Rather, I think we need to collectively grapple with some of the broader definitional and purpose-related questions that values-ambiguous clinics implicate.

when writers, even in recent years, write about *lawyering* in some generalizable fashion, the examples that appear in those works tend to understand the lawyering process as advocacy, negotiation, and resolution of disputes. . . . Generic law practice seems to be understood primarily as litigating.” Tremblay, *supra* note 16, at 379.

⁶⁸ Kosuri, *supra* note 13, at 335 n.34.

⁶⁹ *Id.* at 344.

⁷⁰ Reed, *supra* note 9, at 253–54.

III. THEMES AND QUESTIONS

In this section, I begin by discussing, and identifying themes in, some of the existing scholarship on the relationship of social justice to transactional, IP/T, and other potentially values-ambiguous clinics. I then turn to a discussion of how values-ambiguous clinics surface several broader questions regarding how we might define social justice or other values and the many ways we might conceptualize the meaning of and relationship between skills, values, and theory when discussing the purposes of clinical education.

A. *Values-ambiguous Clinics and Social Justice*

To the extent that values-ambiguous clinics are comprised of clinics that are transactional, a relevant argument could be and has been made that transactional law is fundamentally, necessarily, and foundationally at odds with social justice. The essence of this argument is: to the extent one believes that capitalism is fundamentally flawed as an economic system, for instance because it is racist or otherwise “incompatible with oppressed people’s welfare,” then transactional lawyering “must go down with it” because “some affirmation of capitalism is an unavoidable aspect of transactional lawyering.”⁷¹ By extension, many other values-ambiguous clinics that could be said to have the tendency to affirm capitalism—for instance by assisting a wealth-seeking business with securing its legal right to exclusively profit from its intellectual property—could also fall into this category. While most would stop short of making the claim that transactional law or IP/T practices are, as an absolute matter, incompatible with social justice, the tendency to assume that transactional lawyering or IP/T law generally and social justice do not go hand in hand is prevalent. It is not surprising then that assumptions that the clinics that practice and teach these types of law are also frequently assumed to be fundamentally less compatible, if not completely incompatible, with social justice goals.

Against this backdrop, a substantial amount of careful scholarly attention has been paid to advancing some version of the claim that although certain clinics engage in a type of law that is not obviously associated with social justice or the public interest, those clinics are in fact best understood as social justice or public interest clinics. This group of scholarship is concerned with what I will call “unmasking.” The essence of the argument it contains is that although a clinic might have a

⁷¹ Gregory E. Louis, *Bridging the Two Cultures: Toward Transactional Poverty Lawyering*, 28 CLINICAL L. REV. 411, 425–26 (2022) (providing a summary of literature describing transactional law as inherently tainted by its link to capitalism and disagreeing with this premise).

practice area that is not commonly associated with the public good, at least in this case, it would be a misunderstanding to not identify them with “the good fight,” as they are in fact so aligned. In other words, the issue with values-ambiguous clinics is not one of fundamental values alignment, the issue is one of optics, which can be resolved by an unmasking that reveals the true nature of the clinic as having been social justice oriented all along. Some unmasking literature makes a broader claim that most transactional or IP/T clinics are social justice aligned, some makes a narrow claim that just an individual clinic is social justice aligned, and some makes a middle ground claim that a subset of clinics with a certain mission or that employ certain methodology are social justice aligned.⁷²

Susan Jones’ pioneering article, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice* deserves pride of place in the unmasking literature category.⁷³ Jones explores the relationship between small business representation and social justice goals by describing how transactional clinics “provide much needed legal representation to low-income and underrepresented communities.”⁷⁴ This article has been joined by legions of other compelling assertions, made by a group of authors who emphasize transactional clinical work’s ability to help further social enterprise,⁷⁵ its compatibility with critical theory,⁷⁶ its tools for addressing income inequality, including through alternative business structures,⁷⁷ its capacity to promote social and economic justice,⁷⁸ its ability to further Black and Brown economic recovery,⁷⁹ and its centrality to addressing rural legal shortages.⁸⁰ There are numerous articles situating (some) transactional clinics in social justice traditions of “community lawyering” where transactional practice is understood as capable of producing social good by “participating in establishment of structures through which collectives might operate productively and lawfully,”⁸¹ or in the “rebellious lawyering” traditions, where lawyers are called to “recognize

⁷² E.g., Jones & Lainez, *supra* note 35, at 89 (broadly claiming that “true to their social justice underpinnings, transactional clinics often serve a social justice mission.”).

⁷³ Jones, *supra* note 9.

⁷⁴ *Id.* at 195–96.

⁷⁵ Alicia E. Plerhoples, *Representing Social Enterprise*, 20 CLINICAL L. REV. 215 (2013).

⁷⁶ Ball, *supra* note 5.

⁷⁷ Carmen Huertas-Noble, *Worker-Owned and Unionized Worker-Owned Cooperatives: Two Tools to Address Income Inequality*, 22 CLINICAL L. REV. 325 (2016).

⁷⁸ Jones, *supra* note 9; Pantin, *supra* note 9; see also Ball & Viswanathan, *supra* note 23, at 59–60.

⁷⁹ Louis, *supra* note 71.

⁸⁰ Alexandra P. Everhart Sickler, *A Rural State Perspective on Transactional Skills in Legal Curricula and Access to Economic Opportunity*, 27 J. AFFORDABLE HOUS. & CMTY. DEV. L. 499 (2019).

⁸¹ Tremblay, *supra* note 16, at 380.

the importance of creating dynamic approaches to injustice... that are uniquely tailored to address social harm.”⁸² In their comprehensive study of IP/T clinics,⁸³ Dahl and Phillips undertake a direct “unmasking” effort by producing survey data to document the sense in which IP/T clinicians understand themselves to be operating social justice clinics. The goal of this effort is to allow “all clinicians to better understand the underlying goals, contributions, pedagogy and loyalty to the clinical tradition and public interest mission of Intellectual Property and Technology clinics.”⁸⁴ Unmasking appears both in the context of clinical “goals”—that is, what the clinic is trying to do/accomplish/achieve—and clinical “methods”—how the clinic or clinical teacher reaches those goals.”⁸⁵

As a counterpoint to this unmasking narrative, there is also a small body of scholarship that we might call “confirming” literature. This literature, unlike the unmasking literature, states or suggests that the perception that transactional or IP/T clinics are less grounded in social justice values is accurate. The confirming literature also generally defends values-ambiguous clinics on these terms. Praveen Kosuri, for instance, generally claims that “[t]ransactional clinics’ primary focus is on grounding students in fundamental transactional skills. ...[and] [t]he clinicians who

⁸² Patience A. Crowder, *What’s Art Got to Do with It?: A Rebellious Lawyer Mindset in Transactional Practice*, 23 CLINICAL L. REV. 53, 53 (2016); GERALD LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE* (1992); Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 HASTINGS L.J. 947 (1992); Anthony V. Alfieri, *Rebellious Pedagogy and Practice*, 23 CLINICAL L. REV. 5 (2016); Brian Glick, *Two, Three Many Rosas! Rebellious Lawyers and Progressive Activist Organizations*, 23 CLINICAL L. REV. 611 (2017). See generally Alicia Alvarez et al., *Teaching and Practicing Community Development Poverty Law: Lawyers and Clients as Trusted Neighborhood Problem Solvers*, 23 CLINICAL L. REV. 577 (2017); R. Anthony Reese, *Copyright and Trademark Law and Public Interest Lawyering*, 2 UC IRVINE L. REV. 911, 918 (2012).

⁸³ Dahl & Phillips, *supra* note 2.

⁸⁴ *Id.* at 98.

⁸⁵ Susan Jones, for instance, generally describes the method of working with microbusinesses. Susan R. Jones, *Transactional Law, Equitable Development, and Clinical Legal Education*, 14 J. AFFORDABLE HOUS. & CMTY. DEV. L. 213 (2005). Dahl and Phillips similarly present a long list of methods used by IP/T clinics they say are aligned with the traditional clinical social justice imperative including: taking on underrepresented clients; using an income cap in selection of clients; operating “with a public interest mission in mind”; conducting policy projects; seeking to stimulate regional economic growth through successful companies; working to achieve public health goals through successful medical companies; and creating jobs. Dahl & Phillips, *supra* note 2, at 120–21. Dahl and Phillips recognize that public interest may need to be defined “in slightly different ways” in Intellectual Property and Technology Clinics, including by “filling the void for legal assistance for these early stage or community entities where the traditional legal marketplace is not accessible.” *Id.* at 104. However, they go on to note the clients—while they may not be able to afford all the legal services needed for their projects—neither are most of them correctly labeled as “disadvantaged” or “poor,” nor do many of the clinics operate with an income cap. *Id.* at 131, 135–36. See also Carolyn Grose, *Beyond Skills Training, Revisited: The Clinical Education Spiral*, 19 CLINICAL L. REV. 489, 492 (2013) (discussing the distinction between methods and goals).

run them are usually far removed from the social justice imperative.”⁸⁶ To some extent Kosuri agrees with the unmasking literature, and he provides careful explanation of the ways in which transactional clinics can and do have social justice impacts, but he also defends the claim that “[r]egardless of the clinical context, non-social-justice-oriented clinics should be a valid offering for students.”⁸⁷ Similarly, transactional clinician Steve Reed notes that his clinic focuses almost exclusively on skills development rather than social justice and expresses the opinion that “it is better to give the law students good training they can put to use in BigLaw than to try to get them interested in helping indigent clients.”⁸⁸

The answer to whether a values-ambiguous clinic (or any clinic) is in fact operating in service of social justice is of course a complicated matter, but it does seem that almost all of the academic writing done by or reflecting the perspective of transactional or IP/T clinicians that addresses questions of values expresses the belief that in one form or another, the values-ambiguous clinic is doing public good, not just private good. Even the two authors most explicitly claiming transactional clinics should not have to be oriented toward social justice, Kosuri and Reed, describe generally understanding themselves to be public interest lawyers who choose to teach in an ideologically neutral way.⁸⁹ This notwithstanding, I think it is a near certainty that some directors of values-ambiguous clinics in fact do not understand themselves as public interest or social justice lawyers. It would also not be surprising that one who had this understanding would choose not to express it in scholarship, as most people generally do not want to be perceived as anti-social justice or anti-public interest.⁹⁰

B. The Challenges

Thus far this Article has argued that there is a divide between different clinicians largely centering around perceptions about values commitments. It has also argued that while there is a large body of scholarship defending the proposition that transactional and IP/T clinics are values-aligned with traditional clinics, the perception remains that these clinics are either entirely unconcerned with social justice or

⁸⁶ Kosuri, *supra* note 18, at 9.

⁸⁷ Kosuri, *supra* note 13, at 341.

⁸⁸ Reed, *supra* note 9, at 252.

⁸⁹ Kosuri, *supra* note 13, at 342 (“Despite how it may appear, I believe in social justice. I even believe that law school clinics should be free to champion social justice causes. In fact, I am firmly engaged in achieving social impact through the work of my clinic—a transactional clinic at the University of Pennsylvania.”).

⁹⁰ *Id.* at 332 (“[N]o one wants to be perceived as against ‘doing good’ or helping the underprivileged.”).

more concerned with skills than social justice. In some, but by no means all or most cases, this perception may also be accurate.

The tendency has been to treat this as the end of a conversation, but in the next sections of this Article, I would like to suggest some ways we might move forward. First, I discuss the challenges associated with the absence of a shared definition of social justice or other values, and then I turn to a broader discussion of clinical purposes and the ways that the relationship between skills and values have been and might be imagined. I conclude Part III with a discussion of the tension between skills and theory. In each of these sections I note how these challenging topics may be particularly highlighted or amplified by values-ambiguous clinics.

1. *No Definition*

One difficulty in discussing the divide between clinics that do and do not have an obvious values-commitment is that we lack an explicit, in depth, shared definition of what we might mean by social justice or other values. Although there are an abundance of articles that deal with the subject of the role of values in clinical education and that seek to explain exactly how clinics carry out these goals, the literature generally either offers brief definitions that invite further questions or assumes definitions of terms like social justice and public interest, rather than undertaking the process of explicitly defining the ways in which these values are presented.⁹¹ The clinical community is not alone in this tendency. As noted by the philosopher Michael Novak, “whole books and treatises have been written about social justice without ever offering a definition of it. It is allowed to float in the air as if everyone will recognize an instance of it when it appears. This vagueness seems indispensable. The minute one begins to define social justice, one runs into embarrassing intellectual difficulties.”⁹²

⁹¹ *Id.* at 331 n.1 (“Social justice is rarely defined in clinical education conversations, and there is often an assumption that everyone is talking about the same thing.”); Rebecca Sharpless, *supra* note 65, at 350 (“There is no settled meaning to the notion of social justice or progressive lawyering.”); Susan D. Carle, *Re-Valuing Lawyering for Middle-Income Clients*, 70 *FORDHAM L. REV.* 719 (2001). For use of brief definitions see, e.g., Pantin, *supra* note 9, at 186 (“For purposes of my work and this Article, social justice is ‘[j]ustice in terms of the distribution of wealth, opportunities, and privileges within a society.’ . . . Further, it is a moral principle of fairness and belief in the equal allocation of benefits among participants in an economy.” (alteration in original) (citing *Social Justice*, OXFORD LIVING DICTIONARIES, https://en.oxforddictionaries.com/definition/social_justice [<https://perma.cc/G558-U6TJ>] (last visited Jan. 21, 2017))); NICOLSON ET AL., *supra* note 6, at 27 (adopting the definition “the fairness of health, housing, welfare, education and legal resources in society” (citing *Teaching Social Justice to Law Students through Community Service*, in *TRANSFORMING SOUTH AFRICAN UNIVERSITIES – CAPACITY BUILDING FOR HISTORICALLY BLACK UNIVERSITIES* (Philip F. Iya, Nasila S. Rembe, & J. Baloro eds., 1999))).

⁹² Michael Novak, *Defining Social Justice*, 108 *FIRST THINGS* 11 (2000).

Those who discuss social justice or clinical values commonly point to certain descriptive attributes of a representation, for instance that the clients lack financial resources or are underrepresented, that there is a question of fundamental rights, or that there are important rights or liberty outcomes for an individual client or for society more broadly.⁹³ Sometimes this literature describes values in terms of tangible outcomes for a client, and sometimes it describes values in terms of access to processes, regardless of outcome.⁹⁴ Sometimes values are described in terms of outcomes for students, for instance that they are exposed to a concept or an experience of injustice; or to a particular way of thinking about the law as a tool of injustice, and sometimes values are described in terms of a general ethos, or an orientation.⁹⁵ Some articles use values words like public interest, poverty law, and social justice interchangeably while others make distinctions, for instance that by social justice they mean more than mere public interest.⁹⁶

Because there is so much variety in the way clinical values are described, it is very difficult for a clinic that isn't already presumed to be value-aligned to demonstrate (or argue against) this commitment. The definitional ambiguity may also be associated with the accusation that social justice and other values language is being used as a mere code for expressions of left-leaning, liberal ideology, including those associated

⁹³ See, e.g., Tremblay, *supra* note 16, at 390 (“representing low-income clients facing serious loss of rights, liberty, and essential benefits”); Kosuri, *supra* note 13, at 331 (“‘social justice’ mission—that is, representation of the indigent and under-represented about poverty law issues”).

⁹⁴ For discussion of the many different ways public interest and social justice have been imagined in clinical education, see generally Susan D. Carle, *supra* note 91, at 729 (describing how “people use the term ‘public interest’ law as a gloss for a wide range of sometimes contradictory lawyering categories.”); David R. Esquivel, *The Identity Crisis in Public Interest Law*, 46 DUKE L.J. 327 (1996). For an access to justice perspective see, e.g., Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 FORDHAM L. REV. 997 (2004). See also Tremblay, *supra* note 17, at 12.

⁹⁵ Dubin, *supra* note 4, at 1477 (“[A] larger [clinical] goal of social justice instruction should be the learner’s attainment of a level of understanding of the relationship between law and issues of social justice at both broad based and personal levels.” Clinical education serves this function by facilitating transformative experiential opportunities for exploring the meaning of justice and developing a personal sense of justice, through exposure to the impact of the legal system on subordinated persons and groups and through the deconstruction of power and privilege in the law.” (second alteration in original) (quoting Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLINICAL L. REV. 37, 43 (1995))).

⁹⁶ Carasik, *supra* note 9, at 43–44 (“The terms public interest lawyering and social justice lawyering are often used interchangeably. While there is indeed overlap between them, both terms evade easy definition and consensus. . . . I prefer to characterize them as occupying different places on the continuum of lawyering for the public good.”); Stuart A. Scheingold, *Essay for the In-Print Symposium on the Myth of Moral Justice*, 4 CARDOZO PUB. L. POL’Y & ETHICS J. 47, 48 n.3 (2006) (Ultimately, “[w]hether the pursuit of any particular cause advances the public interest is very much in the eye of the beholder.”).

with the progressive politics of the 1960s.⁹⁷ Echoes of this association can be seen in articles arguing that teaching values is problematic because it is important to be ideologically neutral or to not alienate students who have different beliefs.⁹⁸ Depending on what we mean by values (or ideology, for that matter), this framing of values teaching vs. ideological neutrality could be understood as describing a mutually exclusive pair—for instance if we mean social justice as ideologically aligned with politically left-leaning political teaching—or it could be seen as a false dichotomy—if we mean social justice as an already arguably ideologically neutral pursuit of a goal or value such as the amelioration of poverty.

I don't believe we are going to arrive at one shared definition of what we mean when we invoke words and phrases like values, social justice, and public interest, and I don't even particularly view that as a desirable outcome. Rather, I believe our collective cause would be furthered if we decreased our tendency to speak as though these terms did have generalizable, readily understood and widely agreed upon definitions when they in fact do not. Instead, we might more explicitly identify the specific concept we mean to invoke in any given conversation, and select a term that is more easily and tangibly described than these blanket terms.⁹⁹ We might further acknowledge that at times some of our many different understandings of a values commitment might not be universally applicable and might even be in conflict with each other.¹⁰⁰ For example, if I have my students draft a contract for an indigent client they may be promoting access to justice for an individual, but they may not be promoting economic development for a community. Conversations that encompass many different understandings of values, again, do not strike me as inherently problematic or limiting, but the habit of speaking as though there is one agreed upon understanding of values does.

⁹⁷ Susan D. Carle, *supra* note 91, at 729 (describing those who associate public interest law as “lawyering specifically with a left wing or politically progressive agenda”); Stephen Wizner, *Beyond Skills Training*, 7 CLINICAL L. REV. 327, 338 (2001) (noting that the “clinical faculty has been accused by some of our non-clinical faculty colleagues of being ‘mired in the sixties.’”). *But see* Baskaran and Haber, *supra* note 19, at 341 (opining that a “social justice perspective helps students lay aside personal politics.”).

⁹⁸ Kosuri, *supra* note 13, at 338 (“Every law student should feel welcome in a clinic regardless of ideology, background, or interest. . . . [T]acit signals may nevertheless make many students feel uncomfortable with clinics that espouse a different ideology, or worse, fear being judged by professors. Additionally, some students may still be forming their ideology; others may not have one at all. Students may be dissuaded from working in a clinic for fear that clinical faculty will dogmatically preach rather than allow students to formulate their own beliefs and values.”).

⁹⁹ *See, e.g.*, Tremblay, *supra* note 17, at 12 (noting transactional legal services in clinics are more suited to long-term capacity-building understandings of social justice goals than to “triage-based” understandings).

¹⁰⁰ For examples of this, *see* Susan D. Carle, *supra* note 91; Rebecca Sharpless, *supra* note 65.

2. *The Purpose of Clinics: Values and skills*

Relatedly, there is also considerable ambiguity surrounding interpretations of the purposes of clinics. A great deal of writing has been devoted to exploring the purposes of clinical education, including in literature that discusses the historical evolution of understandings of the purposes of clinics, different ways of conceiving of clinical purposes, claims of the primacy of social justice or other values as the true purpose of clinical education, and discussions of the interplay between the pursuit of social justice and skill development in the clinical setting. There is of course, again, no single agreed upon articulation of the purposes of clinical education and an abundance of options regarding how one might conceive of these purposes. Existing commentary offers us: nine goals of clinical education;¹⁰¹ ten primary clinical themes with underlying value choices;¹⁰² three waves associated with different values commitments;¹⁰³ a “loose consensus” of three broad goals of clinical education;¹⁰⁴ and a theory-practice spiral.¹⁰⁵ We also have a long list of goals such as “theory-driven preparation and advocacy,” “reflective practice,”¹⁰⁶ and providing “substantial lawyering experience,”¹⁰⁷ as well as claims that “clinical education is not an amalgamation of goals, but a distinct pedagogical method.”¹⁰⁸ The state of scholarship is perhaps best summarized by Carolyn Grose’s succinct conclusion, after extensive research, that a review of existing literature did not result in a “‘clear description’ of the goals and methods of clinical pedagogy.”¹⁰⁹ To dramatically oversimplify a great deal of very interesting scholarship however, the two most dominant categories of purposes discussed for clinics are those associated with skill development (generally, but not always, meaning students learning practical lawyering skills and competencies) and those

¹⁰¹ Carasik, *supra* note 9, at 43–44.

¹⁰² David Barnhizer, *The University Ideal and Clinical Legal Education*, 35 N.Y.L. SCH. L. REV. 87, 89–91, 124 (1990).

¹⁰³ Margaret Martin Barry, et al., *Clinical Education for This Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 12, 16–18 (2000).

¹⁰⁴ Grose, *supra* note 85, at 493–94 (“[C]linical education has three broad goals: providing learning for transfer; exposing students to issues of social justice; and offering opportunities to practice lawyering skills.”).

¹⁰⁵ Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 MINN. L. REV. 1599; Grose, *supra* note 85.

¹⁰⁶ Elliott S. Milstein, *Clinical Legal Education in the United States: In-House Clinics, Externships, and Simulations*, 51 J. LEGAL EDUC. 375, 378–80 (2001).

¹⁰⁷ A.B.A. SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROC. FOR APPROVAL OF L. SCHS. 2023-2024 (2024), Standard 304.

¹⁰⁸ Stephen F. Befort, *Musings on A Clinic Report: A Selective Agenda for Clinical Legal Education in the 1990s*, 75 MINN. L. REV. 619, 624–25 (1991).

¹⁰⁹ Grose, *supra* note 85, at 492.

associated with the pursuit of values-based goals (described in various ways, as discussed above).¹¹⁰

One interesting, embedded theme in discussions of skills and values in the existing literature is the variety in how authors imagine the *relationship* between skills and values, however defined. A substantial number of authors present skills and social justice as fundamentally compatible and mutually reinforcing, while many others imagine them as fundamentally in tension, while still others view them as being in a subordinate, instrumental relationship.¹¹¹ For the first group, those that see skills and values as mutually reinforcing, the question of tradeoffs between purposes doesn't matter as much, because you can do both. They argue for instance, that "skills training ... is an essential and pervasive element nested within an approach to clinical teaching that privileges an overall understanding of the relationship between law and social change."¹¹² These authors describe an understanding where "the very circumstances that further valuable clinical professional competency instruction can contribute to the service mission."¹¹³ For example, Martin Guggenheim points out that a focus on social justice is important "not only because of its effect upon clients but also because of its effect upon students" as part of skill development.¹¹⁴

Other commentators imagine the skills/values relationship very differently, describing the challenges of "the *competing* goals of providing skills training and furthering a social justice agenda" in a clinic.¹¹⁵ Some have gone so far as calling it a "strain of schizophrenia" in clinical education from conflicting educational and service objectives.¹¹⁶ Importantly, a conflicting relationship between values and skills is imagined in many arguments that are concerned with priority imbalance in clinical education—noting for example: "by necessity, as transferable skills training and assumption of lawyer role in individual cases has become the core

¹¹⁰ NICOLSON ET AL., *supra* note 6, at 19 ("the most common objectives [of clinics] are to enhance student education and to serve social justice.").

¹¹¹ Although I am describing these in terms of different authors, as will be clear below, it is the case that many individual authors describe the purposes of clinics in more than one of these ways, for instance sometimes describing goals as competing and sometimes describing them as instrumental.

¹¹² Ashar, *supra* note 63, at 385.

¹¹³ Dubin, *supra* note 4, at 1481.

¹¹⁴ Martin Guggenheim, *Fee-Generating Clinics: Can We Bear the Costs?*, 1 CLINICAL L. REV. 677, 683 (1995). A similar but weaker claim is made that the two goals are compatible in the sense that if a clinic focuses on social justice, education will inevitably happen along the way. See, e.g., NICOLSON ET AL., *supra* note 6, at 20 (noting "if students provide services to the community, they will inevitably learn about the substantive law and its application, along with the skills and values applicable to law.").

¹¹⁵ Carasik, *supra* note 9, at 26 (emphasis added). See also NICOLSON ET AL. *supra* note 6, at 19 (observing that "there is a potential and often-experienced tension between these two goals.").

¹¹⁶ George S. Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEGAL EDUC. 162, 186, n.108 (1974).

aim of clinical legal education, community-based advocacy has become a byproduct of clinical curricula.”¹¹⁷ In this understanding, “the emphasis on skills training in clinical programs has resulted in ... too little [time devoted] to the ways in which lawyers can, and should, use law to pursue social justice and stimulate social reform.”¹¹⁸

Still a third way of conceptualizing these goals imagines an instrumental relationship between skills and values. Skills training, in this description, should not be understood as an “end unto itself,” but rather, should be understood only as a means toward the end of a values goal.¹¹⁹ In this understanding, commentators ask: “what skills do students need to learn, incidental to and in order to pursue the overriding ... purpose of the clinic,” where the overriding purpose is “teaching law students about the ability and responsibility of lawyers to work for justice and to challenge injustice.”¹²⁰ When imagined as having worth only as means to a values end, skills training that is not used in service of a values goal is useless at best and harmful at worst. As expressed by Jane Aiken:

If all I can do in law school is to teach students skills ungrounded in a sense of justice then at best there is no meaning to my work, and at worst, I am contributing to the distress in the world. I am sending more people into the community armed with legal training but without a sense of responsibility for others or for the delivery of justice in our society.¹²¹

Whether we believe skills and values goals are in mutually reinforcing, competing, or instrumental relationships matters a great deal when we are talking about values-ambiguous clinics. If we believe that they are mutually reinforcing, then we might regard a director as making an easily avoidable mistake by choosing to structure a clinic in a way

¹¹⁷ Ashar, *supra* note 63, at 368 n.43.

¹¹⁸ Wizner, *supra* note 97, at 333. A distinction might be made, although I have not seen this articulated in this way, that there is a difference between skills generally, for instance so-called “soft-skills” or “DRAIN” skills (drafting, research, advocacy, interviewing and negotiation skills) on the one hand and more specific technical skills like how to draft a specific contract on the other. Some of this may be captured under the distinction between “skills” and “substantive law,” but I suspect there is more room for fruitful discussion here. For some of the specific ways specific skills are understood by transactional clinicians, see Robert R. Statchen, *supra* note 57.

¹¹⁹ Wizner, *supra* note 97, at 338 (characterizing and agreeing with the position of William Pincus: “experiential learning and skills-training [are] seen as the means for achieving the justice goal . . . not as ends in themselves.”); see generally William Pincus, *Concepts of Justice and of Legal Education Today*, in COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, CLINICAL EDUCATION FOR LAW STUDENTS: ESSAYS BY WILLIAM PINCUS, 125, 131 (1980) (speech delivered at Order of the Coif Dinner, Villanova Law School, January 15, 1971).

¹²⁰ Wizner, *supra* note 97, at 338.

¹²¹ Jane Harris Aiken, *Striving to Teach “Justice, Fairness, and Morality,”* 4 CLINICAL L. REV. 1, 6 n.10 (1997).

that might give short shrift to values. If there is no cost, why wouldn't we simply do both at once? If I believe that when my students draft a contract for an indigent client they will simultaneously learn about contract drafting and learn about or promote social justice, then why would I ever have them learn contract drafting skills in a context where these social justice implications are not present? Or to look at this differently, if entrepreneurship clinics provide the same skills training as community economic development clinics, but don't bring the values benefits, why do we have them at all? Or if, as the "unmasking" literature claims, some values-ambiguous clinics actually do provide values benefits, why don't we just rename them community economic development clinics to avoid the optics problem?

On the other hand, if we understand skills and values as in conflict we might see values-ambiguous clinics very differently. In this understanding, values-ambiguous clinics, or any other clinics that expend a lot of effort on skills training, might be problematic because gains for skills-training goals are losses for values goals. For instance, I might think that when I have my students write and revise a contract for an indigent client they better learn the practice skill of contract drafting, but the more time they spend on the time-consuming process of learning how to draft, the fewer clients we are able to serve, and the less social justice impact our clinic has. Conversely, others with this understanding of values and skills training as being in conflict might believe that clinics with a strong focus on values are problematic because gains for social justice goals come at the expense of student opportunities for skill development. If this was my understanding, I might imagine that if I have my students only draft contracts for indigent clients where their work will have a social justice impact, then they will have a suboptimal skill training experience. The logic here would be that this will preclude them from working on transactions that are very good for skill development but that only happen when the parties to the transaction have more resources.¹²²

And finally, if we understand skills goals as not being valid as independent goals at all, but only as having merit if they are pursued in service of values goals, we might have a still different reaction to values-ambiguous clinics. Here we are not really assessing the relationship between two different possible goals, we are instead saying that social justice is the only proper goal and that skills training is an instrument we might use to obtain that goal. With this understanding, a

¹²² See, e.g., Reed, *supra* note 9, at 250–51 (“I suppose one could, theoretically, only represent people who do not have any capital, but in that case the practical training aspect of our transactional clinic would suffer. If work closer in style and substance to BigLaw work will yield the kind of training that will best prepare students for their future, then a better capitalized business with more complex legal needs better suits our substantive goals.”).

values-ambiguous clinic would be greeted with considerable suspicion if not outright hostility. For instance, if this was my understanding, I might imagine that if I have my students draft contracts for clients where their work will not have a social justice impact, or where I do not show them its social justice impact, then the time I have spent on contract drafting skills training is at best purposeless and a waste of a rare opportunity to open their eyes to the relationship of law and justice. At worst, in this view my work is perpetuating a harm—teaching students to become more skilled in using the law as an instrument for private gain rather than public good.

As with the discussion of the definition of values and social justice, the point is again not that we must agree on the question of whether values and skills goals are compatible with, in conflict with, or subordinate to one another. The point is also not that we must each individually adopt only one understanding of the relationship of these goals that applies in every situation. Rather, the point is that we are stymied when we proceed as though we have one shared, static, self-evident understanding of the relationship between skills and values when we in fact do not.

The presence of values-ambiguous clinics highlights these discrepancies of understanding and offers us an opportunity to explore further. If we don't know whether a clinic is oriented toward any values goals at all, we are confronted with broader questions of understanding how it fits with any purpose and whether that purpose might be independently valid. We thus might imagine the values-ambiguous clinic as being in need of "unmasking," in need of additional values orientation, or as being an active threat to justice. Some of the division between clinicians may stem from differing implicit assumptions about the relationship between values and skills. To the extent this is the case, the division may be ameliorated if we can distinguish between where we actually disagree about certain clinics or their goals and where we are simply imagining relationships between purposes differently.

3. *Theory*

In the prior section, I was discussing the purposes of clinical education in terms of the relationship between skills and values. In this section I want to also introduce a second pairing relevant to the discussion: skills vs. theory. Understandings of skills-based legal education vs. theory-based legal education, like understandings of skills-based clinical purposes vs. values-based clinical purposes, play an important role in conversations about the purposes of clinics. From the earliest history of clinics these pairs—skills and theory, and skills and values—have been dominant themes in clinical commentary.

For example, when told in brief, the story of the history of law clinics is often depicted as a fairly simple “values to skills” evolution where the modern clinical movement began with a values commitment borne out of the civil rights era that has subsequently been eroded by the introduction of a stronger emphasis on skills training.¹²³ Skill-centric values-ambiguous clinics, in this simplistic story, are very much a product and a symptom of this latter era.¹²⁴

However, more in-depth discussion of the history of clinics includes a “theory to skills” evolution as well. This history is more likely to take as its beginning point the 1920s, when legal realists and others rejected the notion that law could be taught through theory (via the case method) alone but rather emphasized the importance of skills development through apprenticeship-style training in “clinical law schools.”¹²⁵ In some sense, these advocates were not suggesting a new way of teaching, they were advocating clinics as a return to an even older way of teaching law: the theory-based system they argued against was predated by a long period where legal education was understood not in terms of theory or classroom learning but was almost entirely practice-based.¹²⁶ In these longer time-horizon versions of clinical history, skills-centric values-ambiguous clinics are perhaps not best understood as a new deviation from mid-20th century values-based origins but rather may be seen as a throwback to an earlier era of skill, rather than theory, emphasis in legal education.¹²⁷

¹²³ See, e.g., Dubin, *supra* note 4, at 1466 (“Beginning in the 1980s, clinical education experienced a shift in emphasis from its origins in client and community service, structural reform, and social justice ideals, ‘to a largely skills focused curriculum.’” (quoting Minna J. Kotkin, *The Violence Against Women Act Project: Teaching A New Generation of Public Interest Lawyers*, 4 J.L. & Pol’y 435, 448 (1996))); Kotkin, *supra* note 8, at 289 (“The beginnings of clinical education in the 1960s grew out of law students’ growing political involvement.”); Wizner, *supra* note 97, at 332 (“The founders of the clinical movement, responding to the social ferment and legal rights explosion of the 1960’s, envisioned clinical legal education not only as a way of enriching legal education with professional training, but as a means of stimulating law schools to attend to the legal needs of the poor, and engaging students in the pursuit of social justice” while today clinical legal education tends to “emphasize skills training and professional development over social objectives.”).

¹²⁴ Kosuri, *supra* note 9, at 220 (noting that “[t]ransactional clinics are . . . less tethered to the past because [they] did not emerge from the fervor of the civil rights era.”).

¹²⁵ Joy, *supra* note 7, at 562 (citing Jerome Frank, *Why Not a Clinical Lawyer-School?*, UNIV. PA. L. REV. 907 (1933); Jerome Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303 (1947)).

¹²⁶ Rachel Gurvich et al., *Reimagining Langdell’s Legacy: Puncturing the Equilibrium in Law School Pedagogy*, 101 N.C. L. REV. FORUM 118, 125 (2022); ALBERT JAMES HARNO, LEGAL EDUCATION IN THE UNITED STATES: A REPORT PREPARED FOR THE SURVEY OF THE LEGAL PROFESSION (1953).

¹²⁷ This is not to suggest they weren’t also concerned with values; early proponents of what we now call clinics generally tended to group the goods of increased skills-based training and values (for instance the amelioration of poverty, etc.) together and then to set the pair as being in contrast to a classroom or theoretical treatment of the law. Barry et al.,

Continuing through the current day, scholars regularly express their understandings of and concerns with clinics along these multiple axes. For instance, some are concerned that priorities have become misaligned and skill is being focused on to the exclusion of values, while others are concerned that priorities have become misaligned and theory is being focused on to the exclusion of skills. That these conversations have gone on for more than a century may indicate the depth of the issues they implicate. And unsurprisingly, as with discussions of values, they are made challenging by the many ways we might characterize theory.

While here I am referring to theory as it is used to reference the conceptual, doctrinal, podium-style, classroom-only teaching of law, rather than a practical, experiential, skills-based treatment, this is certainly not the only way it could be used. By “theory” we might also mean, for instance “the theory that law should be used as a tool for social justice,” or we might mean clinical pedagogical theory involving “learning for transfer.” Rather than teasing out these many different ambiguities or permutations, I instead want to focus on how these conversations about theory and skills additionally highlight our understanding of the place of skills in legal education and how values-ambiguous clinics might bring that story closer to the surface in potentially uncomfortable ways.

Although skills training has been frequently championed in arguments against purely theoretical educational methods, it is also, as a practical matter, devalued in the legal academy.¹²⁸ Rejections of the premises that legal education is “nothing more than the mastering of a craft”¹²⁹ and law school is merely “trade school” or is a way to learn to be “simply a skilled legal mechanic”¹³⁰ have roots at least as old as formalized law school itself.¹³¹ These rejections contains echoes of antiquated elitist views of labor generally and are reflected in myriad places within the legal academy, from the hierarchy of law school instruction where theory-oriented professors have more status than practice-oriented professors¹³² to the patterns of more “elite” law

supra note 103, at 12 (“The earliest forms of clinical legal education embraced the dual goals of hands-on training in lawyering skills and provision of access to justice for traditionally unrepresented clients.”).

¹²⁸ Gurvich et al., *supra* note 126, at 125.

¹²⁹ ALBERT HARNO, *supra* note 126, at 39.

¹³⁰ Warren E. Burger, The State of the Federal Judiciary (1971), in 57 A.B.A. J. 855, 857 (1971) (A lawyer “must be more than simply a skilled legal mechanic.”).

¹³¹ Gurvich et al., *supra* note 126, at 142–43 (“This bifurcation, and the implicit devaluation of learning outside the traditional Socratic classroom, reinforces the long critiqued and profoundly durable skills-doctrine divide that dates back to Langdell’s rejection of faculty whose experience involved *practicing* law rather than *studying* it.”).

¹³² Kristen K. Tiscione, *How the Disappearance of Classical Rhetoric and the Decision to Teach Law As A “Science” Severed Theory from Practice in Legal Education*, 51 WAKE FOREST L. REV. 385, 394 (2016).

schools traditionally privileging theoretical treatment of law over practical aspects of law.¹³³

On the clinical side, alignment with skills, as opposed to values or theory, unsurprisingly is thus often understood to be a double edged sword. On the one hand, it is argued that as more emphasis has been placed on skills training in legal education more generally, clinics have risen in number and arguably in status.¹³⁴ However, as clinics are more firmly typecast as a place to learn skills, their fates are more strongly tied to the lower status this association has historically connoted.¹³⁵ This association can be seen as creating countervailing incentives for clinics to market themselves as being places to learn skills but, very importantly, concerned with more than “mere” skills. This challenge is nicely expressed by transactional clinician Alina Ball who observes, “[h]aving resisted the perception of clinical legal education as the ‘trade school’ component of the legal academy, clinicians are understandably uncomfortable with exclusive emphasis on the skills training portion of clinical pedagogy.”¹³⁶ Minna Kotkin expresses a similar set of concerns in somewhat different terms. She describes two hierarchies at stake—clinical vs. doctrinal (what I might call skills vs. theory) and a hierarchy in clinic practice type (what I might call skills vs. values)—and explains her concern with further replication of these hierarchies. In essence, by this she means: if the values-ambiguous clinicians who primarily teach skills in the context of higher status practice areas win the day, their victory would both further entrench all clinicians in the lower status role of mere skills teachers and also would place the values-oriented clinicians at the bottom of clinical heap because their skills training is associated with lower status types of law practice. While both Ball and Kotkin locate skills-association as being a root of these issues, Ball primarily focuses on theory (specifically, she discusses the theory contributions of a transactional law clinic) as a solution, while Kotkin focuses on values (specifically, the need for transactional clinics to have value commitments) as a solution.

This thoughtful set of concerns brings me to my final point of discussion. It is not surprising that values-ambiguous clinics—an expression of legal education that may appear to be skill-centric rather than values- or theory-centric—would raise issues of hierarchy. As with most other subjects discussed in this Article, my primary hope is that we might examine this debate more thoroughly and have a productive conversation. Here, where hierarchy is implicated at the intersection of

¹³³ John O. Sonsteng et al., *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303, 323 (2007).

¹³⁴ Kotkin, *supra* note 8.

¹³⁵ *Id.*

¹³⁶ Ball, *supra* note 5.

skills, values, and theory, I think we can do that by taking seriously the questions of how different types of clinics might differently assess, understand, and pursue various goals, and by considering if we can create a stronger and more integrated alliance between values-ambiguous and values-presumed clinicians.

The abundant calls for clinicians to embrace a values mission more completely and defenses of clinics in traditional values terms are an important part of the story, but I believe there is also room for other techniques of fighting hierarchy. First, clinicians might embrace and elevate, rather than de-emphasize or minimize, our roles as skills teachers. Second, clinicians might endeavor to bring values-ambiguous clinicians who teach in higher status practice areas more fully into the fold as partners and allies, regardless of whether they are in obvious alignment with a particular version of values.

As for the first of these suggestions, while acknowledging the long standing hierarchies within legal education, we as clinicians might make a concerted effort to reimagine and re-present the narrative around skills training, for instance by rejecting minimizing qualifiers such as “mere skills,” “simply ‘skills training,’” and “reduction to ... technical skills.”¹³⁷ We might also question the habits of describing skills training as something clinics should transcend,¹³⁸ or of categorizing clinical efforts as useless if all they do is teach students skills.¹³⁹ Our students want to become lawyers, and increasingly their non-clinical professors have very little first-hand experience in that profession.¹⁴⁰ Our collective fates may be tied to being characterized as the “‘trade school’ component of the legal academy,” but it does not seem impossible to reclaim that characterization from elitist narratives about different forms of labor and to celebrate it as sufficient in its own right.

As to the second point, we might agree with, as I do, the underlying premises of Minna Kotkin’s argument that the rise of clinics that focus on teaching skills in contexts associated with conventionally higher-status practice areas has the potential to replicate problematic hierarchies. But I also see both hope and opportunity here, because I believe that values-ambiguous clinicians can be allies in fighting hierarchy, rather than serving a fixed role within it. While values-ambiguous

¹³⁷ Wizner, *supra* note 97, at 339.

¹³⁸ Grose, *supra* note 85, at 493 (framing the inquiry in terms of what we do that “transcends skills training for lawyers”).

¹³⁹ Aiken, *supra* note 121, at 6 n.10.

¹⁴⁰ Justin McCrary et al., *The Ph.D. Rises in American Law Schools, 1960-2011: What Does It Mean For Legal Education?*, J. LEGAL EDUC. 543 (2016); Brent E. Newton, *Preaching What They Don’t Practice: Why Law Faculties’ Preoccupation with Impractical Scholarship and Devaluation of Practical Competencies Obstruct Reform in the Legal Academy*, 62 S.C. L. REV. 105.

clinicians may come from practice backgrounds that enjoy a relatively higher status, they have chosen a profession, clinical teaching, where that status relationship is often inverted.¹⁴¹ Values-ambiguous clinics are on the rise, but they are also relatively new and, in most schools, as well as in the greater clinical community, they comprise a minority position.¹⁴² Their colleagues and supervisors and leaders are less likely to understand the work they do, and the ways they interact with the law are less likely to be represented in the clinical community and in the broader legal academy. I believe they often are in positions where they are inclined to join a common cause and are stopped only by the hurdle of mutual understanding.

I do not mean to underestimate the powerful hierarchies at stake within the practice of law generally, within the legal academy, or within the clinical community. Instead, I mean to suggest that it might behoove us all to reconsider the ways we have previously imagined the battlelines.

IV. CONCLUSION

A. *Concluding Thoughts*

This Article has argued that the rise of values-ambiguous clinics has been a disruptive force in clinical legal education and that there is currently a largely unacknowledged divide between different types of clinicians. It seems clear that values-ambiguous clinics are here to stay, and their persistent presence forces us to confront a series of challenging but difficult questions about clinical education, and about legal education more broadly. While these questions may not have clear answers, identifying and exploring them in an intentional and reflective manner is critical. They are important both for our scholarly conversations, for our practical understandings, and for our ability to work together toward the shared goals of the clinical community, our students, and our institutions. Productive conversation will necessarily entail some exploration of what we mean by certain terms, and grappling with the intersection of several thorny juxtapositions that are implicated by clinical legal education. This Article has suggested several possible avenues for conversation.

B. *The Traditional and Transactional Clinician Go Home*

Following the clinical conference the Transactional and the Traditional Clinician, finding themselves seated next to each other

¹⁴¹ Susan D. Carle, *supra* note 91, at 729 (“There is an alternative prestige hierarchy in the profession, especially at many law schools, that confers special honor to some alternative careers focused on helping people in need who cannot pay for legal representation.”); Ryan, *supra* note 57.

¹⁴² See *supra* Part I(B)(3).

on the plane headed home, struck up a conversation. The Traditional Clinician politely asked the Transactional Clinician what she thought of the keynote speaker. The Transactional Clinician replied that she had heard there was a high turnout and that the conference facilities had been set up very well to accommodate this. The Transactional Clinician in turn politely asked the Traditional Clinician if she was excited about the news they had received about the intellectual property clinic that would be starting at their law school. The Traditional Clinician replied that she had heard these types of clinics were very in vogue, and she was continuously impressed by the Dean's ability to fundraise.

Both Clinicians were tempted to let this stale conversation come to an end, and the story could very well have concluded here. But instead, they each decided to risk a bit of candor and curiosity. The Transactional Clinician said she actually had intentionally skipped the talk, along with a number of other sessions, because she was having a very hard time connecting with the subject matter and was feeling frustrated by assumptions that certain versions of social justice were applicable in certain ways in all of legal education. It seemed dated, and it seemed to minimize student interests and needs, and she did not understand it. Why did this conference—and for that matter their own clinical faculty—seem so full of assumptions that only certain clinics did social justice work? And what was so wrong with teaching skills anyway?

The Traditional Clinician knew she had some good answers to some of these questions but also that some would require a bit more reflection. But first she needed to get her own concerns on the table as well. She said she actually was not at all excited about the new intellectual property clinic. She in fact was frustrated to see another example of clinical resources being squandered on privileged, college-educated clients when there was so much need in oppressed communities. How did anyone think the next generation of lawyers would learn to use law as a meaningful tool for social change if all clinics taught was lawyering for the “haves” in their pursuit of private gain? And why was it so hard to understand what social justice was and that skills and social justice could be pursued at the same time? The Transactional Clinician knew she had answers to some of these questions but not to others. At this point they both could see that there was a lot more to the story than the way they had been imagining it.

Once it was clear they were going to engage with this subject, they just needed to settle on how. The Transactional Clinician suggested they start by creating a list of agreed upon defined terms and subjects where they were and were not in alignment that they could refer to during future conversations. The Traditional Clinician instead suggested treating the conversation like structured “case rounds,” attempting to first identify the problem before proceeding to problem solve. To the likely

annoyance of the other passengers in their row, this methodological debate went on for a while before they settled on a middle ground approach, doing a bit of both. They asked broad open-ended questions of each other and followed up for additional details. How do you understand the role of values and skills in your clinic? Why do you focus on that? How do you focus on that? What clinics do you wish we had here? Why? Where are we in alignment? How do we see things differently? What concerns you? Is there any kind of client you wouldn't take on, even if it was great skills training? Do you ever wonder if your work is actually having the impact you most value? Do you ever have to make hard tradeoffs between values goals and skills training? Where else might our students learn about law as a tool for change? How do you see the future of legal education? What hierarchies most trouble you? And so on.

Although the plane eventually landed and this conversation came to a close, the broader conversation, once started, did not end. Eventually, the Traditional and the Transactional Clinician were able to understand and articulate each other's positions and to refine their own. They each took something from their new understandings that informed and improved their own clinical teaching, that deepened their ability to participate in the broader clinical community, and that strengthened them in their pursuit of various outcomes. They were also able to exchange pedagogical techniques, collaborate on clinic projects, present together at conferences, and advocate for student and clinical outcomes together. They did not ever come to share the same views, but with some dedication and some continued curiosity, they did come to share a commitment to working together toward a better future of clinical legal education.

