BEYOND THE TRANSPLANT: ORIGIN AND ONGOING TRANSFORMATIONS OF CLINICAL LEGAL EDUCATION WITH A PUBLIC INTEREST LAW FOCUS IN LATIN AMERICA

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By

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This dissertation discusses the origin and ongoing transformations of law school clinics in Latin America with a public interest law focus. Through a historical analysis, the dissertation challenges a general assumption according to which the origin and development of clinical legal education in the region corresponds simply to the idea of a legal transplant from the Global North to the Global South during the second half of the 20th Century. The dissertation shows that there is a pre-history of clinical legal education efforts and the fact that law school clinics were not at the core of the early efforts of the Law and Development movement across the region. Furthermore, the dissertation concludes that clinical legal education in Latin America today is the result of a much more complex set of ideas, competing projects and ongoing economic, political and constitutional transformations in the region that the metaphor of a legal transplant from the North to the South cannot fully comprehend. For this reason, the dissertation concludes that it is key the understanding of our own history of clinical legal education to better address the challenges of the contemporary clinical practice. In particular, the issue of clinical collaborations between law school clinics from the North and South. Finally, the dissertation revisits a proposed framework of clinical teaching and advocacy as a way to improve clinical collaborations taking into account the origin and transformations of the Clinical Legal Education movement in Latin America.

BIOGRAPHICAL SKETCH

Esteban Hoyos studied law at Universidad de los Andes in Bogotá (Colombia). He holds a Masters of Laws (LL.M) from Cornell Law School in Ithaca, NY (USA). After law school, Esteban Hoyos was a law clerk of the Colombian Constitutional Court. He has been a professor of law at EAFIT University law school in Medellín (Colombia) since 2006 where he teaches courses on Colombian Constitutional Law. His research interests include Colombian Constitutional Law, Comparative Constitutional Law, Socoal and Economic Rights, International Human Rights Law, Clinical Legal Education and Public Interest Law.

Como el calígrafo de mi abuela, a mis padres.

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LIST OF ABBREVIATIONS

HRC	Human Rights Clinic
LAC	Legal Aid Clinic
PILC	Public Interest Law Clinic

PREFACE

I have spent most of my adult life in a law school. My own experiences with legal education have influenced this research. These experiences include my years as a law student at Universidad de los Andes in Bogota, Colombia; my experience as a Constitutional Law junior scholar at Universidad EAFIT School of law in Medellin; my participation as a LL.M student in the Cornell International Human Rights Clinic; and, very especially, as a student team member in the right to free education project[1]. In every one of these moments and spaces and now in the J.S.D. program at Cornell Law School, I have permanently reflected and wondered about the consequences that legal education can have on students and the legal profession, but also in the possibilities of social impact through legal education even from law school.

In this research, I focus on analyzing a concrete transformation in legal education in some Latin American countries, particularly Colombia, during the last twenty years, which is the emergence of Public Interest Law Clinics (hereinafter PILCs). With differences between them, PILCs have become part of a discourse that

[1] This project led to the decision C-376 de 2010. In this decision the Colombian Constitutional Court Colombian ordered that all public primary schools in the nation must cease charging students tuition fees. The decision followed strategic litigation supported by the Colombian Coalition for the Right to Education, Camilo Ernesto Castillo, legal advisor to the Coalition and researcher and fellow at the University of Rosario, Esteban Hoyos, J.S.D. student at Cornell Law School and professor at EAFIT University Law School in Medellin, and Cornell Law School's International Human Rights Clinic. *See* Cornell International Human Rights Clinic website *available at* http://www.lawschool.cornell.edu/Clinical-Programs/international-human-rights/colombia-free-

promotes the renovation of legal teaching and at the same time a tool against legal formalism within the academy.[2]

Those who believe and advocate for law school clinics in general, and PILCs in particular within the law schools defend at least two ideas: First, that legal education should not only be a theoretical or dogmatic education but it should include also some practical training in the type of activities that lawyers do every day. These activities and skills include problem-solving; legal analysis and reasoning; research; communication; counseling; negotiation; litigation and mediation; organization and management; dealing with ethical concerns, among others. In the case of PILCs and human rights clinics (hereinafter HRCs), skills include conducting human rights research; planning and implementing human rights fact-finding missions to further project's goals; interviewing victims or their representatives; building and supporting human rights coalitions; identifying, negotiating, and overcoming cultural and other barriers; developing and implementing media and advocacy strategies to advance human rights, among others.[3]

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education-case.cfmeducation-case.cfm (Last visit December 2016)

[2] I follow Daniel Bonilla's definition of legal formalism. According to him, formalism is the legal doctrine "that claims that law is a complete, coherent, and autonomous system mainly composed of rules enacted by a legislative body. Accordingly, the legal system contains all the answers to legal problems or conflicts that may arise, and the role of the judiciary is to apply the system's rules to solve such problems. Legal formalism is also attached to a classical conception of liberal democracy, which features a radical separation of powers, in which rules enacted by the legislative branch are the main legal source and judges are in charge of their application, through a logic-deductive process, to particular cases. Thus, for legal formalism, judicial precedent is only an auxiliary criterion in the application of law". *See* Daniel Bonilla, *El Formalismo Jurídico, la Educación Jurídica y la práctica profesional del derecho en Latinoamérica* in DERECHO Y PUEBLO MAPUCHE, APORTES PARA LA DISCUSIÓN. Centro de Derechos Humanos 259 (Universidad Diego Portales 2013)

[3] *See* James E. Moliterno, *Legal Education, Experiential Education, and Professional Responsibility,* 38 WM & MARY L.REV 71 (1996) and Jocelyn Getgen-Kestenbaum, Esteban Hoyos-Ceballos and

A second idea has to do with the possibility of pursuing a certain social change or impact through the law even from law school. The idea is that students can manage activities that can contribute to address the structural conditions of poverty, inequality and permanent violation of human rights. This represents the "*social justice*" goal of clinical legal instruction.

Among the many issues that one can analyze regarding the emergence and development of PILCs in Latin America, I am particularly concerned in this thesis for one, which is the relationship between Latin American PILCs and the United States legal academic community in a broader sense[4]. To some extent, my work builds on a personal dissatisfaction with part of the literature on the subject that, I believe, it has taken for granted certain aspects of the relationship between the United States and Latin American countries on clinical legal education. I reproduce here four examples of those ideas and assumptions that cause me this discomfort:

- "*Clinical legal education as adopted by law schools outside the United States is the result of an export from the United States*"[5]

Melissa C. del Aguila Talvadkar, *Catalysts for change: A proposed framework for human rights clinical teaching and advocacy*, 18 CLINICAL L. REV. 483 (2012)

[4] I understand here by legal academic community not only U.S law schools, but also U.S. agencies and foundations that provide funding to law schools in both the North and the South to develop projects related to clinical legal education.

[5] *See* Richard Wilson, *Beyond Legal Imperialism: U.S. Clinical Legal Education and the New Law and Development*, in THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE, FRANK BLOCH Ed. 135 (Oxford Univ. Press 2010).

- *"Clinical legal education in Latin America dates back to the 1960s"*[6]

- "*Clinical legal education was sponsored in Latin America by the so-called "first generation of Law and Development movement*"[7]

- "*Building on a revised strategic move to a "Second Generation of Law and Development" aimed at reappropiating the public role of both lawyers and law schools in the South, a second wave of clinical legal education arrived in the region in the 1990s*"[8]

One of my goals with this work is to persuade the reader that most of these affirmations are not completely accurate. My contribution to this discussion is precisely make things a little bit more complicated: I do not believe that all forms of clinical legal education in Latin America are the result of a legal transplant from the U.S. to the region. I attempt to offer a narrative according to which there is evidence of clinical legal education even before the first phase of the law and development movement in countries like Brazil, Ecuador, Uruguay, Chile or Colombia. I called this the narrative of the origin: Law school clinics were not at the core of the legal education reform efforts that were proposed during the first phase of the law and development movement in many Latin American countries. And the so-called "*second wave*" of clinical legal education in Latin America is the result of a much more complex set of ideas, competing projects and ongoing economic, political and, very

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[6] Erika Castro et al. *Clinical Legal Education in Latin America: Toward Public Interest in Global Clinical Movement* in BLOCH Ed. *Id.* at 69

[7] *See* Helena Alviar, *The Classroom and the Clinic: The Relationship Between Clinical Legal Education, Economic Development and Social Transformation*, 13 UCLA J. INTL'L. & FOR. AFFAIRS 197 (2008)

especially, constitutional transformations in the region that maybe the metaphor of a legal transplant from the North to the South cannot fully comprehend. Moreover, clinical legal education in the region today is not necessarily the result of contemporary law and development projects. But in many occasions the result of isolated efforts of law professors with university support that want to introduce a change in the way law is taught in their own institutions and jurisdictions.

I do not deny in my work, nevertheless, that there is an influence from U.S. agencies, foundations, and law schools in the current configuration of clinical legal education, in general, and Latin American PILCs in particular. My own academic interests are the result of that kind of influence as a Colombian law young professor, with many U.S. educated teachers, who develops an interest for clinical legal education and even participates in an international HRC on a project to enforce the right to free education in Colombia. I will describe that experience in depth in Chapter 4 in which I address the issue of contemporary North-South clinical collaborations.

However, my main point is that the influence, to some extent, has been overestimated and that fact can have certain problems. For instance, in the way new PILCs programs are developed or existing programs establish collaborations with U.S. law school clinics. Therefore, in my work, I call for a reinterpretation of the way we understand the relationship between the U.S. and Latin America on clinical legal education and very especially to re-think the role to be played by PILCs within the law

[8] *See* Wilson, *supra* note 5, at 135.

schools and especially in their interaction with their U.S counterparts. I think this is very useful if we think in the present and future of clinical collaborations to advance the goals of clinical legal education.

A necessary term clarification: Public Interest Law Clinics (PILCs), Legal Aid Clinics (LACs) and Human Rights Clinics (HRCs) as possible forms of clinical legal education

In the first section of chapter 1, I will provide a working definition of clinical legal education. However, for the purposes of clarification, it is worth to say at this point that even though PILCs are my primary research interest, I believe that their study cannot be completely separated from their immediate predecessors in the region: the Legal Aid Clinics (hereinafter LACs). LACs are one possible form of clinical legal education in which students, under the supervision of a law professor or practitioner, provide legal services or judicial representation to individuals who cannot afford the legal services of a lawyer. LACs are the most popular and widespread form of clinical legal education in countries like Colombia, in which it is mandatory that all law students take part of a LAC as a law degree requirement.[9]

Unlike LACs, in PILCs students usually do not provide individual

[9] According with Colombian National Law 583 of 2000 that modified the National Decree 196 of 1971

representation to clients. Instead, they teach human rights to empower the citizens in the knowledge of their rights and the judicial mechanisms designed to protect and enforce them; they provide legislative consulting services with a special focus on legislative bill drafting that benefits vulnerable or discriminated groups; or work in strategic high impact litigation to advance in the protection of the rights of broad sections of the population. These are only a few examples of the diversity of task that students can undertake within a PILC.

This distinction between PILCS and LACs is important because at least in Colombia, unlike the U.S., the idea of 'clinic' has been primarily reserved to the work done by PILCs. Moreover, as it will be studied in the chapter on Colombia, the creation of new PILCs is often justified as a way to improve the work done in LACs which are accused of being too formalist and not addressing the structural causes of their clients' legal issues. Part of what I argue is that the work of LACs is key in countries in which the legal system requires a lawyer for most of legal proceedings and there is no a strong system of public lawyering that provides that kind of representation before the Courts, maybe with the exception of Criminal Law matters.

Beside PILCs and LACs in this dissertation, I will also talk about Human Rights Clinics (Hereinafter HRCs). When I talk about HRCs, I am talking specifically about law school clinics based in the U.S. that emerged during the 1980s and early 1990s representing a new development in the evolving clinical legal education movement in this country. I will adopt Arturo Carrillo's definition of HRCs as a "law

school-based, credit bearing course or program that combine clinical methodology around skills and values training with live case-project work, all or most of which takes place in the human rights context"[10]. This definition is important for two reasons. First, it delimits the scope of clinical work to an academic context in which students are the main actors of a learning process. Second, it distinguishes the work of HRCs from the work that it is done at human rights centers, NGOs or other social organizations. I insist in one idea: PILCs, LACs and HRCs are all possible forms of clinical legal education.

Theoretical and practical implications of my study

The literature on clinical legal education in Latin America is scarce. There is not much academic reflection on the history of clinics, methodology or the impact of clinical work in student's education.[11] Unlike elite U.S. law schools, Latin American clinical professors have, in general, a precarious employment relationship and they are not expected to produce any type of academic work. Furthermore, there are no specialized legal education journals in which this kind of reflections can be published. So I think that the first contribution of this work is a symbolic one: the idea that the work of clinics, its history, and the possible relationships between clinics of the North

[10] *See* Arturo J. Carrillo, *Bringing International Law Home: The Innovative Role of Human Rights Clinics in Transnational Legal Process*, 35 COLUM. HUM. RTS. L. REV. 527, 533-34 (2004). According to Carrillo, Human rights context refers to "a dynamic ecosystem comprised of the formal and informal rule, procedures, mechanisms, and actors that continuously interact at myriad levels to apply, promote, defend or develop human rights principles"

[11] A personal note: When I first started to write this dissertation some people asked me how it was possible that I was going to write a thesis on law school clinics. Clinics are usually the place to practice

and South is important and demands academic attention.[12]

But my work has also theoretical and practical implications. From a theoretical point of view, this research has direct connections with at least three bodies of literature: First, the Law and Development literature in which legal education reforms, and specifically clinical legal education reforms, have not been usually individualized to be scrutinized as potential motors for development and social change. A second body of literature is the legal transplant works within the comparative legal studies field. This literature has been traditionally focused on studying the transplant of rules or legal institutions, but less focus on studying the role of legal education as object or vehicle for the transplant of legal institutions. And, finally, an increasing body of literature on globalization of clinics and public interest law[13]. With my work I aim to offer a perspective of the emergence and development of public interest legal education from certain Latin-American countries, particularly

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the law and not to write about it. In a social imaginary in Latin America, people usually do not write law thesis on law school clinics.

[12] Daniel Bonilla, Colombian law professor and clinician has talked extensively about the differences between law school clinics in the Global North and the Global South. Bonilla argues: "the strength of clinical legal education in the countries of the Global North where it was developed is evident. In the United States and Canada, in particular, clinics have existed for decades and have emerged as an irrefutable part of the law schools. The strength of legal clinics in these countries is demonstrated by the number of programs that exist, the quantity of cases worked on successfully each year and the number of publications on the subject. In sum, the academic capital available to clinics in the North is much greater than that available to clinics in the South. (…) Second, clinics in the North have far more access to scarce resources, money, researchers, academic networks and libraries than clinics in the South. *See* Daniel Bonilla, *Legal Clinics in the Global North and South: Between Equality and Subordination – An Essay,* 16 YALE HUM. RTS. & DEV. L.J. 1, 8 (2013)

[13] *See* Yves Dezalay and Bryant Garth, *The internationalization of Palace Wars: Lawyers, Economics, and the Contest to Transform Latin America States,* The University of Chicago Press (2002)*;* Stephen J. Ellmann, "*Cause Lawyering in the Third World*," Chapter 12 in *Cause Lawyering: Political Commitments and Professional Responsibilities*, at 349–430 (A. Sarat & S. Scheingold, eds., Oxford University Press, 1998); Scott L. Cummings, *The Internationalization of Public Interest Law*, 57 DUKE L.J. 891, 959 (2007); Scott L. Cummings & Louis Trubek *Globalizing Public Interest Law* 13 UCLA JOURNAL OF INTERNATIONAL LAW & FOREIGN AFFAIRS 1-53 (2009).

my own, Colombia. I try to engage with the literature that has been produced both in the U.S. and Latin America on issues of legal transplantation and law and development. However, I believe that my main audience is the clinical legal academic community. Like Professor Frank S. Bloch, I believe in the existence of a Global Clinical movement. This means that I believe that clinical legal education is playing an increasingly important role in educating lawyers worldwide. Therefore, it is urgent a reflection on the history, goals, central concepts, methods of clinical legal education and collaborations from a global perspective.[14]

At this point, I can think in at least two practical implications of my study. On the one hand, as I mentioned earlier there are ongoing initiatives to either establish new PILCs or strengthening existing clinical programs in Latin America. The U.S. government is still sponsoring some of these initiatives and U.S law schools and universities participate actively in this type of projects. There is also an increasing collaborative work between clinics in the North and the South on specific clinical projects. I share the concern expressed by authors like Bonilla, Perelman, Jaramillo, Silk among others[15], regarding the conditions in which these partnerships are established and developed. That discussion will be fully explored in chapters 4 and 5.

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[14] *See* Bloch, *supra* note 5, Introduction.

[15] *See* Bonilla, *supra* note 12; David Bilchitz *Creating the Space "In Between": Towards a Conception of Equal Exchanges in the Legal Academia of the Global South,* 16 YALE HUM. RTS. & DEV. L.J. 59 (2013); Jeremy Perelman, *Transnational Human Rights Advocacy, Clinical Collaborations, and the Political Economies of Accountability: Mapping the Middle* 16 YALE HUM. RTS. & DEV. L.J. 89 (2013); Isabel C. Jaramillo Sierra, *Mapping Academic Exchanges: Beyond the North-South Divide,* 16 YALE HUM. RTS. & DEV. L.J. 171 (2013) and James Silk, *From Empire to Empathy? Clinical Collaborations Between the Global North and the Global South-an essay in conversation with Daniel Bonilla* 16 YALE HUM. RTS. & DEV. L.J. 41 (2013).

In the next section of this introduction, I will summarize some of the main theoretical issues and debates in every one of bodies of literature that I mentioned above. I would like to suggest, since now, the point in which I think these bodies of literature converge and that are useful for my own work. My main point is that it definitely matters whether clinical models are being wholly transplanted, modified, or created anew in different contexts.[16] Law school clinics have played and are playing a key role in the so-called "globalization of public interest law".[17] And we should advocate for more detailed descriptions of the movement of people and ideas across borders which is key to understand the complex relationships between law school clinics in the world, as well as to comprehend how clinical legal education fits within larger theoretical frameworks, such as law and development, and very specifically to anticipate what we can expect from those relationships and collaborations in the near future.

One first approximation to Law and development

Law and Development is a general term used to describe a set of ideas and practices guiding reform of legal institutions in developing and transition countries

[16] *See* Sameer M. Ashar, *Book Review of Frank S. Bloch, Ed., the Global Clinical Movement: Educating Lawyers for Social Justice* J. LEGAL EDUC. 193, 202 (2012)
[17] *Id.*

during the second half of the 20th century.[18] During the 1960s and 1970s, U.S. academics from different disciplines started to work in developing countries on projects designed to promote economic and social development. The realization of these goals required formulating proposals for legal reform, which would improve the rule of law in those nations. Law and Development advocates believed that legal systems in Latin America and other developing nations did not have the kind of lawyers that were needed to face the challenges of a modern and developed world.[19] They held that one of the problems in the case of Latin America was the formalist educational system imparted to law students.[20] Formalist professors taught that the law was an abstract system to be applied by rigid internal rules without concern for policy relevance or social impact.[21]

At that time, the main goal of the Law and Development movement in the region was to transform legal culture and institutions through educational reforms and selected transplants of modern institutions in order to respond to the increasing pressures of poverty and underdevelopment. The idea was to create a new and more instrumental legal culture.[22] This led to a heavy emphasis on reform of legal education because for the reformers this was the source of the legal formalism[23] in the practice of

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[18] *See* David Trubek, *The "Rule of law" in development assistance: Past, present, and future.* in David Trubek and Alvaro Santos Eds. THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL. 76 (Cambridge Univ. Press 2006)
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] By legal formalism I understand a concept of the law that identifies the system with the law. According to a formalist conception, the law is complete, coherent and closed. The law is able to give

law.[24] There was also formalism in the judiciary, legislature and practicing bar; but the idea was that a change in the legal education system was the most effective way to bring a change in all other legal institutions.[25]

Criticism of the first phase of the Law and Development movement in Latin America has probably been more widespread than the legal education reform projects themselves. Although different types of critiques to the legal education reform projects during this time have been made, the sharpest critiques came especially from the U.S. participants of the early law and development movement of the 1970s and early 1980s. As David Trubek has said: "In some cases, the transplants did not 'take' at all: some of the new laws promoted by the reformers remained on the books but were ignored in action. In others, laws were captured by local elites and put to uses different from those the reformers intended".[26]

Some critiques are more theoretical and some are more practical, but all overlap in important ways. On the one hand, theoretical critiques relate to those patterns of thinking that were at the base of the reform projects. On the other hand, practical critiques relate mainly to problems that arise from the implementation of the reforms. I will come back to some of these critiques in Chapter 1 of this work.

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unique answers to all the problems that arise in a political community. *See*, Daniel Bonilla, *supra* note 2, at. 262.

[24] *Id.*

[25] *Id.*

[26] *See* Trubek, *supra* note 18, at 78.

However, one of those critiques, the legal imperialism critique, is one that allows me to explore an important relationship for this work which is the relationship between clinical legal education and law and development projects.

The relationship between law and development, clinical legal education and the legal imperialism critique.

Richard Wilson, a longtime expert on clinical legal education, is one of the authors that argue that clinical legal education as adopted by law schools outside the United States is the result of an export from the United States.[27] One of Wilson's central arguments is that this U.S. export is not now and has never been a case of American legal imperialism. To develop this argument Wilson starts by presenting the three different moments of the law and development movement.

The first one, during the 1960s and 1970s, in which the first legal education reform projects were carry out to Latin America. The second moment, from the early 1980s to the early 1990s that began with the Reagan government programs that promoted Rule of Law, strengthening democracy and good governance. Wilson argues that the early scholarship from this period is the most skeptical of the three stages of law and development.[28] However, he argues that at the same time the early promoters of this phase of the movement were "self-conscious" and drew lessons from their

[27] *See* Wilson, *supra* note 5, at 135
[28] *Id.* at 142

predecessors in the first phase. Legal education reform, in general, and clinical legal education in particular were a priority during these years for the donors.[29] Therefore, the legal imperialism critique, according to Wilson, was definitely not present during those years.

Finally, the third moment of law and development in which the idea of development includes both economic growth and human freedom[30] and it which one-size fits all models of development have no place. Wilson claims that clinical legal education reform "works against the grain of traditionally capitalist development policies, promoting care for the poor and marginal in the legal system, as well as greater attention to the ethical responsibilities of the legal profession".[31]

Wilson has engaged in an interesting discussion with another clinician, Phillip Genty who believes that despite their good intentions, U.S. clinical teachers have exhibited a 'cultural blindness' in the way they promote law school clinics abroad. Genty is particularly concerned for the fact that most of the countries that are the recipients of law school clinics are civil law countries. He affirms that U.S. clinicians have oversold that clinical discourse abroad. A key difference between Wilson and Genty is that for Wilson overselling does not necessarily mean imperialism through clinical instruction. Both Wilson and Genty, however, agree that US exporters become more aware of the deep cultural differences between civil and common law

[29] *Id.*
[30] *Id.* at 143
[31] *Id.*

traditions.[32]

Part of the literature on the relationship between law and development and clinical legal education still struggles with one question: to what extent the clinics established after the 1990s (mostly PILCs) can be subject to the same type of criticism of the first wave of legal education reforms in the 1960s. The work of clinical professor Peggy Meissel addresses this question using recent cases of law and development projects in Irak, China, and Russia. Meissel and others have argued that in order to avoid that sort of criticism and to successfully support the creation of reforms in such countries, the approach must be more collaborative which basically means "involve colleagues from the host country from the outset in establishing the purpose and goals for the project…immerse themselves in the local context and culture early in the process and then maintain a high level of collaboration through all phases of delivery to insure that the reforms they seek can work in the local context".[33]

Bettinger-Lopez and other human rights clinicians[34] have responded to the imperialism critique supporting a critical approach to the practice of human rights clinical teaching. Bettinger-Lopez and other professors have highlighted different areas in which clinical educators, who have developed their practice in the poverty law and community lawyering, have stimulated the critical thinking within the human

[32] *Id.* at 144.
[33] *See* Peggy Maisel, *The Role of U.S. Law Faculty in Developing Countries: Striving for Effective Cross-Cultural Collaboration*, 14 CLINICAL LAW REVIEW 465, 504 (2008).
[34] See Carol Bettinger-Lopez et al., *Redefining Human Rights Lawyering Through the Lens of Critical Theory: Lessons for Pedagogy and Practice* 18 GEO. J. POVERTY L. & POL'Y 337 (2011)

rights clinical teaching realm. Their idea is to explore strategies "for redefining human rights lawyering in a way that is responsive to critical theorists and that informs and expands our teaching, our advocacy, and our students' sense of what it means to be a human rights lawyer".[35] Some of these strategies include: (1) The careful selection of cases and projects that reflect a commitment to taking on riskier endeavors situated in their social, political, and historical contexts; (2) The creation and adoption of an ethical framework that is responsive to the challenges faced in their work; (3) The redefinition of community lawyering to include different kinds of collaborative partnerships, from working with communities, to identifying transnational dimensions to the work of the clinics, to working with non-legal professionals; (4) The creation an ongoing self-awareness about power differentials and how that informs the clinical work with respect to race, class, culture, gender, ethnicity, disability, sexual orientation, and sexual identity.[36]

The legal imperialism critique remains open. To what extent is that conception of collaboration enough? Does the institutional design of clinical projects allow authentic collaboration, mutual understanding and full awareness of the differences between clinical work in the North and South? How are the terms of collaboration being established?

Another important voice in the issue of law and development and clinical

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[35] *Id.* at 338
[36] *Id.* at 380

educational reforms in Latin America has been Helena Alviar, the former dean of Universidad de los Andes school of Law. Alviar is less concerned about the claims of legal imperialism but more in the tensions and effects that specific legal education reform projects have had on the law school curriculum, particularly in Colombia. In her article "The Classroom and the Clinic: The Relationship between clinical legal education, economic development and social transformation", Alviar's starting point is again to affirm that "most reforms of legal education in the region promoted the establishment of legal clinics". She argues that throughout the history of law and development efforts in Latin America, there has always been a tension between legal education in the classroom and in the clinic. Alviar's big contribution is to affirm that law and development projects can generate tensions such as reviving the discussion between formalism and antiformalism in the legal academy. This does not mean, however, that LACs are examples of formalism and PILCs are examples of antiformalism – she argues.[37]

The legal transplant as object or vehicle of the legal education reform effort

The metaphor[38] of legal transplant has been understood as the moving of a rule or a system of law from one country to another, or from one people to another.[39] The term was originally coined by comparativist Alan Watson in the 1970s and it has been

[37] *See* Alviar, *supra* note 7, at 214
[38] The idea of legal transplant as a metaphor can be found in Maximo Langer, *From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure*, 45 HARV. INT'L L.J. 1 (2004).
[39] See ALAN WATSON, *Legal transplants: An approach to Comparative Law*. 21 (Univ. of Georgia Press 1993).

subject of enormous debate and controversy in the last three decades.[40] The first set of works on legal transplants challenged a functionalist-positive view of the law, which considered the law as a group of rules produced by a sovereign power in response to the needs of society.[41] Researchers on legal transplants have shown how much law is transplanted or borrowed instead of being originally created by local powers.[42]

The literature on legal transplants' causes, dynamics, structure and consequences has focused on a simple model[43] with three main features: First, in relation with the agents, there are exporters and importers. Both of them are easily identifiable. They are usually governments that act in name of particular states. According to this simple model, the legal system of the importer is usually dependent or less developed that the legal system of exporter.[44] Second, the object of the transplant consists of a set of legal rules that do not change when transfer to the importer state. Finally, according to this simple model, the dynamic of the transplant consists of a one-way action, which means that the legal rule travels from one state (the exporter) to the other (importer). The transplanted rule replaces the prior law or fills a gap in the legal system of the recipient. The transplant implies a formal promulgation and takes place in a precise moment.

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[40] *See* for example the works of Langer, *supra* note 38; Pierre Legrand, *The Impossibility of "Legal Transplants"*. 4 MAASTRICHT JOURNAL OF EUROPEAN & COMPARATIVE LAW 111(1997) or Gunther Teubner, *Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Differences,* 61 MODERN LAW REVIEW 11, (1998)

[41] Michele Graziadei, *Legal Transplants and the Frontiers of Legal Knowledge,* 10 THEORETICAL INQUIRIES IN LAW 723, 726 (2009)

[42] *Id.*

There are limitations of the simple model, for instance, to explain the transplant of legal education institutions or the role of graduate education to bring change. This is the part of the legal transplants literature that I am really interested in. Precisely, in more recent years, the literature on legal transplants has demanded attention for reasons, which are not solely academic.[45] Governing powers and international institutions have relied in legal transplants literature to achieve their objectives that require legal reform.[46]

Legal transplants in Latin America

Legal transplants have been fundamental to the construction and transformation of Latin American law.[47] For example, the Laws of the Indies were decisive for the transformations of the Law of indigenous communities who inhabited the Latin American region and it was also very important in the construction of the legal systems of the colonies.[48] Similarly, the Chilean Civil Code, drafted by Andrés Bello, was influenced by the Civil Code of Napoleon and subsequently, that Bello Code influenced significantly the writing of other Civil Codes in Uruguay, Argentina, Honduras, Colombia, among other Latin American countries.[49] In the second half of the 20th Century, Latin America has transplanted a set of rules and legal and economic institutions that seek to promote classical liberal principles; to strengthen the rule of

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[43] *See* DANIEL BONILLA (ED.), TEORÍA DEL DERECHO Y TRASPLANTES JURÍDICOS 14 (Siglo del Hombre 2012)
[44] *See* Graziadei, *op. cit.,* at 727
[45] *Id.*
[46] *Id.*
[47] *See* Bonilla, *supra* note 43, at 13.
[48] *Id.*

law and the market economy, among other purposes.[50] I will describe in depth some of those law and development projects in Chapter 1 of this thesis.

Latin American Legal transplants have adopted different ways during the years. For instance, the transplant of rules or institutions that seeks to transform the criminal judicial system is clearly different from the transplant of conceptual categories developed by the U.S. legal and political theory with the purpose of reconstructing and reinterpreting Constitutional law in Latin America. Authors like Maximo Langer[51] or Diego Lopez[52] have made substantial contributions to the entire

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[49] *Id.*
[50] *Id.*
[51] Langer's work analyzes "the Americanization thesis in criminal procedure. According to the strong version of this thesis, the U.S. legal system has become the most influential system in the world and, as a consequence, a substantial number of legal systems may gradually come to resemble or mimic the American one and thus become Americanized. This article cautions against the strong version of the Americanization thesis through an examination of the introduction of American-style plea bargaining in four civil law countries - Argentina, France, Germany and Italy. It shows that even if each of these countries has introduced a form of plea bargaining, there are two main series of reasons that explain why these jurisdictions will probably not be Americanized. First, there are important features of civil law countries' inquisitorial system that may neutralize the Americanization effect of the imported practice. Second, these four civil law jurisdictions have introduced plea bargains that present differences - even substantial differences - not only from the American model but also among themselves. As a consequence of these differences between the Argentine, French, German and Italian plea bargains, the article shows that a paradoxical consequence of the American influence on civil law jurisdictions may be the production of fragmentation and divergence, rather than the Americanization of criminal procedures of the civil law tradition. In order to demonstrate these points, this article redesigns two conceptual frameworks. First, it reconceptualizes the adversarial and inquisitorial systems as theoretical categories. The article shows that these systems should be conceived not only as two different techniques to handle criminal cases, but also as two different procedural cultures and as two different ways to distribute powers and responsibilities between the main actors and institutions of the criminal justice system. Second, the article also challenges the framework of the legal transplant as a way to think of the circulation of legal ideas and institutions between legal systems. It shows that the metaphor of the legal transplant is too rigid to account for the transformations that legal ideas and institutions undergo when they are moved into new legal systems. Instead, the article proposes the metaphor of the legal translation as an alternative heuristic device when analyzing the transfer of legal ideas and institutions between legal systems. The adversarial and inquisitorial systems, understood as two different procedural cultures, can be understood as two different systems of productions of meaning. Thus, the transfer of legal institutions from one system to the other can be understood as translations from one system of meaning to the other" *See* Langer, *supra* note 38.
[52] The work of Diego Lopez focuses in the import and export of theories of the law and not of legal rules. Lopez focuses his attention on the recipients of legal transplants and very especially in the role

discussion of legal transplants in Latin America. I am fully aware that their work has nothing to do with clinical legal education. But their contributions are examples of new and fascinating discussions on legal transplants in Latin America that make much more complex a simple model on legal transplantation.[53]

Legal transplants and legal education

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that non-governmental agents and legal academics play in this process of change and transference. Lopez objective is twofold: on the one hand he is aimed to propose a cultural reconstruction of the Latin American theory of law. In particular, to rethink the role that legal positivism has played in the region. This includes its various interpretations and modifications, as well as political and legal purposes that these transformations have pursued. In a similar way Lopez is aimed to research the strategies of resistance that have been articulated to provide theoretical alternatives in the region. On the other hand, Lopez pursues a normative goal. He wants to reposition the Latin American theory of law vis-à-vis the centers of power that produce legal theory. So for Lopez is not only key to understand the dynamics of transference and reception between contexts of creation and production of a transnational theory of law, but also to divulge and value the contributions that Latin American legal theory has done to the international legal academy. In his work, Lopez tells his side of the story as a young doctoral student at Harvard Law School. In particular, the experience that he lived writing a dissertation that wanted to explain and evaluate the hermeneutical turn as a consequence of the amendment and change of several National Constitutions and constitutional legal theories in the last decades of the 20th century. That kind of work was conditioned for the dominant structures and interpretations of the Theory of Law in the U.S. and its relationship with the interpretations of that theory in Latin America. A classic example in the work of Lopez is the use that local legal academics made of authors like H. L. AHart Lopez proposes a new approach to the theory and transnational connections between local theory of law. This new interpretation would explain how the law works locally, how structured the local legal conscience , the functions of the dominant theory of law and the way they have been interpreted and transformed by academics in the region. *See* DIEGO E. LÓPEZ-MEDINA, TEORÍA IMPURA DEL DERECHO. LA TRANSFORMACIÓN DE LA CULTURA JURÍDICA LATIOAMERICANA (Legis, Universidad de los Andes, Universidad Nacional 2004)

[53]The work of Lopez and Langer can fit in what Jorge Esquirol has defined as Legal Latin Americanism. According to Esquirol, Latin Americanism is the academic and professional practice of writing about law (and legal ideas) in Latin America from an external perspective. Its characteristic feature is not the physical location of the author, but rather a distinct epistemology. Most of this literature is produced in North America, in English, for audiences in the global North. By contrast, legal discourse in Latin America refers to the vast array of academic and societal debate about law in specific national legal communities in Latin America. Distinguished in this way, writing about Latin American law in English in North America and engaging in specific legal debates in a particular Latin American location can take very different forms. Additionally, the legal politics in one forum may be quite unlike the other. And, while Latin American legal studies is a field unto itself in the global North, the same cannot be said for legal discourse across Latin America as a whole. Specific locales or discursive communities may have their own conventions, authoritative references, short-hands, and interpretations of sources and events. Still, despite a broad range of local variation, a primary divide can be traced between legal discourse about Latin America principally generated in the U.S. and Europe, and legal

Other authors have considered that legal education is also an effective vehicle for legal transplants. In the case of the United States, for example, Hupper has argued that U.S. graduate legal education is one of the mechanisms through which U.S. legal norms are transplanted to other countries.[54] Graduate legal education is a powerful vehicle for legal transplants because it forces the student to think about the law as an American lawyer would do it; because it is not tied to a formal U.S. Government agenda and it engages with U.S. legal scholarship which is an efficient way of diffusing U.S. ideas about the law abroad.[55]

Hupper holds that the doctorate in law (J.S.D or S.J.D. degree) is particularly effective because it focuses on the teaching function. Originally, this degree was conceived as a teacher training program for the U.S. market.[56] However, the degree is now pursued primarily by lawyers trained in other countries[57] because of "the increasing internationalization of legal education, coupled with the growing academic orientation of U.S. legal education".[58]

Following Pierre Legrand, Hupper argues that law teachers help shape the basic forms in which people think about law.[59] People with American doctoral law degrees usually also bring the insights of the U.S. studies into their scholarship in their

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discourse in specific Latin American countries. *See* Jorge Esquirol, *Legal Latin Americanism,* 16 YALE HUM. RTS. & DEV. L.J. 145 (2013)

[54] Gail Hupper, *The academic doctorate in law: A vehicle for legal transplants?* 58 J. LEGAL EDUC. 413, 444 (2008)

[55] *Id.*

[56] Gail Hupper. *The rise of an academic doctorate in law: Origins through World War II* 49 AM. J. LEGAL HIST. 1, 28 (2007)

[57] *See* Hupper, *supra* note 54, at 454

[58] *Id.* at 422

own countries. Sometimes, the graduate, as academic expert, advises on the adoption of particular legal reforms in his own country.

However, it is interesting that Hupper argues that the adoption of a particular legal reform is not the only way in which a legal transplant can be considered as successful. In this point, she believes that scholarship has a cognitive impact even if it does not result in the modification of positive law. This would be a very simplistic approach to judge whether a legal education transplant is or is not successful because the role of academics is not limited to persuade decision makers.[60]

Jonathan Miller offers a slightly different view of the role of graduate legal education within a legal transplant theory. Miller creates a typology of legal transplants[61] that focuses on the motivation for the legal transplant, particularly, on the importer's motivation. Miller describes all forms of legal transplants using four types: i) The cost saving involves an importer who brings a solution that has worked elsewhere with the purpose of saving time and costly experimentation to judges and legislators[62]; ii) The externally dictated, in which a foreign individual, entity or government indicates the adoption of a foreign legal institution or model "as a condition for doing business or for allowing the dominated country a measure of

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[59] *Id.* at 445
[60] *Id.*
[61] *See* Jonathan M. Miller, *A Typology of Legal Transplants: Using Sociology, Legal History and Argentine Examples to Explain the Transplant Process*, 51 AMERICAN JOURNAL OF COMPARATIVE LAW 839 (2003)
[62] *Id.* at 845

political autonomy"[63]; iii) the Entrepreneurial, in which a local individual or body is interested in importing foreign norms or institutions in order to gain some benefits at the domestic level[64]; and iv) the legitimacy-generating, in which the prestige of a foreign model or a particular legal institution is used to generate legitimacy and allow the transplant of legal institutions.[65]

Legal education as vehicle for the legal transplant appears clearly in the Entrepreneurial type as an instrument of this sort of transplants. According to Miller, foreign degrees and expertise, and international networks, are used to build positions at home. A clear motivator for a legal transplant is the presence in the receiving country of people interested in investing in the transplant legal structure so that they can obtain political or economic benefits from their investment.[66] Miller offers the example of the individual who travels abroad to study a particular area of law, go home, establish a law firm or NGO in the field, and then work with legislators to get a law passed modeled on the statute that was subject of the study abroad.[67]

Miller's argument is heavily influenced by the works of Yves Dezalay and Bryant Garth[68]. In their work, these authors have tried to show how globalization actually works. They have exposed how ideas about law and legal institutions travel from one country to another as a result of the efforts of individuals working in their

[63] *Id.* at 847
[64] *Id.* at 850
[65] *Id.* at 854
[66] *Id.* at 850
[67] *Id.*

personal interests or the firms or organizations where they belong and how legal education institutions emerge as key sites for the social production of a field of valuable expertise.[69] Law schools play important roles in the reproduction of knowledge, the reproduction of power, governing elites and hierarchies among elites and expertise.[70]

Dezalay and Garth have demonstrated, for instance, the increasing influence of American law firms in the international legal field and the development of international legal practice from a more civilian focus to an Anglo-American one. This has been the result of the work of personal individuals who seek to increase their social capital through legal education.[71]

Finally, it is possible to identify legal education as an object of the legal transplant in other of the types described by Miller. For instance, a legal education reform imposed by a foreign agency or government could be seen as an example of an externally dictated transplant in Miller's typology, and a legal education reform which is adopted inspired by the prestige of a particular legal academy could be an example of a legitimacy-generating transplant. In those circumstances, legal education seems to be the object of the legal transplant and not necessarily a vehicle for it.

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[68] In particular the book by Dezalay and Garth, *supra* note13.
[69] *Id.* at 5
[70] *Id.*

3. Clinical legal education and globalization of public interest law

On this issue of globalization of public interest law, the academic work of Scott Cummings and Louise Trubek has been key to my own understanding of the intersections between public interest law, law and development and human rights. The connection of these ideas and projects is fundamental for this work. Cummings and Trubek describe public interest law "from an insular American project borne of the unique domestic and international conditions of the Cold War period toward a more globalized set of practices and concepts that are now being embedded in national legal systems across the developing and transitional world, and integrated into multi-faceted transnational activist campaigns".[72] Why and how this is happening? and what does public interest law look like in the global age are the basic questions of their work?[73]

The precision is very important because increasingly we hear of the existence of a so-called global clinical movement (global clinical movement): perhaps a term coined by Professor Frank S. Bloch. The term denotes the increasing emergence of legal clinics in different parts of the world (see text). Although I must say that my analysis of the legal clinics are limited to those that take place in the university context and in that sense I defend the idea of legal clinics may be more restricted than the notion of legal clinics in the text of Professor Bloch. However, and this may be a more

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[71] *See* ANNELISE RILES, *Comparative Law and Socio Legal Studies* in THE OXFORD HANDBOOK IN COMPARATIVE LAW. Eds. Mathias Reimann and Reinhard Zimmermann, 790 (Oxford Univ. Press 2006)

[72] *See* Scott L. Cummings & Louis Trubek, *Globalizing Public Interest Law* 13 UCLA JOURNAL OF INTERNATIONAL LAW & FOREIGN AFFAIRS 1, 5 (2009).

normative than descriptive, I think in the context of a clinical legal education movement overall, recognize a value of efforts to develop clinical legal education in different parts of the world. And I think the language of legal transplantation input denotes the idea that somewhere in the world it seems that there was an original development, being successful enough, is transported to other regions to work there. It was part of some idea of superiority of the original development then moves to another context. For now, simply reiterate that in my work I present historical and contemporary evidence that Latin American clinics are not just transplant an institution related to legal education from one place to another.

Structure of this dissertation

In chapter 1, I start to trace the relationship between law and development projects and clinical legal education in Latin America. In the chapter, I discuss what I call "the narrative of the origin". This is the idea that clinics in Latin America were the result of law and development projects that at some point, particularly during the 1960s and 1970s, included legal education reforms. According to this narrative, one type of reform was to introduce legal aid clinics (LACs) within the law schools. The chapter has two major findings that to some extent contradict this traditional narrative of the origin: First, there is a pre-history of clinical legal education efforts in the region before law and development projects took place in the 60s and 70s in the

[73] *Id*. at. 4

region. Second, I will argue that legal clinics were not an essential component of the legal education reforms implemented in most Latin America countries during the 1960s and 1970s. This was also the period in which clinics began to operate in U.S. Law Schools. To illustrate that, I will discuss briefly the history of the clinical legal education movement in the U.S. also in this first chapter.

In Chapter 2, I move to discuss a second narrative, "the narrative of the transformation". This narrative takes place in the 1990s when the new clinics, the PILCs began to operate in Latin America with the support of international foundations, like the Ford Foundation. In the chapter, I do not deny the decisive role of that international support in the establishment of a network of PILCs. However, following the works of authors like Rodriguez-Garavito and Uprimny, I argue that the conditions for the establishment of PILCs were given with the new realities of transition to democracy and constitutional change in many Latin American countries. The interesting part of this story is that this is also the time when neoliberal projects arrived to the region. So these clinics start to operate in the midst of competing projects like the neoliberal and neoconstitutional projects as I will explain in the chapter. So the major finding here is that the conditions for the establishment of the new PILCS were given and that transition/coexistence from LACs to PILCs is not the result of an isolated legal transplant from the North to the South that wanted exclusively to transform the clinical legal educational practices in the region.

In Chapter 3, I focus on discussing the narratives of origin and transformation in my own country, Colombia, which is a particular case regarding clinical legal education. In the chapter, I argue that Colombia was one of the countries that effectively introduced mandatory clinical legal education after law and development projects even though there was a pre-history of clinical legal education experiences there. And then, during the 1990s, Colombia was not included in the sponsored programs to establish PILCs but some of these programs started to operate and to coexist with the mandatory LACs. This was mostly in private universities in the capital city of the country, Bogota. I insist that the conditions for the beginning of these programs were given with the new 1991 Constitution that established new actions and enforcement mechanisms to protect constitutional rights.

In Chapter 4, I focus specifically on the issue of collaboration between clinics of the North and South. The chapter follows a contemporary discussion about the conditions in which collaborations between clinics of the North and South are being established. In chapter, I introduce a theoretical discussion on clinical collaborations and then I move to discuss two recent cases that involved collaborative clinical projects.

Finally in Chapter 5, I revisit a proposed framework for human rights clinical teaching and advocacy that we developed after the right to free education project, one of the case study that I discussed in Chapter 4. The idea in this final chapter is to review that model taking into account the emerging literature on collaborations

between law school clinics of the North and South. The framework is not a one size fits all model but it could help and assist other clinicians, particularly in the North that wish to play a role in clinical projects in collaboration with PILCs in the south.

CHAPTER 1

THE NARRATIVE OF THE ORIGIN: LAW AND DEVELOPMENT, LEGAL EDUCATION REFORM AND LAW SCHOOL CLINICS IN LATIN AMERICA BEFORE THE 1960S

> "I think that U.S. law school methodology is an exportable commodity to Latin America. Further, I think it is exportable for wider use than just in law schools. It will be a big job, a delicate job, this export process"
>
> Covey T. Oliver
> United States Ambassador to Colombia at the Cornell Conference: United States Law Schools and Latin American Law and Development. June 17, 1966.[74]

In this first chapter, I start to discuss the relationship between U.S. and Latin American law schools on clinical legal education. I will call this the narrative of the *origin*. According to this narrative, law school clinics in Latin America were the result of law and development projects that at some point, particularly during the 1960s and 1970s, included legal education reforms. One type of reform was to introduce legal aid

[74] *See* Covey T. Oliver United States Ambassador to Colombia at the Cornell Conference: United States Law Schools and Latin American Law and Development. in H.C.L. MERILLAT AND RICHARD W. EDWARDS, JR. UNITED STATES LAW SCHOOLS AND LATIN AMERICA. LAW AND DEVELOPMENT. REPORT OF A CONFERENCE OF LAW TEACHERS HELD AT CORNELL LAW SCHOOL 15 (American Society of International Law 1966)

clinics (LACs) within the law schools.[75] In the chapter, I propose an alternate story. I demonstrate that clinical legal education did not appear in Latin America at the same time that the first law and development projects began during the 1960s and early 1970s. Indeed, my research shows that law school clinics in some countries of the region existed before the first phase of the law and development movement. This means that there is a pre-history of clinical legal education efforts in the region, mostly following a legal aid model. Second, I will argue that legal clinics were not an essential component of the legal education reforms implemented during the 1960s and 1970s in most Latin American countries. These two arguments oppose a general view according to which law school clinics in Latin America are the result of a "*legal transplant*" from the North to the South in the 1960s and 1970s. There was, however, an influence from the North to the South and therefore some law and development projects effectively included the North's support, sometimes economic, sometimes technical or sometimes both, to the establishment of LACs in the region. I believe those were exceptional experiences, like the Colombian case, that I will fully explore in Chapter 3.

This chapter will begin with a working definition of clinical legal education that will be useful for the rest of this work. Then, I will give a brief account of the clinical legal education movement in the U.S. to better understand the moment in which law school clinics emerge in this country. In the next section, I will summarize

[75] This traditional narrative can be found, for instance, in Erika Castro et. al *Clinical Legal Education in Latin America: Toward Public Interest in Global Clinical Movement*. *See* BLOCH (ED.), *supra* note 5 at. 69.

the origin, content and criticism to the law and development projects carried out during the 1960s and 1970s in Latin America, a phase which is also known as the first moment of the Law and Development movement in the region. And finally, I will present some evidence of the pre-history of clinical legal education efforts in the region.

1. A working definition of clinical legal education

In the introduction of a recent book, which discusses the existence of a Global Clinical movement, Professor Frank S. Bloch draws attention to the diversity of programs that can fit into the category of legal clinic. Bloch mentions as examples "the community legal centers in Australia, legal literacy projects in India, legal aid clinics in the United States and *clinicas juridicas* in Chile."[76] Bloch suggest that, despite their differences in content and structure, these broad variety of programs "offer experientially based training in professional skill and values that emphasize critically important areas of professional and public interest that have been left out of the traditional law school curriculum."[77] Therefore, it is key in this general definition of clinical program, first, that the legal clinic would be based in a law school; second, that it cover some areas not generally present in the traditional law curriculum; and, finally, that clinics teach certain skills to law students necessary for their future careers as lawyers.

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[76] *Id.* at xxiii
[77] *Id.*

Stephen Wizner, Clinical Professor Emeritus of Law at Yale Law School, introduces "a critical component" to his notion of the law school clinic, defining it as "a teaching law office where students can engage in faculty-supervised law practice in a setting where they are called upon to achieve excellence in practice and to reflect upon the nature of that practice and its relationship to law as taught in the classroom and studied in the library."[78] Basically, for Wizner, clinical education is a method of teaching law that should allow students to represent clients in the legal system, and to develop a critical view of that system.

Finally, Richard Wilson, law professor and director of the International Human Rights Law Clinic at American University's Washington College of Law, proposes a much more comprehensive working definition of clinical legal education that includes five components and I will adopt as my own in this work: (1) the program must be created through a law school with the purpose of being fully integrated into the academic curriculum of the institution, and the students who work in the clinic must receive academic credits for the case and class work that they perform during the term; (2) Law students must generally be in their final years of law school, must provide legal services or advice to real clients, and must learn from that experience. It is important to emphasize that clinical legal education is not limited to litigation. In general, any activity practiced by lawyers may be subject to clinical teaching, with the necessary adaptations. (3) Students must be supervised by an attorney, preferably by a member of the law school faculty, who agrees with the pedagogical purposes of the

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

clinical experience; (4) the clients served by the clinical program must generally not be able to afford the legal service provided by the clinic and are usually part of "traditionally disadvantaged, underserved or marginal sectors of the community"; and (5) supervised case representation by students must be accompanied or preceded by a pedagogical program that prepares students in what might be called theories of the practice of law.[79]

2. *Brief account of the clinical legal education movement in the U.S.*

In a speech delivered on April 15 2010, Martha Minow, Dean and Professor of Harvard Law School, said that "the largest change in (U.S.) law schools during the past 30 years is the rise of clinical education. Bridging theory and practice, making parts of legal education closer to a teaching hospital, clinics also elevated attention to

[79] *See* Richard Wilson, *Training for Justice: The Global Reach of Clinical Legal Education,* 22 PENN ST. INT'L. L. REV. 421, 423 (2004). I will adopt Wilson's working definition of clinical legal education in this research work. However, there are two aspects from his definition that could be polemic and, consequently, could stimulate a rich discussion of the contemporary goals, means and elements of a law school clinic. The first point has to do with the notion of students as subjects who deliver legal services, or advice, to real clients. There is a growing literature within and outside the theory of clinical legal education[79] that seeks to overcome a conventional, and sometimes hierarchical, relationship between lawyers (students) and clients. Some HRCs, for instance, offer examples of this new kind of relationship that eventually could challenge this particular component of Wilson's definition of clinical legal education. Often, HRCs make strategic alliances with international and/or local organizations to advance the protection of certain rights of individuals or groups.[79] More than clients, in this case, international and local organizations become partners or associates. The difference is subtle, but such partnerships have a deep impact on clinic work and student learning. Faced with a client, the student must simply perform a task that the client has requested; but with a partner relationship, students participate actively in making strategic decisions about those activities that will be performed in a given time during a movement or litigation process. A second controversial aspect of Wilson's working definition of law school clinic has to do with the fact that clinics should serve the interest of "traditionally disadvantaged, underserved or marginal sectors of the community."[79] In general, this is an approach to the definition of clinical legal education that is widely shared not only in the U.S but also in other countries that have clinical instruction. However, given the proliferation of law school clinical programs and the diversification of the labor of clinics, this component of the definition could exclude the work of some other programs in which law students are involved and which do not necessarily serve the interests of the disadvantaged, at least not exclusively.

poverty, racial and gender discrimination, and access to justice."[80] Minow's idea of legal clinics, however, is not new. Clinical legal education was conceived in the early 20th Century in the U.S. as a law teaching methodology that could help to overcome some of the problems of a very formalist and conceptual legal education that had little or no ground on real life situations or practice in the profession.

Jerome Frank, one notable author of American legal realism,[81] was one of the critics of the dominant paradigm of law teaching in U.S. law schools, a paradigm conceived under the legacy of Christopher Langdell at Harvard Law School. In 1933, Frank published his famous[82] essay, entitled: "*Why Not a Clinical Lawyer-School?*"[83] in which he argued for the development of a clinic in law schools similar to the clinics in medical schools. Frank held that from a study of only case precedent it was not possible to fully understand many of the situations that could emerge in a judicial process. For instance, it would not be possible to know whether or not a question of fact will be raised and, if so, what conflicting testimony would be introduced.[84] Furthermore, it would be impossible to know what the reactions of the judge or jury would be to conflicting testimony.[85]

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[80] *See* Martha Minow, *Legal Education: Past, Present and Future*. Available at http://today.law.harvard.edu/minow-addresses-the-past-present-and-future-of-legal-education-video/ (Last visited December 2016))

[81] American legal realism is probably the most influential movement in American legal history. Even though is not a monolithic movement, realists challenged a classical legal claim that legal reasoning was separate and autonomous from moral and political discourse.

[82] I say famous because today it is difficult to find a narrative of the history of the clinical legal education movement in the U.S. (and even in other countries) that it does not start with references to Frank's essay.

[83] *See* Jerome Frank, *Why Not a Clinical Lawyer-School?,*81 U. Pa . L. Rev. 907 (1933).

[84] *Id.* at 912

[85] *Id.*

As a consequence of this oversimplified concept of legal education, Frank vindicated practical experience as something necessary to teach the law. He also advocated for changing the case system to a preeminent method in American law schools. Frank imagined law clinics in which a considerable part of the teaching staff of a law school should consist of lawyers who already had experience in law practice.[86] This was in clear opposition to Christopher Langdell who believed that what qualifies a person to teach law was one's experience learning the law and not one's experience in lawyers' offices or in courtrooms.[87] Frank also believed that some of these professors could run the legal clinics assisted by graduate and undergraduate students and leading members of the local bar.[88] These were novel ideas at that time because legal education did not then involve any significant practical component.

However, as Minow correctly points out, the real development of legal clinics was only possible in the second half of the 20th Century, particularly from the 1960s to the late 1990s. This was a period of creation, maturation and consolidation of many law school clinics in the United States. In particular, the context of the 1960s and the demands for social relevance in American law curricula contributed to an increased demand for clinical programs. Advocates of clinical legal education were not only worried about teaching lawyering skills to the students (as early advocates of clinical education were) but also, specifically, about ensuring that the law serve the interests of

[86] *Id.* at 914
[87] *Id.* at 908
[88] *Id.* at 917

poor communities and individuals. According to Louise Trubek, an Emeritus Clinical Professor at the University of Wisconsin Law School, in the 1960s, there was an enormous explosion in poverty law practice and government programs.[89] This period was also a period of activism in social movements finding expression in the civil rights movement and the movement for welfare rights.[90] Law schools were not an exception during this time; indeed, there was a claim to incorporate in curricula programs and content that helped to achieve the goals of the civil rights movement[91] and, particularly, the delivery of legal services to the poor.[92] In fact, this goal is probably the most known and widespread idea of clinical legal education even today in the U.S.

But the clinical movement has experienced a change in its goals during the last twenty years. The attention for subordinate groups is still there as a goal of clinical legal instruction but it is not the only one. Other goals, such as providing professional skill instruction (in areas as interviewing, counseling, and fact investigation); providing opportunities for collaborative learning, or teaching the students professional responsibilities through clinical education, have emerged or have been re-emphasized, Not all clinics of today are concerned with the interest of the poor or disadvantaged communities. For example, Harvard Law School offers a Cyberlaw and

[89] *See* Louise Trubek. *U.S. Legal education and legal services for the indigent: a historical and personal perspective* 5 MD. J. CONTEMP. LEGAL ISSUES 381, 384 (1994)
[90] *Id.* at 384
[91] *See* J.P Ogilvy. Documentary: An Oral History of the Legal Education Movement. Part. I. Seeds of Change. A project of the National Archive of Clinical Legal Education Columbus School of Law, The Catholic University of America Washington, DC (2006)
[92] *See* Report of the Association of American Law Schools –American Bar Association Committee on Guidelines for clinical legal education. *Clinical Legal Education,* at 7 (1980) [hereinafter Report]

a Sports Law Clinic;[93] Yale Law School offers a Capital Markets—Financial Instruments Regulation Clinic and an Environmental Protection Clinic;[94] and Cornell Law School offers a Securities Law Clinic and a Water Law Clinic.[95] Rather than focusing on the interests and rights of the poor, most of these clinics are concerned with giving students direct experience in the practice of law in specific areas.

Clinics have also started to play a significant role in the international arena. This is the case for HRCs in particular, which emerged in the U.S. during the 1980s and early 1990s.[96] These clinics have appeared as a consequence of the increasing development of international human rights law and human rights institutions during the last two decades of the 20th Century.[97] Also, during this time, human rights advocates, national and international NGOs have sprung up around the world and to some extent have pushed for the consolidation of an international human rights movement.[98] At the same time, these clinics have brought the original social justice mission of clinical legal education to a transnational arena.[99] Indeed, HRCs have become actors that use international human rights law to improve the situation of

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[93] *See* Harvard Law School Clinical Programs website: http://hls.harvard.edu/dept/clinical/clinics/?redir=1 (Last visited December 2016)

[94] *See* Yale Law Clinical Opportunities https://www.law.yale.edu/studying-law-yale/clinical-and-experiential-learning (Last visited December 2016)

[95] *See* Cornell Law School Clinical Programs website: http://www.lawschool.cornell.edu/clinical-programs/ (Last visited December 2016)

[96] According to Deena R. Hurwitz, the first international human rights clinic operated at SUNY Buffalo School of law from 1979 to 1986. This clinic became later an asylum and immigration clinic. Then, in 1989, Yale Law School offered for the first time its international human rights clinic, and American University's Washington College of Law did it in 1990. See Deena R. Hurwitz, *Lawyering for Justice and the Inevitability of International Human Rights Clinics,* 28 YALE J. INT'L L. 505, 525 (2003)

[97] I*d.* at 524-525

[98] *Id.* at 526

[99] *See* Carrillo, *supra* note 10, at 540.

marginalized and underserved populations across the globe. In Chapter 4, I will discuss in depth the work of HRCs and the increasing collaborative work with clinics in the Global South with its challenges.

3. Early law and development projects in Latin America and the role of legal education reform

During the 1960s and 1970s, U.S. academics began to work in developing countries on projects designed to promote economic and social development. The realization of these goals required formulating proposals for legal reform, which sought to improve the institutional conditions in those nations. Law and Development advocates believed that legal systems in Latin America and other developing nations did not have the lawyers with the training necessary to face the challenges of a modern and developed world.[100] They held that one of the problems in Latin American legal education was the formalist training imparted to law students.[101] Then, formalist professors generally taught the law as an abstract system to be applied by rigid internal rules without concern for policy relevance and social impact.[102]

At that time, the main goal of the Law and Development movement in the region was to transform legal culture and institutions through educational reforms and selected transplants of modern institutions in order to respond to the increasing

[100] *See* David Trubek, *supra* note 18, at 76
[101] *Id.*
[102] *Id.*

pressures of poverty and underdevelopment. The idea was to create a new and more instrumental legal culture in Latin America.[103] This movement led to a heavy emphasis on legal education reform because, for the reformers, this was the main source of the legal formalism in the practice of law.[104] Although formalism also existed within the judiciary, legislature and practicing bar, the idea was that changing the legal education system was the most effective way to bring about change in all legal institutions.[105]

3.1 Legal education reforms and methods

According to James A. Gardner, the law and development movement set out to transport four basic American legal models to Latin America during this time: first, a methodological model, specifically the American case and the Socratic method of teaching law; second, educational, the basic American model and structure of legal education; third, professional, the American model of the lawyer as a social engineer or problem-solver; and, finally jurisprudential with a strong emphasis on "rule skepticism" and an "instrumental" vision of law inspired in the American legal realism.[106]

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[103] *Id.*
[104] *Id.*
[105] *Id.*
[106] *See* JAMES A. GARDNER, LEGAL IMPERIALISM: AMERICAN LAWYERS AND FOREIGN AID IN LATIN AMERICA 4 (University of Wisconsin Press 1980)

The U.S. Government and U.S. foundations funded several legal education reform programs during the 1960s in the region.[107] For instance, the United States Agency for International Development (USAID) launched legal education projects in Costa Rica in 1965, the Ford Foundation did it in Brazil in 1966, in Chile in 1967, and both USAID and Ford did it in Colombia in 1969.

The strategies to bring legal education reforms to Latin American countries were diverse and seemed to respond to the reception of American legal reform efforts by legal educators. In Brazil, for instance, USAID and the Ford Foundation established a Center for Study and Research in Legal Education (known as CEPED).[108] Even though it was formally affiliated with the State University of Guanabara, the intention was to establish an autonomous center to bring the set of reforms to Brazil and also to improve the law and economics training of Brazilian lawyers.[109] Gardner called this *"an indirect approach"*[110] to legal education reform in the country because most Brazilian law schools were not very receptive to the notions of change promoted by American agencies in the country. Moreover, the Brazilian lawyers who participated in the process—mostly corporate lawyers and middle-level lawyers in the public sector—seemed more interested in updating their knowledge on law and economics with their U.S. counterparts, rather than engaging in a structural

[107] *See* David Trubek & Marc Galanter, *"Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies"* 4 WISCONSIN LAW REVIEW 1062,1066 (1974)
[108] *See* Gardner, *op.cit.,* at 63
[109] *Id.*
[110] *Id.*

legal education reform to the Brazilian legal education system.[111] The legal transfer mechanisms used by CEPED included: bringing visiting American law professors to Brazil; giving training to CEPED fellowship recipients to develop teaching materials; organizing conferences; and, in general, actively encouraging U.S. legal education methods in informal discussions and formal assistance grants and programs.[112]

In contrast to the Brazilian case, the set of reforms in Chile started directly within Chilean law schools.[113] The reforms were funded by the Ford Foundation and had the support of Stanford University and the recently created International Legal Center (which was also funded by Ford). Gardner called the Chilean reform efforts "the largest and most important American legal assistance endeavor in Latin America."[114] Unlike the case of Brazil, the Chilean case is striking because there was a clear interest by Chilean faculty and administration in the "modernization" of the legal education system. This modernization, for the Chileans, included different components: a new law school building, a center for criminological research, support for libraries, an emphasis on social science education during the early years of law school, new graduate programs, and the revision of teaching methods.[115] Notably, these new methods included the development of seminar methodology, clinical work, and, in general, a greater participation by students in the classroom.[116]

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[111] *Id.*
[112] *Id.* at 81-82
[113] *Id.* at 126
[114] *Id.* at 126
[115] *Id.* at 128

According to John H. Merryman, an emeritus law professor at Stanford law school who was involved directly in the Chile law program, *"the Stanford-Chile Law Seminar"* was the central component of this program that brought young Chilean faculty to the U.S. with four main objectives. The first objective was to present a variety of ideas about the aims, methods and materials of legal education in the U.S. and to encourage them to analyze these ideas critically.[117] A second goal was to contribute to the development of new teaching materials for some of the courses that would be part of the reform proposed by the Chileans law school authorities.[118] A third objective was to stimulate research proposals with a socio-economic impact and to develop collaborative networks among the law faculties, with common concerns regarding the legal education system and a similar view of the role of legal scholars.[119] There were three seminars in the U.S. Later, however, some Chilean professors decided to conduct the seminar in Chile in order to more effectively accomplish program objectives.[120] The result was the creation of the *Instituto de Docencia e Investigaciones Juridica* in Santiago, which became operative in 1969, during the third and final year of the Stanford seminar.

Finally, in the case of Colombia, the strategy to bring legal education reforms to the country was the creation of an association of law schools known as ARED (*Asociacion para la Reforma de la Enseñanza del Derecho – Association for Law*

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[116] *Id.*
[117] *See* John Henry Merryman, *Comparative Law and Social Change: On the Origins, Style, Decline & Revival of the Law and Development Movement* 25 THE AMERICAN JOURNAL OF COMPARATIVE LAW 457, 486 (1977)
[118] *Id.*

Teaching Reform). ARED was different from CEPED in Brazil because agencies were aware of the need to have law school support to push for legal education and other law reform within the country. Moreover, the program differed from the Chile law program because the main activities developed by ARED took place in Colombia and not in the U.S. as did the Stanford Seminar. However, ARED's objectives did not differ significantly from those of CEPED and the Chile law program. These objectives were aimed at improving the social relevance of Colombian legal education; putting students and scholars in closer contact with Colombia's reality through empirical research and activities such as legal aid; making law professors more responsive to the policy implications of their work; and facilitating the publication of relevant research results in order to extend the impact of the program beyond the legal academy.[121] ARED's specific programs included methodology seminars, visiting American law faculty in Colombian institutions, sending Colombian law professors to U.S. law schools and to other countries like Brazil or Chile in which other legal assistance programs were offered.

As demonstrated above, strategies to introduce the reforms were different in every one of these Latin American countries. In Brazil, reform efforts focused on the creation of an independent institute, while in Chile, programs concentrated on launching seminars abroad and in Colombia, reforms included founding an association of law schools. Even more interesting was the way in which each one of these

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[119] *Id.*
[120] *Id.*
[121] *See* Gardner, *supra* note 106, at. 193-194

organizational strategies seemed to respond to these reforms taking place in their respective contexts. Responses ranged from a somewhat hostile attitude toward change in Brazil to a more supportive attitude toward reform in Chile. However, in all three cases, there exist deep similarities in the type of activities carried out by these different institutions or associations organized to develop legal education reforms in Latin America. Such activities included the development of training courses, visits of U.S. professors to Latin American universities and exchanges of Latin American professors to universities in the United States.

Second, perhaps with the possible exception of Colombia, legal aid through clinical instruction was not a central objective of the type of reforms that U.S. agencies wanted to introduce in Latin America. Instead, reformers focused more on transplanting teaching methodologies such as the Socratic and the American Case methods.[122] This might have several explanations. In the first section of this chapter we saw that the real development of clinical legal education in the U.S. took place during the 1960s. This is virtually at the same time that the legal education reform projects were carried out in Latin America. Then, it is difficult to conclude that something that was starting to develop in the context of the U.S. legal education was going to be transplanted to Latin America as part of this package of reforms to legal education in the 1960s and 1970s.

Additionally, the information available shows that those professors who

[122] *Id.*

participated in the legal education reform projects were not devoted to clinical legal education themselves. There has been a longtime separation between full-time tenure-track law faculty and clinical law professors in both the U.S. and in Latin American contexts. This does not mean that full time professors cannot or do not ever endorse or otherwise support the development of clinical legal education within their respective law schools. Indeed, there are several examples of non-clinical law professors who endorsed and strongly supported the early development of Clinical Legal Education in the U.S.[123] However, it was more difficult for those professors to be in charge of introducing and implementing law clinics as part of the legal pedagogical reforms given that they were not clinicians who knew and had worked with this particular teaching methodology.

Finally, this legal educational reform process was a reflective process with certain faults of course, of which the most common critiques will be discussed in the next section. Reflective process means a thoughtful process that attempts to address the context in which the reforms were to be implemented and also tries to adapt and learn from certain mistakes made at the beginning. Good examples of this were some of the changes that were introduced in the Colombian reforms adapted from the learned experience of the Brazilian and Chilean programs. Such conclusions, however, as it will be discussed, remain controversial among scholars and commentators in the field.

[123] *See* Mark V. Tushnet, *Scenes From the Metropolitan Underground: A Critical Perspective on the*

3.2. The criticism of the reforms

Criticism of the first phase of the law and development movement in Latin America has probably been more widespread than the legal education reform projects themselves. Although different types of critiques to the legal education reform projects during this time have been made, the sharpest critiques have come from the U.S. participants of the early law and development movement of the 1970s and early 1980s. Some critiques are more theoretical and some are more practical, but all overlap in important ways. On the one hand, theoretical critiques relate to those patterns of thinking that were at the base of the reform projects. On the other hand, practical critiques relate mainly to problems that arise from the implementation of the reforms.

The reason to reproduce these critiques at this point is that law and development projects with clinical components continue even today. And a question that this dissertation needs to address is to what extent those critiques to early law and development projects can still be made to current clinical projects in the Global South.

Among the theoretical critiques, one of the most known and widespread was Trubek and Galanter's reflection according to which the legal education reforms were based on an imperfect theory of law and society, and a flawed ideal of liberal legalism.[124] According to these authors, in this liberal legalist paradigm, the State is seen as the primary agent of social change that uses the law as a tool to modify the

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status of Clinical Education, 52 GEO. WASH. L. REV. 272, 278 (1984).

[124] *See* David Trubek & Marc Galanter, *"Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies"* 4 WISCONSIN LAW REVIEW 1062,1066 (1974)

society, and is itself constrained by the law.[125] The liberal legalist paradigm focuses on the formal aspects of the legal system and tends to exclude the analysis of the informal and customary legal systems.[126] It also assumes that the legal profession can represent the interests of development and the public interest, instead of representing only those interests of specific parts of the society. Law and development projects have relied heavily on this paradigm to produce social change and reformers have taken for granted the existence of a developing country tendency to evolve in the direction of a liberal legalist model.[127]

James Gardner agrees partially with Trubek and Galanter in this critique. For Gardner, there is no clear conception of the meaning, purpose, or agenda of law and development.[128] Moreover, he suggests that "a basic consensus on American liberal values accounts for the fact that foundation, governmental, and academic lawyers shared numerous implicit assumptions concerning law, state, and society."[129] Here, the theoretical criticism is interconnected with a more practical objection to the law and development projects during this time: American legal reformers were not fully aware of the social, economic, and political conditions of Latin American countries at the time.[130] In particular, the idea that the path of 'modernization' of the countries in the region would approximate the pattern of U.S capitalist development, in which specific

[125] *Id.* at 79
[126] *Id.*
[127] *Id.*
[128] *Id.*
[129] *Id.*
[130] *Id.* at 22

and idealized forms of law were presumed to be fundamental.[131]

Another critique is that law and development reformers "were singularly optimistic and often naively uncritical about both their role and that of the United States in the world."[132] As some analysts have suggested, this naivety had serious practical implications. For example, the project goals were sometimes vague, pretentious and overambitious; the projects were sometimes planned in complete absence of knowledge of the local context; and the conclusions drawn from periodic evaluations were very often mistaken.[133] Additionally, certain academic sectors were often resistant to the reforms that wanted to implement. This was particularly clear in the Brazilian case in which the professors did not trust foreign government and institutional agents in charge of this reform process.[134]

Also, the idea of American legal education as an export commodity[135] is problematic when there is no critical awareness of the main features –strengths and weaknesses - of that commodity. In particular, some authors have argued against the case method because it tends to hide questions of power and values, and does not allow for generalizations concerning social and political processes. Gardner even argues that the U.S. model of legal education gives insufficient attention to ethical issues and provides little real training for either law practice or academic legal

[131] *Id.*
[132] *Id.*
[133] *Id.*
[134] *Id.* at 61

research.[136] This is a line of criticism very similar to the one developed by Jerome Frank reviewed in the first part of this chapter. The professional model, which emphasizes the role of the lawyer as a social engineer or problem-solver, also has its shortcomings because it places too strong an emphasis on the ends rather than the means of legal advocacy and therefore does not allow students to conduct critical ethical judgments in relation to the learning process.[137]

All of these critiques show, in general, the difficulties that could arise in any legal transfer process. In particular, how this process falls short or even fails in some circumstances tends to be where there is a profound lack of understanding of the local context combined with some resistance to change from those actors who are called to implement proposed reforms. Even though there has been no systematic study of the specific effect of the legal education reform projects during this time,[138] some analysts have concurred that legal education reforms were a failure. Others have argued that the criticism started very early; thus, it was not possible to make an accurate evaluation of the reforms' effects. Some others have said that the reforms were not a failure, but ended up having some different effects that even the reformers did not fully anticipate.

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[135] *See* H.C.L. MERILLAT AND RICHARD W. EDWARDS, JR, *supra* note 74.
[136] *See* Gardner, *supra* note 106, at. 247
[137] *Id*.
[138] RODRIGO UPRIMNY, CÉSAR RODRÍGUEZ & MAURICIO GARCÍA-VILLEGAS. JUSTICIA PARA TODOS? ¿JUSTICIA PARA TODOS?: SISTEMA JUDICIAL, DERECHOS SOCIALES Y DEMOCRACIA EN COLOMBIA (Norma 2006)

4. Pre-history of clinical legal education programs in the region

There is little information available on the situation of legal clinics in Latin America before the 1960s and 1970s. Notably, however, much the information that does exist is available in English and was published in the United States during the 1970s. These documents mainly relate to the delivery of legal aid to the poor in the region given that law school clinics played—and continue to do so today—an essential role in providing legal services to the poor in Latin America.

This process did not start, however, with the first phase of the Law and Development movement of the 1960s and 1970s. In fact, in many cases, clinical legal education or some form of practical experience within Latin American law schools predates this movement by decades. For instance, Chile's law schools have required their graduates to perform six months of free legal services at a legal aid center before taking the national bar exam since 1928**.** In Brazil, the first law school legal aid clinic was established at the University of Sao Paulo in 1919, and by 1972, there were law school clinics in about ten cities in Brazil. The Law School at the National University in Uruguay has offered a legal aid clinic program since 1952, which used to be part of a course on legal practice that students had to take during their last three years of law school. In Colombia, the University Pontificia Bolivariana (UPB) in the city of Medellin, the second largest city in Colombia, started its first legal clinic in 1950.

In this section, I will develop this evidence of LACs or law students' participation in legal aid activities before the Law and Development Movement in the 1960s and 1970s. One of the main findings of this chapter is that there were early experiences with clinical legal education in the region. This challenges what I have called the narrative of the origin in this work: the idea that LACs started to develop in the region with the arrival of Law and Development projects in the 1960s and 1970s. Even though many of these early clinical experiences were not fully documented, given the own nature of clinical legal work, I have identified historical evidence of legal aid activities by law students before the Law and Development projects in countries like Brazil, Colombia, Chile, Peru, Ecuador and Uruguay.

4.1 The early experience with clinical legal education in Brazil

Brazil had an early history with LACs. On September 1919, law professors from Largo de São Francisco Faculty of Law[139] created AJA (Assistência Judiciaria Academica). AJA pursued two main objectives: facilitate access to justice to the poor in the city of Sao Paulo and to initiate students of the law school in the professional practice of the law.[140] AJA was the first academic initiative in Sao Paulo in providing legal aid services to the poor. The first state regulation about the provision of legal aid

[139] This is the common name of the University of Sao Paulo Law School. The law school was founded in 1827. It is the oldest law school in the country. It became part of the University of Sao Paulo when this institution was founded in 1934. *See* University of Sao Paulo Law School website available at http://www.direito.usp.br/ (last visited December 2016)

came after the foundation of AJA in 1920.[141]

Then, AJA was restructured in 1929 and 1947. On 1947, AJA became part of an external academic center and adopted its current name: *Departamento Jurídico XI de Agosto.*[142] The main objectives remain unaltered after 96 years of work. The clinic has been run independently and administrated by law students and alumni of the Largo de São Francisco Faculty of Law. Because of its importance and long tradition, national and international law school officials visit the legal aid clinic frequently. However, its model of clinical legal education is difficult to reproduce given the particular circumstances in which the program was created and operates. [143]

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[140] *See* Departamento Jurídico XI de Agosto Website available at https://djonzedeagosto.org.br/quem-somos/nossa-historia/ (Last Visited December 2016)

[141] The Law 1763, enacted on December 1920, organizad the Judicial Assistance service in the State of Sao Paulo. The implementation of this law started in March 1922 during the tenure of Washington Luís as Governor of the State. CÁSSIO SCHUBSKY (ED.) ESCOLA DE JUSTIÇA, HISTÓRIA E MEMÓRIA DO DEPARTAMENTO JURÍDICO XI DE AGOSTO. 12 (Universidade de Sao Paulo 2010)

[142] The book Escola de Justica, História e Memória de Departamento Jurídico XI de Agosto published in 2010 makes a complete historic account of the creation and evolution of the clinic. The book reflects on the lack of academic work with regards to the history of legal clinics in Brazil. At the same time it highlights the recent interest in the legal academic community in Brazil for the question of access to justice in the country: "Escassa é a bibliografia disponível no Brasil sobre a história da assistência judiciária gratuita. Em parte, essa lacuna se explica pelo proverbial descaso do País com a memória e a preservação do patrimônio histórico e cultural. Ha de considerar-se, também, que é relativamente recente a preocupação da comunidade jurídica com o acesso universal a Justiça, que remonta ao início do século passado" *Id.*

[143] According to Brazilian lawyer Hamilton Kenji Kuniochi, "O Departamento Jurídico do Centro Academico XI de Agosto, por sua antiguidade, sempre foi procurado e visitado por representantes de outras institucioes de ensino, nacionais e estrangeiras, dispostos a conhecer o trabalho e implatá-lo em suas faculdades. Porém, por possuir um carácter *sui generis,* nao se enquadrando nos modelos tradicional ou inovador de assessorial juridical, nao ha noticia de nenhum outro organismo que tenha sido organizdo tendo por base o Departamento. E inegavel que muito de sua organizacao pode ser copiada e implementada em escritorios modelo, porem o fato de se tartar de entidades estudantil, sem víncumlos com a faculdade, torna sua repeticao inviável. O Departamento Jurídico é um fenomeno único, estabelecido na Faculdade de Direito da Universidadde de Sao Paulo por forca das circunstancias no momento de sua criacao e assim mantido até hoje pelo engajamento dos estudantes" Hamilton Kenji Kuniochi, Assitencia Juridica Aos Necessitados: Concepcao Contemporanea e Analis de Efetividade. University of Sao Paulo Faculty of Law. 2013. *See* Hamilton Kenji Kunioshi, *Assistência jurídica aos necessitados: concepção contemporânea e análise de efetividade,* University of Sao Paulo (2013) Available at: http://www.teses.usp.br/teses/disponiveis/2/2137/tde-09012014-113135/pt-br.php.

On October 1942, Brazilian president Getulio Vargas issued the National Decree No 10550. The purpose of the decree was to allow the creation of auxiliary services of justice at no charge at the Law Schools. The Decree stated that any law professor could require the local authority that was in charge of the free legal aid service, the organization of an auxiliary service that would work under the orientation and responsibility of the professor. The Decree added certain requirements that the professor should fulfill including the number of students and the nature of the cases that he would advice.[144]

According to *Legal Aid and World Poverty*, a survey of Asia, Africa, and Latin America developed by the Committee on Legal Services to the Poor in Developing countries[145] (hereinafter The Survey), following the Decree of 1942 there was an

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(Last visited December 2016).

[144] This is the original text of the Presidential Decree: "Art. 1º Qualquer professor catedrático de Faculdade de Direito, oficial ou equiparada, poderá requerer à autoridade local, encarregada do serviço da justiça gratuita, a organização de um serviço auxiliar do mesmo, que funcionará sob a orientação e responsabilidade do referido professor. § 1º No requerimento, o professor indicará o horário do serviço auxiliar para atender o público, o número de alunos que trabalhará sob sua direção e série escolar respectiva, e as limitações de capacidade do serviço, quer quanto ao número, quer quanto à natureza dos assuntos. § 2º Caberá a autoridade encarregada da Justiça Gratuita encaminhar as partes aos serviços auxiliares, de acorda com a capacidade dos mesmos" Brazilian National Decree No. 10550, October 1942. According to Ana Paula de Barcellos, full professor at the State University of Rio de Janeiro: "The decree from 1942 was enacted in order to improve the training of law students so they could have a practical experience with real cases during law school - therefore, in the context of higher education regulation. Gustavo Capanema (one of the subscribers) was a very important Minister for Education and Public Health during Vargas Administration. Some decades later, it became mandatory for all law students to have this kind of training. This is the rule until today in law schools in Brazil. At the same time, to provide legal representation to poor people was much in line with Vargas dictatorship initiatives, so the two goals seemed to work well together" Ana Paula de Barcellos (Personal Communication December 5, 2016) On file with the author.

[145] I have consulted different sources to produce this section on the pre-history of clinical legal education efforts in the region. However, this particular work Legal Aid and World Poverty, A Survey of Asia, Africa and Latin America is one of the most complete compilations of some of these pre-law and development efforts. In the introduction of the book, the International Legal Center affirms that "it

expansion of more clinical programs in cities like Belem, Belo Horizonte, Curitiba, Natal, Pelotas, Porto Alegre, Rio de Janeiro, Salvador, Santos, and Sao Paulo. The main goals of these programs were to give law students practical experience and to provide students with a means to fulfill their obligation to the poorest members of these communities.

According to the Benson Report[146], some of these programs were very strong but others were small and weak, involving a reduced number of students. The universities funded almost all of the programs and most of the cases that they would take were criminal and civil law cases.[147] The Benson Report highlights the work and organization of the Law School Legal Aid Program of the Federal University of Minas

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has been an interested of the recent growth of legal aid programs, and at times an active participant (…) As part of the Center's Latin American program, a Survey and evaluation of legal services projects in Latin America was undertaken in 1971 and support provided for a Latin American seminar on Clinical Education and Public Legal Services, held in Santiago in early 1973 (…) The Trustees and staff of the International Legal Center, in the belief that a more systematic effort to encourage and assist legal services programs in the developing nations is desirable, convened in 1972 the Committee on Legal Services to the Poor in Developing Countries". Members of the Committee were Orison S. Marden, Luis Bates Hidalgo, Gary Bellow, Mauro Cappelletti, Geoffrey de Mornay, Joel F. Handler, Earl Johnson, Frank Jones, Adnan Buyung, William Pincus, Seton Pollock, Cruz Reinoso, L.M. Sighvi, John S. Tennant and Michael Zander. They were all leaders of the legal aid movement from both developed and developing nations. The main objectives of the Committee were: "1. To survey the availability of legal services to the indigent in the developing nations. 2. To evaluate different approaches to the provision of legal services, recognizing that programs appropriate in the developing nations may be far removed from the pattern of American, English, and Continental legal services, and recognizing further that legal services must be viewed from the perspective of the legal system and the society as a whole. 3. To encourage research into the legal problems of the poor in the developing nations, primarily by scholars in those countries. 4. To stimulate assistance to institutions within the developing nations in the planning, execution, and evaluation of new legal services programs and in the upgrading of existing programs. 5. To encourage the modernization of the legal profession in the developing nations to meet its enlarged responsibilities for providing legal services to the poor" *See* COMMITTEE ON LEGAL SERVICES TO THE POOR IN THE DEVELOPING COUNTRIES, LEGAL AID AND WORLD POVERTY. A SURVEY OF ASIA, AFRICA AND LATIN AMERICA. (Praeger 1974)

[146] In describing the Brazilian experience, the *Survey* cites an unpublished study entitled "A Development Project for the Justice Industry in Latin America: Legal aid to the Poor – The Case of Brazil" 1969. This unpublished study was elaborate by R. Benson and it is on file at the International Legal Studies office, School of Law, University of California, Berkeley). *Id.* at 83

[147] *See* The Survey, *Id.* at 83

Gerais in Belo Horizonte. This program was funded in 1959. It also highlights the work of the Law School legal aid program of the Federal University of Rio Grande do Norte in Natal. This clinical program was a real innovation in clinical legal education in Brazil because it included a teaching component; bringing legal aid to rural areas; community legal education lectures and mandatory participation for law students.[148]

Some factors that could explain this early development of clinical legal education in Brazil were the fact that legal aid was raised to a constitutional right in the legal system[149], and federal laws required all states to make provisions for public legal aid, providing general and uniform standards for legal aid in the country.[150] Another factor was the fact that Brazilian Bar Associations, law schools, public and private agencies had a positive inclination to support legal aid. The Survey concludes:

> "Brazil's legal aid infrastructure is extensive, involving a variety of different programs in hundreds of cities. Even though, the provision of legal services may be inadequate, this organizational base is an established fact that will greatly assist in future legal aid developments"[151]

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[148] This is how the Benson Report highlights the work of this innovative program: "The Program in Natal is remarkable for its imagination and the way it employs progressive ideas. First, the fourth and fifth years students at the school take a practical course based upon materials from the legal aid office files. Second, about 20 law students, supervised by professors, drive each week to the interior of the State to give legal aid to rural areas. This, and community legal education lectures as well, are carried out as part of the University's CRUTAC programs (Rural University Center of Training and Community Development) which also send teams of dental, medical, engineering, and social welfare students to the interior on regular visits. Third, participation in legal aid is mandatory for third through fifth year law students (numbering about 120). Finally some students are paid by the University for doing clerical work in the legal aid office, thus easing part of their financial burden as students. The only negative note to be made about this extraordinary program is that its productivity seems low: only 600-700 are attended to every year (and this is evidently the only legal aid service in Natal). *Id.*

[149] *Id.*

[150] *Id.*

[151] *Id.*

4.2. The Chilean case: organized bar and some sporadic clinical experiences

The Chilean case is another case of student participation in legal aid activities before the Law and Development movement in the 1960s. Legal aid services have been available in the country on a greater scale and for a longer time that in many other countries of the region.[152] Research shows that even after the declaration of independence in 1810, Courts were required by Chilean national laws to name lawyers to represent indigent persons for free.[153]

In 1928, the Congress enacted the organic law on Chilean Bar Association (Colegios de Abogados). This law recognized the association with the mission of systematically providing legal representation for the poor. Then in 1929, the Government issued an organic regulation of university education, which establishes as a professional practice the legal aid assistance to people who lack resources under the

[152] *See* Michael A. Samway, *Access to Justice: A Study of legal assistance programs for the poor in Santiago, Chile*, 6 DUKE JOURNAL OF COMPARATIVE & INTERNATIONAL LAW 347, 356 (1996)
[153] *Id*. at 356

tuition of the Bar Association.[154] Under this normative structure the first legal aid service was created with public funding in 1932. This structure of legal aid remained in Chile until the 1980s when the Pinochet Government created the Judicial Corporations of Legal Assistance.[155]

Even though clinical legal education is not mandatory in Chile, there is also evidence of university clinical programs with a more pedagogical focus in the country. For instance, Lowenstein[156] notes that in 1922, law students at the University of Chile[157] took a course called Forensic Practice and offered their legal aid services through an office associated with the course.[158] This program disappeared but new voluntary clinical programs began to operate during the 1970s in the progressive

[154] *See* Leonardo Cofre-Pérez, 76 *El derecho a la defensa y los modelos comparados de ayuda legal: elementos a considerar en la reforma del sistema de asistencia jurídica en Chile*, REVISTA DE DERECHO PÚBLICO U. DE CHILE. 283, 286 (2014) Chilean Law Professor Cofre-Pérez writes in this article on the extensive transformation of the legal aid system in Chile in recent years, incorporating a new way to understand the legal aid that the State provides to people. However, according to his work this is still an area to perform extensive reform in order to overcome deficiencies related to its efficiency and its consistency with the Chilean Constitution.

[155] According to Wilson, the Corporations provided the most significant component of legal services to the poor in Chile until vey recent reforms: "The Corporations accomplished a significant measure of their ample coverage of both civil and criminal matters, in part, trough a structure that includes the heavy use of so-called *postulantes,* or post-law school interns who are required to perform six months of unpaid service with the Corporation, along with pasaje of the equivalent of a bar examination, before they are admitted to the bar". *See* Richard Wilson*, Three Law School Clinics in Chile, 1970-2000: Innovation, Resistance and Conformity in the Global South,* 8 CLIN. L. REV. 515, 528 (2002).

[156] Steven Lowenstein was Executive Secretary to the Chile Law Program from September 1967 to April 1969.

[157] The University of Chile was founded in 1842. It is one of the oldest universities in the country. The law school is one of the five original schools of the University.

[158] *See* Steven Lowenstein, LAWYERS, LEGAL EDUCATION AND DEVELOPMENT: AN EXAMINATION OF THE PROCESS OF REFORM IN CHILE 170 (International Legal Center 1970). Lowenstein notes: "The concept of students working within the legal process while in law school is not new to Chile. Although figures are unavailable, it appears that most students, whether they need the remuneration or not, work as *procuradores* after their second year in law school. To a question in the Law Survey asking which factors during law school most profoundly contributed to the respondent's development, 74.9% of those who worked during law school thought that experience important to their development. This was by far the largest positive response for any activity during law school years".

Salvador Allende years.[159] Nevertheless, the reduced number of law graduates in the country possibly made difficult the consolidation of this type of clinical programs. According to Samway, between 1945 and 1955, the number of law school graduates receiving their licenses to practice law in Chile each year never exceeded 150. Between 1966 and 1987, that number ranged from 200 to 300 each year.[160]

4.3. Other experiences with early legal aid clinics: evidence from Colombia, Peru, Ecuador and Uruguay

In Colombia, the University Pontificia Bolivariana (UPB) in the city of Medellin started a Clinical Program in 1950. This was almost two decades before legal aid clinics became mandatory in the country. UPB is a private catholic institution. It was founded on 1936 by a decree of the Catholic Archbishop of Medellín. The University started with a small faculty and 78 students enrolled in the School of Law. In 1945, the university received the title of Pontifical, from the Holy See under Pope Pius XII.[161] The founders wanted to anchor the University on the ideals of Christian humanism and those of Simón Bolívar. Precisely, the legal aid clinic took the name of Pope Pius XII and it started to provide legal aid services and professional services in

[159] According to Wilson: "These new efforts were located in the Department of Procedure, where both Civil and Criminal Procedures courses were taugh as classrooms lectures. Interested students and teachers, usually the younger teaching assistants of the classroom faculty, began organizing informal course which came to be called Forensic Practice, like its predecessor a half-century before" *See* Wilson *supra* note 155, at 537.
[160] *Id.*
[161] *See* UPB Website https://www.upb.edu.co/es/identidad-principios-historia/fundadores (Last visited December 2016)

architecture. Then when clinical legal education became mandatory in every law school of the country, the clinic became only a legal aid office.[162]

In Peru, the University Nacional de San Marcos, one of the oldest Latin American Universities started a clinical program in 1962. This was under the deanship of professor Luis Bramont Arias.[163] The program was part originally of the extension and social projection department of the University.[164] The program was heavily oriented toward teaching lawyering skills. During 1966 the legal aid office attended 444 cases, 160 of which involved court proceedings.[165] The Catholic University of Ecuador started also a clinical program in 1973 but it seems that there were earlier experiences with clinical legal education even before that program.[166]

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[162] *See* UPB – Legal Aid Clinic website available at: http://derechoypolitica.medellin.upb.edu.co/index.php/derecho/consultorio-juridico (Last visited December 2016)
The legal aid clinic of the University of Antioquia, the major public institution in the State of Antioquia in Colombia also predated the mandatory national regulation of LACs in the country. However, this legal aid clinic emerged in 1968 as a result of the work of a group of academias inspired by ARED (Asociación para la Reforma de la Enseñanza del Derecho). I already described ARED efforts in the previous section of this chapter. One of the leaders of the project to start the legal aid clinic was Guillermo Peña Alzate. Today, the legal aid clinic has his name. Carlos Gaviria-Díaz was the Dean of the Law School during those years. He became later one of the most progressive Justices of the Colombian Constitutional Court during the 1990s. The efforts to create law school clinics in Universities like University de Antioquia and University de los Andes definitely responded to law and development projects during this decade: *See* Universidad de Antioquia Website http://www.udea.edu.co/ (Last visited December 2016)

[163] A graduate of the University Nacional de San Marcos, professor Bramont Arias was professor of Criminal Law and Dean of the Law School. He was also a founding member of the University San Martin de Porres, a private university in Lima. *See* http://www.derecho.usmp.edu.pe/itaest2010/enero_2010/actualidad_00.htm (Last visited December 2016)

[164] *See Actualidad Sanmarquina Newsletter* available at: http://sisbib.unmsm.edu.pe/bibvirtual/publicaciones/actualidad/a%C3%B1o10_n124/proyecci%C3%B3n_a_la_comunidad.htm (Last visited December 2016)

[165] *See* The Survey, *supra* note 145 at 96.

[166] *See* Ruth Bader Ginsburg et al, *The Availability of Legal Services to Poor People and People of Limited Means in Foreign Systems* 6 THE INTERNATIONAL LAWYER 159 (1972).

Finally, the first clinical program at University de la Republica in Uruguay was introduced in 1932. The clinic was part of the Forensic Law practice course. Originally, the clinic was not mandatory.[167] The main goal of the clinical program was to provide free legal aid services to those in need. There was also a concern for teaching ethics and professional responsibility to law students.[168] The clinic was under the exclusive direction of the law professor.[169] Nevertheless, the clinic was suppressed in 1937. The explanation to this early disappearance of the clinic was that it was not mandatory.[170]

The legal aid clinic resumed its operation in 1952. The clinic was part of a course on legal practice that law students were required to take during their last threes years of law school. During years one and two of the program, students were required to take classes on subjects related to the practice of law. They also had to visit the courts and administrative offices while they were taught how to take a case to the Court. Then in their last year, students participated in the legal aid clinic assisting in counseling and preparation of real cases.[171] A real innovation of the Uruguayan legal

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[167] According to Article 3 of the 1932 legal aid clinic bylaws: the assistance of students to the legal aid clinic was facultative but the professor had to take notes of the student's assitance and have a record of her work to grade at the end of the school year. See, Gonzalo Uriarte Audi, *La enseñanza de la técnica forense. Antecedentes Mediatos e Inmediatos. Análisis del estado actual. Perspectivas y Propuesta.* Unpublished manuscript. Montevideo. 1986. (On file with the author) Gonzalo Uriarte Audi is a lawyer and law professor at the University de la República. He is the current Dean of the Law School where he is also the director of the Legal Aid Clinic since 2005. He has thought the Forensic Law course since 1976.

[168] According to the 1932 Legal Aid Bylaws: the professor would try to instill in the students elements of professional ethics through an introduction to the course and frequent annotations outside the development of the practice. *Id*. at 20

[169] *Id.*

[170] *Id.*

[171] The Survey explains in detail the work within the legal aid clinic in Uruguay in the 1960s: "Unlike the legal aid programs of some Brazilian law schools, the Uruguayan consultorio is not operated and

aid clinic was the introduction of neighborhood legal aid offices. Most of the final-year law students worked in these neighborhood offices around Montevideo. The main goal of these facilities was to expose students to different kind of legal issues, particularly labor law related issues.

In sum, every one of these early experiences with clinical legal education is unique. In some cases students took the clinic for credit. In other cases, the clinic was not a formal requirement within the law school curriculum. There are also differences in the administration and operation of the clinics. In some cases, students were responsible for running the clinics while in others the universities mostly managed them.

I believe, however, that most of these programs have in common three aspects: First, they all shared the purposes of the clinical education movement in general. This means that the founders of these clinical programs were concerned for both teaching lawyering skills to students, and facilitating access to justice to the poor in the region. Second, most of these early experiences existed before National laws and regulation of clinical legal work in their own countries. Third, some of these early experiences

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directed by the students. The main office of the consultorio has a full time staff of two contracted lawyers, four professors of trial practice, and several secretaries and clerical personnel, all paid by the law school. Students participate three times per week between March and October, but the consultorio remains open throughout the year, operated by paid staff. One interesting feature of the consutorio is that real cases are apparently used in training Group students. Thus after a staff lawyer has conducted a preliminary interview with the client, a client will explain his problem before a group of 15 to 20 law students who then are supposed to analyze the nature of the case and discuss legal remedies and procedures. If the case requires litigation, a staff lawyer or trial practice professor will assign it to a student. Law students may represent their clients in court to a limited extent, under the supervision of a licensed attorney" *See* The Survey, *supra* note 145, at. 90-91.

supposed real innovations to clinical legal education even for today's academic standards. Rural legal aid activities in Brazil and neighborhood law offices in Uruguay are examples of those innovations.

Though clinical legal education clearly predates the Law and Development movement in the region, evidence demonstrates that some law school clinics received economic or technical support from U.S agencies and institutions during the 1960s and 1970s. For instance, the University of Costa Rica law school clinic was established in 1966 after the school received financial assistance from USAID.[172] The clinic started with three offices in the neighborhoods of San Jose and, by 1974, there were three additional offices. Unlike most of the legal clinics in the region, the legal offices of the University of Costa Rica law school clinic were not located in the law school building.[173] Moreover, the Clinic specialized in criminal, labor and civil law cases, and all fourth and fifth year law students were required to participate in the legal clinic program.[174]

Another example is the legal clinic at Los Andes University in Bogota, Colombia, which was established with the technical support of the International Legal Center.[175] The clinic started to work in 1968—three years before the Colombian national government established legal clinics as mandatory in every law school of the

[172] *See* Gardner, *supra* note 106, at 92.
[173] *Id.*
[174] *Id.*
[175] *Id.*

country. In 1971, Article 30 of National Decree 196[176] mandated that every law school in the country start legal clinics. The article also mandated students in the last two years of law school to work in these clinics under the supervision of law professors in order to serve the interests of poor individuals in criminal, labor, civil law cases, among others.[177] At the same time, the office of the Colombian President created a foundation known as "Fundación Jurídica Popular" (Popular Jurist Foundation), which was in charge of the delivery of legal services to the poor.[178] This foundation shared some clinics' objectives, including providing legal services to the poor, but unlike the clinics, it operated only in Bogota and not in other regions of the country.[179]

Initially, however, Los Andes Law School Clinic did not focus exclusively on providing legal services to the poor in individual criminal, labor and civil law disputes. In the first Latin American seminar on clinical education and legal assistance, the delegation of Los Andes noted that the clinic had also performed work on community issues, such as petitions before administrative authorities; installation of public utilities to low income neighborhoods; and land tenure issues.[180] Despite these additional foci, the provision of legal services to people of scarce resources remained the focus of the clinic's work.

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[176] This used to be the norm that regulated the practice of law in Colombia.
[177] *See* Colombian National Decree 196 of 1971, Art. 30 Today, it is still mandatory for Colombian law students, in public and private institutions, to take a legal aid clinic during the last year of law school
[178] *See* PRIMER SEMINARIO LATINOAMERICANO SOBRE ENSEÑANZA CLÍNICA DEL DERECHO Y ASISTENCIA LEGAL p. 98 (Universidad Católica 1973)
[179] *Id.*

Remarkably, international agency support was not reduced to simply establishing law school clinics in countries like Costa Rica and Colombia. There was also a concern that the different experiences of work with clinical legal education and legal assistance were known among different law schools in the region. For this reason, the International Legal Center and the Department of Legal Assistance from the Catholic University in Chile organized the first Latin American seminar on Clinical Legal Education and legal aid in Santiago in March of 1973,[181] with the purpose of starting to bridge the communication gaps among Latin American law school clinics.

In the following Table, I summarized this evidence of clinical law programs that predated the law and development movement in the region. I include also the clinics that I have identified were founded with international assistance during the Law and Development Movement.

Country	University Law School Clinic or Legal Aid Program	Year of Foundation	International Assistance
Argentina	University of Buenos Aires	-	None
Brazil	University of Sao Paulo	1919 1947	None
Brazil	University of Rio	N.A.	None

[180] *Id.*
[181] *See* The Survey, *supra* note 145 at. 104

	Grande do Norte		
Colombia	University Pontificia Bolivariana	1950	None
Colombia	University de Antioquia	1968	ARED
Colombia	University de los Andes	1971	International Legal Center
Chile	Catholic University of Chile	1970	International Legal Center
Costa Rica	University of Costa Rica	1966	USAID
Guatemala	National University of San Carlos School of Law	1954	None
Honduras	University Nacional Autónoma de Honduras	1958	None
Peru	University of San Marcos	1962	None
Uruguay	University of La Republica of Montevideo	1950	None

Table 1: Early history of LACs in Latin America.

This chapter shows that law school clinics were not at the core of many of the law and development projects during this time. Indeed, clinical legal education was starting to develop in the U.S. at virtually the same time that many of these projects were launched in Latin America. Moreover, law school clinics existed in some Latin American countries even before law and development projects started during the 1960s and 1970s. Although some law school clinics in Latin America started with international support of U.S. agencies and foundations, these projects were somehow isolated and were not a structural component of the most important legal education

reform efforts in the region during the 1960s and 1970s.

CHAPTER 2

THE NARRATIVE OF THE TRANSFORMATION: FROM LEGAL AID TO PUBLIC INTEREST LAW CLINICAL MODELS IN LATIN AMERICA DURING THE 1990S AND EARLY 2000S

In Chapter 1, I presented and disputed the narrative of the *origin* according to which law school clinics in Latin America emerged as a consequence of a legal transplant from the US to Latin America during the 1960s and 1970s. In this second chapter, I discuss a second narrative: the narrative of the *transformation*. In the chapter, I explore the emergence of PILCs in Latin America during the 1990s and early 2000s. The most simplistic causal account of this phenomenon attributes the emergence of PILCs in Latin America directly to the US legal community.[182] In this account, Latin American PILCs are a legal transplant from the United States to Latin America, brought during the 1990s as part of law and development projects in the region.[183] In this chapter, while I do not deny that there has been an influence from the North to the South on PILCs, I argue that the conceptions of Latin American PILCs as "*legal transplants*" from the North to the South oversimplifies multifaceted processes, both local and global, which have facilitated the development of these new clinical programs in the region.[184]

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[182] *See* Wilson, *supra* note 5.

[183] *See Educación Legal Clínica, La Revolución de la Práctica Jurídica* in Ambito Jurídico (2011) https://www.ambitojuridico.com/BancoConocimiento/Educacion-y-Cultura/noti-110215-12-educacion-legal-clinica-la-revolucion-de-la-practica-juridica (Last visited December 2016)

[184] Some authors have formulated more sophisticated critiques to the legal transplants figure. *See* Langer, *supra* note 38. The purpose here is not to formulate a critique to the legal transplants literature. As I mentioned earlier the purpose is to show the limitations of the metaphor of legal

I present an alternative, more complex framework that again challenges the idea of a legal transplant. I identify certain conditions that contributed to the development of PILCs in the region and, therefore, to the ongoing transformation of clinical legal education in Latin American law schools. These conditions include the enactment of new constitutions in the region full of previously unrecognized rights and enforcing mechanisms to protect them, the growing presence and influence of the international human rights law movement, the specific interests of international institutions and agencies in the enforcement of human rights law, and a change in the educational background of this new generation of clinicians.

The core of the chapter builds on Rodriguez-Garavito's[185] recent work on the intersection of global neoliberal and neoconstitutional projects[186] in Latin America in judicial reform projects.[187] While Rodriguez-Garavito does not specifically address law clinics, he offers a complex and thoughtful framework that provides an useful starting point for thinking about why and how these new clinical programs in the region have emerged. In this chapter, I argue that most of these programs, at least in

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transplants to explain the circumstances that have facilitated the development of clinical legal education in Latin America.

[185] Cesar Rodriguez-Garavito is a Colombian legal sociologist and constitutional law scholar. He is also the former director of a prominent legal clinic: the Global Justice Program at the University of Los Andes in Bogota, Colombia. He is a founding member and director of Dejusticia, a Colombian Colombian human rights organization and think/do tank based in Bogota that works regionally and internationally.

[186] "Neoconstitutional" and "neoliberal" can be interpeted quite differently of course. For the purposes of this chapter, I will follow Rodriguez-Garavito's uses of the term.

[187] *See* Cesar Rodriguez, "Toward a Sociology of the Global Rule of Law Field: Neoliberalism, Neoconstitutionalism, and the Contest over Judicial Reform in Latin America," in BRYANT GARTH & YVES DEZALAY, EDS. LAWYERS AND THE RULE OF LAW IN AN ERA OF GLOBALIZATION, 155 (Routledge 2011)

Latin America, are important actors in what Rodriguez calls the global neoconstitutional project. I support this thesis by analyzing the historical moment in which the clinics emerged, the activities that they have developed, and the clinics' relationship with other key actors of the global neo-constitutional project.

However, it is worth noting that at least in the Latin American case, some actors of the global neoliberal project have had a concern for the teaching of law in the region, and in this regard have had also certain connections with the clinical legal education movement. This fact confirms one of Rodriguez' thesis according to which neoliberal and neoconstitutional projects have had moments of confrontation but also moments of coordination and overlap. My aim is to show here that PILCs can offer another example of this complex relationship between global neoliberal and neoconstitutional projects in the region.

I begin this chapter by recounting Rodriguez Garavito's argument, and then move to explicitly draw the link between PILCs and the global neoconstitutional project in the region. Specifically, I will discuss the historical moment in which these clinics arise, the activities they have undertaken and their relationship with other key actors in the global neoconstitutional project.

1. A Sociology of the Global Rule of Law Field: Between Neoliberalism and Neoconstitutionalism

According to Rodriguez-Garavito, during the 1990s there were two transnational ideological and political projects that promoted different conceptions of the rule of law in Latin America. First, the *global neoliberal project* promoted both economic liberalization and mostly a thin conception of the rule of law. These thin conceptions of the rule of law included "those indifferent to the content of the laws providing legal certainty (and thus compatible with non-democratic regimes), and those highlighting public order and economic freedom while embracing core civil and political rights as limits to state power."[188] The key actors that promoted this *global neoliberal project*[189] were agencies like USAID, and institutions like the World Bank and the Inter-American development Bank.[190]

Second, the *global neoconstitutional project* promoted a thick conception of the rule of law with "an expansive understanding of civil, political, and social rights."[191] The main accomplishment of this "project," which originated within the human rights movements of the era, was the boom of national constitutions with generous bills of rights and judicial enforcement mechanisms. The central actors in the implementation of this global neoconstitutional project were the judges, especially those who worked in Constitutional Courts or Supreme Courts with judicial review functions.[192] Judges have also formed collaborative national and international networks, which have facilitated cross-citation among tribunals and the exchange of

[188] *Id.*
[189] *Id.*
[190] *Id.*
[191] *Id.*
[192] *Id.*

ideas related to constitutional interpretation and enforcement mechanisms.[193]

But judges were not alone in this effort. As Dezalay and Garth have demonstrated, human rights NGOs and networks made rule of law project reforms a priority during the last decades of the 20th century in Latin America.[194] Law-centered NGOs and certain networks of elite legal scholars were also crucial in the development of this global neoconstitutional project. The legal scholars who made up these networks were very different from the more traditional legal scholars in the region, who historically have had not been involved in politics and have had been educated in-country.[195] Rodriguez argues that an academic legal career, especially in elite universities in the region, has become more professionalized. Law schools now have full-time professors, most of whom who have done graduate studies abroad. And, just like a PhD in the field of economics in the 1980s, a graduate degree from the top U.S. law schools is "the key both to a local scholarly career and to elite transnational networks of like-minded academics."[196] The members of this new generation of legal academics are key promoters of this global neoconstitucional project.

The most important claim in the description of these two projects in Rodriguez-Garavito's recent work is that despite promoting different notions of rule of

[193] *Id.*
[194] *See* Dezalay and Garth, *supra* note 13.
[195] *See* Juny Montoya, *The Current State of Legal Education Reform in Latin America: A Critical Appraisal*, 59 J. LEGAL EDUC. 545 (2010).
[196] Rodriguez's description may be somewhat exaggerated. It is certainly a description of his own academic experience and networking. I do not think, at least in the case of Colombia, that the champions of global neoconstitucional project have studied in the U.S. exclusively. However, there is no doubt of the enormous influence that those who have done it have within the local legal academy.

law, the neoconstitutional and neoliberal projects are not necessarily contradictory: their relationship is at times confrontational, at times complementary. The classic clash results, for instance, from controversy associated with the costs of enforcement and protection of social and economic rights.[197] The two points of view have converged in instances when, for example, an international institution or agency supports a program to strengthen the judiciary's efficiency within a developing country.[198]

Although Rodriguez-Garavito does not discuss the case of PILCs, I argue that these programs, at least in Latin America, are part and key players of this neoconstitutional global project. Insofar as some actors in the neoliberal project have had a concern for law teaching in the region, and because of this have had connections with extending clinical legal education movement in the region, this confirms Rodríguez-Garavito's thesis according to which neoliberal and neoconstitutional projects have moments of coordination and overlap.

2. PILCs in Latin America during the 1990s: The Beginnings.

PILCs emerged for the first time in the 1990s in Latin America. This was a decade of change for many Latin American countries, with many countries moving

[197] *See* Rodríguez-Garavito, *supra* note 187.
[198] *Id.*

from authoritarian regimes to more formal democracies.[199] The Brazilian Constitution of 1988 inaugurated a wave of constitutional reform in the region.[200] After this reform, there were Constitutional reforms in Colombia (1991), Peru (1993), Argentina (1994 and 1998), Bolivia (1994), Mexico (1994), Venezuela (1998) and Ecuador (2008).

Though the political causes behind this wave of constitutional reform varied, between countries[201] each country's constitutional reforms expanded constitutional rights and created new enforcement mechanisms to guarantee their protection.[202] Other common trends included: the recognition of ethnic and cultural diversity; the inclusion of religious equality; a special concern for the protection of groups that have been traditionally discriminated against, such as women, and indigenous or Afro-descended communities.[203]

Another important trend in this wave of constitutional reforms in the region has been opening domestic legal systems to be more receptive to international human rights law.[204] In Colombia, for instance, the 1991 national Constitution conferred constitutional value to human rights treaties[205] This constitutional provision makes

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[199] *See* Rodrigo Uprimny, *The Recent Transformations of Constitutional Law in Latin America: Trends and Challenges,* 89 TEXAS LAW REVIEW 1587, 1592 (2011)
[200] *Id.* at
[201] *Id.*
[202] *Id.*
[203] *Id.* at 1590-1591
[204] *Id.*
[205] In Colombia, this is known as *Bloque de Constitucionalidad* or Constitutional Block. Articles 53,93, 94 of the Colombian Constitution give constitutional hierarchy to certain human rights norms that are not part of Colombia's written Constitution. One practical effect of the *Bloque de Constitucionalidad* is that the Colombian Constitutional Court can rule as unconstitutional any law that contradicts the content of international norm of human rights ratified by the Colombian State.

international instruments mandatory and binding. . This type of provision has enabled greater domestic judicial support for the protection of human rights at the domestic level, and overall has been a positive step in the struggle for universal protection of human rights.

Country	**Clinic**	**Year of Foundation**
Argentina	Universidad de Buenos Aires-CELS	1995
Argentina	Universidad de Palermo (Public Interest Law Clinic)	1996
Chile	Universidad Diego Portales (Public Interest legal actions and human rights program)	1997
Colombia	Universidad del Rosario (Public Actions Group GAP)	1999
Perú	Pontificia Universidad Católica del Perú (Legal Clinic)	1997
Argentina	Universidad Torcuato di Tella	2004
Colombia	Universidad de los Andes (Public Interest law group GDIP)	2005
Mexico	CIDE	2004

Table 2: Year of foundation of some Latin American PILCs

With this new and generous Constitutions it is not a coincidence, therefore, that some of the first human rights and PILCs emerged in the region also during the 1990s. For instance, the CELS-Universidad de Buenos Aires Clinic in 1995, the Public Interest Law Clinic at Universidad Diego Portales in Chile in 1997 and the Public Actions Group or *Grupo de Acciones Públicas* (GAP) from Universidad del Rosario in Colombia in 1999. Initially, HRCs in the region focused their efforts on litigation. Some clinics, such as the Universidad Diego Portales in Chile, have specialized in bringing cases before the Inter-American system of human rights. Others, such as the Public Actions Group at the University of Rosario in Colombia (GAP), have focused more on the use of national legal mechanisms for protecting human rights. Even the name of this clinic, *Grupo de Acciones Públicas*, denotes the domestic emphasis of the clinic's litigation.[206] Beatriz Londoño, law professor and clinician, has affirmed that one of the motivations behind the creation of GAP was the use and appropriation of those new national mechanisms for the protection of human rights in Colombia's new national Constitution back in the 1990s.[207]

Moreover, the decision of whether to bring a case before national or international tribunals usually depends on the existence of those national mechanisms that can ensure the protection of human rights in a specific country.[208] In other cases,

[206] *See* BEATRIZ LONDONO (ED) EDUCACIÓN LEGAL CLÍNICA Y DEFENSA DE LOS DERECHOS HUMANOS. CASOS PARADIGMÁTICOS DEL GRUPO DE ACCIONES PÚBLICAS. 13 (Universidad del Rosario 2009)
[207] *Id.*
[208] Many of these legal mechanisms were created during the wave of constitutional change in Latin America during the 1990s. But of course, there are national differences and the use of those mechanisms is not always as simple. There is also the case, in countries like Chile, in which certain human rights (such as some Social and Economic rights) are not recognized in their Constitutions. In such cases, it is even harder to protect human rights given the absence of an express recognition of the

national mechanisms exist but the government is not willing to comply with the rulings by national courts, or the courts simply rule against the interests of the petitioners. Given that lack of compliance or the dissatisfaction with the decisions of domestic courts, clinicians decide to bring their cases to international courts.[209]

Felipe Gonzalez-Morales is one the most authorized voices to explain the development of PILCs in Latin America during the 1990s. Gonzalez is a U.S. trained, Chilean law professor and clinician at Universidad Diego Portales in Chile, a pioneer institution in the use of clinical legal education with a public interest focus in the region.[210] Gonzalez was a key actor in the establishment of a network of PILCs with the auspice of the Ford Foundation back in the 90s. He argues that the origin of the PILCs in the region, as we know them today, was linked directly to the creation of this network sponsored by Ford.[211] Gonzalez confirms the emphasis on litigation in this wave of clinical legal education in the region. According to Gonzalez, these were the

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existence of those rights.

[209] In addition to this, most of these international instruments require that petitioners exhaust local remedies before bringing their cases to international tribunals. A recent example of this is the case of Karen Atala Riffo, a lesbian mother and judge in Chile, who the Supreme Court denied the custody of her three children and said was a risk to them because she was living with her partner. Along with several organizations[209], including the active participation of the public interest law clinic from Universidad Diego Portales, Mrs. Atala Riffo brought a petition against the Chilean government to the Inter-American commission on human rights as a case of discrimination on the basis of sexual orientation.

But there is also the problem of resources. International litigation is expensive and time-consuming. A case before the Inter-American System of human rights, for instance, is first litigated in Washington D.C. (before the Commission) and then can go to Costa Rica (before the Court). The consequence of this sort of system is that only certain frequent litigators, who belong to specific and a few human rights networks, can afford to litigate this sort of cases within the system. The main sources of funding of Latin American clinics are the own universities and, unlike their equivalents in the U.S., Latin American universities usually do not have all the resources, for example, to afford travel expenses and litigate many of these cases in international courts.

[210] *See* Wilson, *supra* note 155, at 549.

criteria that the clinics at the time took into account to select the cases[212]:

- Public interest should appear clearly so the clinic does not have to decide among private interests which are both legitimate.
- The case should be paradigmatic. It should serve as a model for the development of other cases and to strengthen the Court's jurisprudence
- In the case should be possible to detect structural failures of the internal legal system and therefore legal actions must work to change those structural failures
- The case should produce a significant public impact
- There should be the possibility to use the international instruments of human rights to pursue their protection
- There should be an institutional commitment with the defense of the case
- The case should be plausible which means that the judicial process should have some viability.

At least four of the above criteria are directly related to the idea of litigation and with a conception of clinical work that restrict students to work bringing cases before the courts. It is clear at this point of this work that the idea of clinical legal education goes beyond litigation. Any activity performed by the lawyers may be subject to clinical law teaching as we have explained in the previous chapter.

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[211] *See* Felipe González-Morales, *La Enseñanza Clínica en Derechos Humanos e Interés Público en Sudamérica*, available at https://archivos.juridicas.unam.mx/www/bjv/libros/5/2466/19.pdf (Last visited December 2016)

Furthermore, when reviewing the cases[213] of the clinics in these first years of work, it is clear that most of the cases involved some kind of litigation.

Public Interest Law Clinic	**Issue involving the case**
UBA, CELS (Argentina)	Right to health with the decision of the State of Argentina to discontinue the production of vaccine for **hemorrhagic fever**
Palermo (Argentina)	Land use and division of indigenous territories in Southern Argentina
Católica (Perú)	Conflict on heavy industries in Ecologically Protected Areas
Católica de Temuco (Chile)	Consumer's rights in Chilean law and limits to the functions of security guards at shopping malls.
San Agustín de Arequipa (Peru)	Judicial fees and access to justice
Católica (Peru) and Diego Portales (Chile)	Discrimination on job offers published in national newspapers.

[212] However, he clarifies that not all of these criteria should be present in every case.
[213] González-Morales, *op. cit.*

GAP, Universidad del Rosario (Colombia)	Public Transport Systems' Accessibility for People with Disabilities
UBA/CELS (Argentina)	Right to truth and enforced disappearances in Argentina
Diego Portales (Chile)	Judicial censorship of literature

Table 3: Emblematic cases by PILCs. Source: González Morales.

3. From litigation to other forms of legal advocacy

Latin American clinicians realized very quickly hat litigation is only one tool among many in the struggle for the enforcement and protection of human rights. Therefore, clinic students started to perform other activities such as lobbying local, state and national legislatures; authoring fact-finding reports about the human rights situation in their countries or regions; teaching students and human rights practitioners about human rights and the mechanisms in place to enforce them; and publicizing systematic violations of rights in order to influence public and judiciary opinion.

A second observation, particularly important in the context of this chapter, is that the fact that clinics engage in these diverse activities demonstrates the commitment of most of these programs to a substantial and robust conception of the rule of law, and specifically to an expansive understanding of human rights. This

understanding is not limited to the role that the Courts could play in the protection of human rights; but one that takes into consideration all of the different possibilities, particularly in the political arena, that can lead to the effective enforcement of human rights norms. The Global Justice Program at Universidad de los Andes in Bogota exemplifies this approach. This program, which has a clinical component, declares that litigation is as important as the research projects and public opinions of the Program in specific human rights controversies with a global justice component.

Additionally, in the Latin American context it is still considered a strange idea that a university, public or private, can bring suit against the State, a corporation or individual when they are violating human rights. This has generated a backlash to the work of certain clinics.[214] However, I would like to note that the fact that the clinics focus on activities apart from litigation has been an effective way to confront this backlash, particularly when these non judicial strategies prove to be equally or more effective in addressing the situation of human rights of individuals and communities in the region.

4. The profile of the new generation of clinicians

The final component of gaining an understanding of PILCs as key players of the global neoconstitutional project is to examine the clinicians themselves. The new

[214] A backlash that is not unique to Latin American clinics. *See*, Ian Urbina, *School Law Clinics Face a Backlash* in New York Times (2010) http://www.nytimes.com/2010/04/04/us/04lawschool.html (Last visited December 2016)

generation of clinicians fits within Rodriguez-Garavito's description of this new type of elite legal scholar: individuals that support and promote the global neoconstitutional project. Unlike the clinicians of the first law school clinics in the region, professors of these new clinics are usually experts on constitutional and international human rights law; they have completed their master and doctoral degrees abroad[215]; and participate in international networks of public interest law clinicians.[216] Particularly, they have fully supported the consolidation of a Latin American network of PILCs, which meets periodically to discuss clinical legal education experiences.

The idea to create this network came from Felipe Gonzalez-Morales, the current president and the rapporteur on migrant workers and their families at the Inter-American Commission on Human Rights, a professor of international law and constitutional law at Diego Portales University in Santiago de Chile, and the founder and director of the human rights center there. Mr. González holds an LL.M. in international law from American University and a Masters in advanced human rights studies from University Carlos III in Madrid, Spain.[217]

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[215] Legal education is an effective vehicle for legal transplants. In the case of the United States, for example, Gail Hupper has argued that U.S. graduate legal education is one of the mechanisms through which U.S. legal institutions are transplanted to other countries. *See* Hupper, *supra* note 54*, at* 444.

[216] Two of these networks are the Latin American Network of Public Interest Law Clinics and the Global Alliance for Justice Education (GAJE). According to their website: "GAJE is an ALLIANCE of persons committed to achieving JUSTICE through legal education. Clinical education of law students is a key component of justice education, but this organization also works to advance other forms of socially relevant legal education, which includes education of practicing lawyers, judges, non-governmental organizations and the lay public" *See* GAJE website https://www.gaje.org/about-gaje/mission-statement/ (last visited December 2016)

[217] *See* Felipe González Morales Faculty Website at American University available at https://www.wcl.american.edu/faculty/fgonzales/ (last visited December 2016)

The professional trajectory of Mr. Gonzalez-Morales is a fairly typical trajectory for a clinical professor in the region. It is also very similar to the description that Rodriguez offers of this new breed of Latin American scholar that has supported and promoted the global neoconstitutional project. Gonzalez-Morales has experience at the local, regional and international levels, and although his LL.M is not from a top-ten U.S. law school, AU Washington College of Law has had strong connections with Latin America in the past. AU faculty is also familiar with the situation of human rights in Latin America, and has strong links with the Inter-American system of human rights. Moreover, AU's Law School Former Dean, Claudio Grossman, is Chilean, and is a former President of the Inter-American Commission on Human Rights (IACHR) of the Organization of American States.[218]

I would like to emphasize that the educational background of these new clinicians is probably the most direct influence from the north to the south in the contemporary transformation of clinical legal education in the region. Latin American professors who have done their graduate studies abroad have become strong promoters of the law school clinics with a public interest law focus in the region.[219] However, given the proliferation of these new clinical programs is not accurate to affirm that all these professors did their graduate studies in the U.S.

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[218] *See* Claudio Grossman Faculty Website at American University available at https://www.wcl.american.edu/faculty/grossman/ (last visited December 2016)

[219] The idea of the export of legal education through graduate programs in the U.S is not new. In a recent book Brand and Wes Rist explore the extent to which legal education from the U.S has an impact on both legal education and legal developments in other states. The book tells the stories of different individuals that did their LL.M program at the University of Pittsburgh. *See* RONALD BRAND & D. WES RIST, THE EXPORT OF LEGAL EDUCATION ITS PROMISE AND IMPACT IN TRANSITION COUNTRIES. (Ashgate 2009).

5. Clinics and other key actors of the global neoconstitutional project

During the 1990s, the Ford Foundation[220] and USAID assisted the efforts of some of these new clinics to form a network of human rights clinicians in the region. Universidad Diego Portales was the first institution in charge of the coordination of the network. The network of clinics has been since its inception a meeting space for Latin American clinicians. The goal of these meetings has been to share information, teaching methods and strategies of public interest litigation across the region. During several years the Ford Foundation, which is recognized as a key actor of the global neoconstitutional project, supported this network.[221]

It is worth nothing that the Ford Foundation targeted those clinics that "pursued social justice goals, public interest law, [and] access to justice and human rights".[222] This means that the interests of the funders were much more focused on the substantive work of human rights, rather than teaching lawyering skills to students. This may explain why other law school clinics, with different goals not necessarily related to human rights or social justice, did not received the support of foundations

[220] As we saw in chapter 1, the support of the Ford Foundation to clinical legal education was not new within the context of the United States. Neither it was in the Latin American context.
[221] *See* Felipe González-Morales, *supra* note, at 211.
[222] The support from Ford was mainly to law school based clinics that served real clients.

like Ford during the 1990s in the region.[223]

In addition to this, the information available from Ford also shows that the network of Latin American clinics was created to develop broader approaches to public interest law in cooperation with NGOs.[224] This is an important illustration of the relationship between the law school clinics and other key actors of the global neoconstitutional project. In fact, some clinics, particularly in Argentina, were designed from the outset to work in partnership with a particular NGO. This is the case, for example, of the alliance between the UBA and the CELS, or the University of Palermo and the NGO Poder Ciudadano.[225] Even in those cases in which the clinics did not begin with a particular NGO in mind, partnering with NGOs around specific projects has become very common.[226] The priorities of international funders like Ford have encouraged this type of collaboration: their desire that clinics have a broader social impact and their work promoting these alliances have been fundamental to this work.

Even though it has become common to argue that U.S. clinics were a model for

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[223] It is important to highlight, however, that one of the declared goals of Ford with the support of law school clinics across the world is to improve legal education: "The most commonly known educational benefits of clinics are the practical lawyering skills students gain through working directly with clients on specific problems. In addition the experience can help students to better understand and apply legal theory, as well as to explore weaknesses in legal systems or procedures". *See* Aubrey Mc. Cutcheon *University Legal Aid Clinics: A Growing International Presence with Manifold Benefits* in MARY MCCLYMONT & STEPHEN GOLUB, MANY ROADS TO JUSTICE. THE LAW RELATED WORK OF FORD FOUNDATION GRANTEES AROUND THE WORLD 271 (The Ford Foundation 2000)

[224] *Id*. at 269

[225] *Id.* at 275

[226] The battle for the recognition of patrimonial rights to same sex couples is a good example of this. *See* Alviar, *supra* note 7, at 216.

Latin American clinics, U.S clinics only participated of in this network since 2003. Their participation, as described by Latin American clinicians, has been incipient.[227] In general, U.S clinics have not been interested in imposing a particular method of clinical work. More than a transplant, there is an interest in sharing experiences among clinicians, expanding collaborative networks and benefiting from the expertise of local lawyers, particularly when international HRCs are involved. There is also an increasing interest in developing collaborative projects with local organizations and local clinics in the global south. This will be explored in the next chapter and it is probably one of the most compelling topics in the contemporary literature of clinical legal education in the U.S and in Latin America.

Ford Foundation was not the only funder, associated with the global neoconstitutional project that supported law school clinics in Latin America. The Open Society Justice Initiative[228], for instance, assisted the development of clinical legal education in Mexico at two institutions: CIDE and ITAM.[229] These two institutions pioneered the development of PILCs in Mexico, a country with a strong tradition of legal formalism in the teaching of law. Again, in Mexico, CIDE worked in partnership with an NGO developing an NGO-based clinic in which the direct

[227] *See,* Latin American Network of Public Interest Law Clinics Website available at http://www.clinicasjuridicas.org/historia-red.htm (last visited December 2016)

[228] *See* Open Society Website available at https://www.opensocietyfoundations.org/about/programs/open-society-justice-initiative (last visited at December 2016) "The Open Society Justice Initiative uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. We foster accountability for international crimes, combat racial discrimination and statelessness, support criminal justice reform, address abuses related to national security and counterterrorism, expand freedom of information and expression, and stem corruption linked to the exploitation of natural resources"

supervisors of the work of the student were the lawyers at the NGOs. This shows, once again, the close connection between the clinics and the NGOs in the global neoconstitutional project.

Conclusion

So far we have seen how HRCs started during the 1990s, which was a crucial decade for the development of the global neoconstitutional project in Latin America. We have also seen how clinics' activities were aimed at defending human rights, which can be found not only in the new regional constitutions but also in the ever-growing body of international human rights law. These clinics' activities included litigation at the beginning, but then other forms of legal advocacy emerged, such as lobbying, research on human rights, public interventions, elaboration of fact-finding reports, among others. PILCs have had an important relationship with other key actors of the global neoconstitutional project. In particular with funders such as Ford or the Open Society which have tried to promote robust conceptions of the rule of law in the region.

[229] *See* Castro, *supra* note 7, at 81.

CHAPTER 3

ORIGIN AND ONGOING TRANSFORMATIONS OF CLINICAL LEGAL EDUCATION IN COLOMBIA

The goal of this chapter is to analyze the origin and ongoing transformations of clinical legal education in Colombia. The tendency, regarding clinical legal education in the region, has been to affirm that clinical legal education in Latin America has developed on a regional basis.[230] However, the situation of clinics is not the same across the continent. Wilson, for instance, has shown in an interesting piece on clinical legal education in Chile that experiences with legal clinics often differ even within the same country.[231]

Clinical legal education has existed in Colombia for more than 50 years. The history of legal clinics in the country did not begin in the 1970s. As Chapter 1 showed, LACs were present in some Colombian universities even before the arrival of the law and development projects to the region.[232] However, Colombia was one of the few countries in which law and development projects included effectively LACs. These LACs have remained in the country without significant changes and assuming the role of representing the interests of the poor in certain judicial proceedings.

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[230] *See* Alviar, *supra* note 7.
[231] *See* Wilson, *supra* note 155

During the 1990s and early 2000s, PILCs in Colombia were launched in search of alternatives to the traditional ways of teaching law and at the same time advocating for solutions to structural problems within society. Most of these clinics have also focused efforts in marginalized and disadvantaged groups, and coexist with the more traditional LACs. This chapter studies the ongoing transformations of clinical legal education in Colombia, from the traditional legal aid model to the new public interest law clinic model.

There are not many PILCS in Colombia today. This is still a marginal phenomenon in the Colombian legal education system. Some may argue that these clinics do not deserve academic attention. However, new PILCS have been launched very recently throughout the country. In November 2009, for example, a Colombian National Network of PILCs began with nine law schools.[233] Currently, four of these clinics[234] are members of the Latin American Network of PILCs.[235] In addition, other law schools in the country are planning to launch new public interest clinics; thus, the phenomenon is increasing. The proliferation of these new legal education programs deserves the scrutiny to understand the driving forces and likely impact of these

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[232] That is the case for instance of the legal aid clinic of the Universidad Pontificia Bolivariana in Medellin which started to operate in 1950. *See* UPB Website, *supra* note, at 161.
[233] These law schools are part of the following universities: Universidad de los Andes, Universidad del Rosario, Universidad Sergio Arboleda, Universidad de Medellín, Universidad ICESI, Universidad Cooperativa de Colombia (Apartado), Universidad del Cauca, Universidad de la Sabana, Universidad del Norte, Universidad de Ibagué.
[234] Universidad de los Andes, Universidad Sergio Arboleda, Universidad de Medellin and Universidad del Rosario.
[235] This network emerged in 1996 under the leadership of Felipe Gonzalez Morales, former clinician at Universidad Diego Portales in Chile. *See* Network Website, *supra* note 227.

reforms on the broader legal community. This is true not just for Colombia, but the lessons of these legal education reforms may also be relevant to other Latin American contexts. Indeed, countries often look to their peers and regional neighbors to devise and reform their own legal systems. Therefore, it is important to understand how particular processes are functioning, as well as to analyze system challenges and shortcomings toward improving and adapting current and future reform efforts.

Although some of the PILCs are still very new and it is difficult to evaluate and reach general conclusions about their work only a few years after they were launched, others have been functioning for several years and can be evaluated across time. For instance, the *Grupo de Acciones Publicas* (hereinafter "GAP") from Universidad del Rosario, has been doing interesting and important public interest law work for more than ten years. Other clinics, like the *Grupo de Derecho de Interés Publico* of Universidad de los Andes (hereinafter "GDIP"), have been doing clinical work for the past five or six years and have achieved significant and measureable impact in their work. For example, GDIP in partnership with the NGO Colombia Diversa litigated an important case that led to the recognition of several patrimonial rights to same-sex couples in Colombia.[236] Therefore, as a practical matter, this is an opportune moment to evaluate the broader trajectory of clinical legal education reforms based on existing and proposed projects in the country and region.

This chapter is organized in five sections. Section 1 presents an overview of

[236] *See* Alviar, *supra* note 7, at 216.

the legal education system in Colombia, which is crucial to understanding the setting in which the clinics operate and are being launched. Section 2 focuses on the role of LACs in Colombia. Section 3 distinguishes between the work of the LACs and the new public interest law programs within the Colombian legal education context. Section 4 summarizes the work of two PILCs in Colombia, and Section 5 characterizes some of these PILCs as a phenomenon that has taken place mainly in private universities in Bogota, the capital city of Colombia, but that is growing and extending throughout the country. This final section also points out that some of these clinics are highly focused on litigation in national courts in Colombia, even though they purport to work in other activities, such as legislative advocacy or fact-finding report-writing on the situation of human rights within the country. In the chapter, I do not analyze specific clinical relationships between Colombian and U.S. clinics. I will explore that relationship with some of its challenges and opportunities in chapter IV.

1. An overview of the legal education system in Colombia

In Colombia, law students must complete a five-year undergraduate program to begin practicing law. Across the country, the law school population is very diverse. In most private elite and in public universities, students tend to be very young and usually start their studies immediately after high school. These students are also commonly full-time students. In this respect, Colombian legal education is not unlike that of many civil law traditions in Europe and throughout the world. The situation is

different in private non-elite institutions where the age of the law school population is variable. Commonly, and in contrast to private elite and most of public law schools, some of the older students in these programs have part-time or full-time jobs. In addition, these universities offer courses and seminars early in the mornings, late in the afternoon, during the nights or even during the weekends to facilitate class attendance.

Although an incipient account of the law school population in Colombia, the purpose of this description is to show some of its main features to understand the context in which law clinics have operated. The fact that law is an undergraduate program in Colombia does not necessarily mean that the law school population is young and with full time dedication in every institution.

Even though the Colombian Constitution of 1991 recognized the principle of university autonomy, the legal education system is still highly regulated by the Colombian Congress and Government. National laws, executive decrees, resolutions from the Ministry of Education,[237] and other authorities regulate, for instance, the fields of the law that curricula must include. These norms also regulate the procedures to certify the quality of law school programs. Accreditation is provided by the Ministry of Education pursuant to these myriad laws. A national law also establishes that Colombian law students, in public and private institutions, must take a legal aid clinic during the last year of law school. The students work in these clinics under the

supervision of law professors in order to serve the interests of poor individuals who cannot afford the services of a lawyer, usually in criminal, labor, and small civil law cases.

As a consequence of these regulations, law curricula in most of the universities tend to be rigid. Students are required to take large course loads of mandatory core courses in subjects like Constitutional Law, Civil Law, Criminal Law, Administrative Law, Civil/Criminal Procedure, Family Law, and Commercial Law.[238] Elective courses are the exception, and they are usually offered only during the last two years of law school.

Recently, there has been a significant and dramatic increase in the number of law schools in Colombia. According to official sources, in 1992 there were 32 law schools in the country. This number more than doubled by 2002 to 65 law schools, meaning that 33 new schools of law were opened in the country in only ten years.[239] In

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[237] *See*, Colombian National Decrees 1221/1990, 2802/2001 and 2566/2003 (recent decrees concerning legal education).

[238] Bonilla has defined this phenomenon as the "the encyclopedic" character of Latin American legal education. This is basically a system which "divides a curriculum in the classic Civil Law tradition areas of law and includes as many mandatory classes as necessary to oblige students to know all the legislature's creations". *See* Daniel Bonilla. *Public Interest Law Clinics in Latin America: A Tool against Legal Formalism,* Working Paper, 2007. *Available at* http://law.gsu.edu/ccunningham/LegalEd/Bonilla-ClinicsInLatinAmerica.pdf (last visited December 2016)

[239] *See* Alfredo Fuentes, *Educación legal y educación superior en Colombia: desarrollos institucionales y legales 1990-2002*, REVISTA NO. 9, ABOGACÍ-A Y EDUCACIÓN LEGAL (August 2005), *available at*, http://www.sistemasjudiciales.org/content/jud/archivos/notaarchivo/434.pdf (last visited December 2016)

2015, there are 178 law school programs within the country.[240]

One of the causes behind the increase in the number of law school programs in Colombia was the enactment of Law 30 of 1992, which relaxed the requirements for opening programs in tertiary education in the country.[241] To complicate matters, the proliferation of law schools has gone hand-in-hand with the phenomenon of privatization of education, which includes, of course, legal instruction. For instance, 24 of the 33 new law schools are part of private educational institutions.[242] Thus, in 2002, 72% of law schools in Colombia were private and only 28% were public institutions.[243] The effect of the privatization of education in Colombia and legal education in particular has not been adequately researched, and poses significant challenges due to the fact that some private legal institutions do not have the same reporting or compliance requirements as the traditional public national universities or private elite institutions.[244]

Additionally, there has been an increase in the number of law school programs[245] in the Colombian regions outside of Bogota and even outside of other

[240] *See* Maria Adelaida Ceballos, *Educación Jurídica, abogados y movilidad social en Colombia*, Master thesis on sociology at Universidad Nacional de Colombia available at http://www.bdigital.unal.edu.co/54799/ (last visited December 2016)
[241] *See* Freddy Salamanca, *Reseña Histórica de la regulación de la Enseñanza del Derecho* in MAURICIO GARCIA-VILLEGAS (ED.) LOS ABOGADOS EN COLOMBIA 61 (Universidad Nacional de Colombia 2010)
[242] *Id*.
[243] *Id*.
[244] *See* MAURICIO GARCÍA-VILLEGAS (Ed.). *Id.* at 23
[245] It is important to clarify that there is a difference between the number of Schools of Law and the number of law school programs. One law school in Colombia can have several law school programs in different cities. This is the case, for example, of Universidad Libre, Universidad de Antioquia, Universidad Cooperativa or Universidad Sergio Arboleda.

major cities. For instance, in 1992 there were 54 law school programs in 13 departments and 14 cities within those departments.[246] By 2002, there were 175 law school programs in 24 departments and 42 cities.[247] According to Alfredo Fuentes, former Dean of Law of the Universidad de los Andes, even though the law school population is still concentrated in the major cities of Colombia (commanding nearly 58% of the total law school enrollment in the country in 2002), the major urban Colombian centers of Bogota, Medellin, Cali and Barranquilla reduced their participation in the total of law school programs in the country from 76% in 1992 to 52% in 2002.[248] This means that in the last 15 years, law school programs have increased their presence in the Colombian regions. As with privatization, this 'regionalization' of legal education in Colombia has been under-analyzed. Regionalization is also problematic because many of these law faculties in the Colombian regions do not have the resources (both human and material) to guarantee a legal education with quality standards in these regions.[249] The proliferation of programs and law schools results in Colombia having one of the highest rates of lawyers in the region by population. According to a study by the Justice Center for the Americas, Colombia has a rate of 354.45 professionals per hundred thousand inhabitants. That is one of the highest in Latin America.[250]

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[246] *See* Fuentes, *supra* note 239, at 40.
[247] *Id.*
[248] *Id.*
[249] *See* Mauricio Garcia-Villegas, *Colombia, tierra de abogados*. El Espectador (May 1, 2010) available at http://www.elespectador.com/impreso/nacional/articuloimpreso201004-colombia-tierra-de-abogados (Last visited December 2016)

Another issue is the quality of that education. According to a recent investigation, very few law programs meet the highest quality standards of education: accreditation of the university and accreditation of the program. These programs are usually the ones with the best results in the national exams for law students. In other words, the general rule are the law school programs within unaccredited institutions of poor quality with poor results in national test. Most of these law quality programs are offered in private institutions.[251]

As in many other countries in Latin America, law school professors used to be prestigious practitioners who ran small law offices or who had important positions in the public or the private sector. With respect to pedagogical methodology, the most conventional method to the teaching of law was the lecture (*cátedra magistral*). Generally speaking, there was little interaction between the professor and the students. Students took notes and copied what the professor said. Usually there were neither questions nor reading assignments for every session of the class.

This situation has slightly changed in the last ten to fifteen years. Executive

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[250] *See* Corporación Excelencia en la Justicia website available at http://www.cej.org.co/index.php/todos-los-justiciometros/2586-tasa-de-abogados-por-habitantes-encolombia-y-el-mundo (last visited December 2016).

[251] In her recent work Ceballos concludes with regard to Colombian legal education system, "first, regulation and monitoring of legal education have been precarious and insufficient. This has led to a spectacular increase in the supply and demand for legal education over the last two decades. Second, as a result of this deregulation, the growth of supply and demand has been heterogeneous and unsystematic, with a predominance of low-cost, low-quality private programs. Finally, this disparity in supply is biased in terms of social class and gender since access to high-quality education is limited either to economically over-qualified students or to academically over-qualified students (mostly male)" *See* Ceballos, *supra* note 240.

decrees and administrative resolutions have encouraged, and sometimes have forced law schools (and most of undergraduate programs) to transition to a full-time professoriate. The goal of these regulations is to require law faculties to ensure that a significant group of professors are exclusively dedicated to teaching, research, and publishing. At the same time, the idea of a *profesor de catedra* system (adjunct professor) is contested by this set of rules that encourage the development of new teaching methods that allow critical thinking among the students.

This is still an ongoing process of change. Every year there are more full time "tenure-track" professors, but there are still many practitioners who serve as law professors, in particular, in the smaller, private non-elite law schools. The tendency among stronger law faculties is to hire more full time law professors with graduate studies (masters-level and doctoral degrees). With higher standards and the emphasis on hiring graduate-level professors, the result has been that those professors develop new and different teaching methods for their students, research projects and publications resulting from their work. However, as Garcia-Villegas has pointed out, legal education in Colombia is still heterogeneous, dispersed in the national territory, sometimes captured by private or political interests and with a poor quality on average.[252] This reality, of course, has an effect on the legal profession and the

[252] García-Villegas asserts that the social impact of a profession on the public should be proportional to the regulation of institutions. It is for this reason that he argues ath as the medical profession, the legal profession should be subject to precise regulation to ensure the quality of professional practice and ultimately the proper functioning of the administration of justice. Another important issues, regarding the quality of legal services is the fact that there is neither a State bar in Colombia nor a bar exam to practice law. This means that people who graduate from law school can go straight to practice the law. This also has an impact in the quality of legal representation across the country. *See* Sebastian Lalinde et al, *Gobierno y nominaciones de la Rama Jurisidiccional: hacia una mayor rendición de cuentas*. .

administration of justice in the country.

2. The key Role of LACs in Colombia.

C. Foster Knight, a former USAID officer, observed in 1974 that Latin American legal systems had moved slowly toward developing mechanisms to give the poor effective participation in the legal process.[253] One of those mechanisms was the law school clinic model. Specifically in Colombia, legal clinics started to assume an important function related to the delivery of legal services to the poor. There are arguments for and against clinics as primary providers of legal services to the poor in the country.

The first and more obvious argument in favor of law clinics playing the service provider role is that the students learn and give something back to the society while performing a social justice function. In other words, the participation of the student in the legal aid activity meets the dual function of clinical legal education: an authentic legal learning experience and a social work for the community. The exposure of students to legal aid work may sensitize them to social and legal problems and may even induce some of them to commit to doing such work as a life choice.

Available at: http://www.dejusticia.org/files/r2_actividades_recursos/fi_name_recurso.684.pdf (last visited December 2016)

Additionally, in certain countries like Colombia, the universities have been seen as distant to certain social problems. When entrusted with a specific task such as that of the provision of legal services to the poor, the university repositions itself and reforms its image as being empathetic to societal needs. In addition, if clinics are mandatory in both public and private universities, this is even clearer because this social responsibility of law schools is not restricted to those institutions that receive public resources or are part of the structure of the state.

Another argument in favor of clinics as service providers is that universities are often seen as neutral political actors and generally have a positive image among citizens.[254] By contrast, in many Latin American countries, public offices are often associated with corruption and inefficiency. Thus, one might expect that people go to universities more easily to try to find a lawyer to solve their legal disputes, rather than going to a government office. In this sense, to give law school clinics the primary responsibility regarding the legal aid could also mean to increase opportunities for citizens to participate effectively in the legal system. Finally, given the scarce resources of Latin American universities, it would not be accepted that law school clinics focus on delivering legal services to those that can afford them. First, this would not be a socially responsible use of resources and, second, the university would unfairly compete with their former graduates that, of course, expect to charge for their legal services once they leave law school and enter law practice.

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[253] *See* The Survey, *supra* note 145 at. 77

Among the arguments against LACs as primary providers of legal aid to the poor, the first and foremost is that law school clinics perform a function that replaces—and therefore exonerates—State responsibility and a function that the State is required to perform. In fact, the idea of legal aid services for the poor has a close and dual relationship with the welfare state. On the one hand, legal aid service for the poor is a welfare provision. In England, for instance, a system of legal aid was established after the World War II through the Legal Aid and Legal Advice Act 1949 which provided with free legal services to those who were not able to pay for the services of a lawyer. In the U.S., during the 1960s, the Congress passed the Economic Opportunity Act and, for the first time, made monies available for legal services to the poor creating the Office of Economic Opportunity (OEO).[255] On the other hand, free legal aid is also a tool to make effective certain rights recognized by a welfare state. Indeed, people turn to the legal aid centers in order to enforce their rights, such as health, education or the right to housing.

One might argue that, if state laws provide that citizens must attend judicial proceedings through an attorney, it should be the State, and not the universities, responsible for ensuring that lawyers are available to represent the interests of its citizens. In other contexts, however, the State can consider and has instituted different

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[254] *See* Carrillo, *supra* note 10, at 527.
[255] *See* Alan W. Houseman & Linda E. Perle, Ctr. for Law and Soc. Policy, *Securing Equal Justice for All: A Brief History of Civil Legal Assistance in the United States* 21 (2007), available at http:// http://www.clasp.org/resources-and-publications/files/0158.pdf (last visited December 2016).

alternatives in order to guarantee the delivery of legal services to the poor. One of those alternatives is to give this public function to the universities as it gives other public functions to other private actors. Notaries are a good example of this. In the case of public universities there should be no controversy about this because these universities are publicly funded and perform a public service.[256] The problem seems to arise when the only sources of legal aid for the poor are the law school clinics and the state does not fully support its work. Especially if one takes into account the number of unmet legal needs that affects the poorest.[257]

A second common argument against law school clinics as primary providers of legal aid to the poor is that this type of clinics does nothing to reform or change the underlying structural problems that they try to solve on an individual client basis. Given their nature, some argue, they do not extensively use other judicial mechanisms and legal tools that could promote broader social change and structural reform. In general, this is a structural objection to the work of legal aid law school clinics that

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The creation of this office is seen as part of the American welfare state, which then faced a strong opposition from conservative governments in the U.S. context during the last three decades of the 20th Century

[256] The mere existence and work of law school clinics in public universities is also controversial. Law school clinics in public universities in both the U.S. and in Latin America have faced important backlashes. In particular, when the activities and projects of the clinics are in contradiction with the interests of the State. This happens particularly, in those law school clinics in which the activities of the students are not restricted to the representation of the interest of an individual in a legal proceeding. The backlashes, however, are not exclusive of public institutions. In both the U.S.. and in Latin America, some private institutions receive public funding that can also be at risk when the State feels that there is any risk that comes from a litigation of the clinic. *See* Ian Urbina, *supra* note 214.

[257] In a recent and comprehensive study on access to justice in Colombia, researchers found that 2 out of 5 of Colombian adults in 14 major cities had a legal need in the last four years. Among those who had a legal need suffered 1.7 of them. This means that 4.6 millions of urban Colombians had 8 millions of legal needs in the aforementioned period. According to the study the people in a situation of extreme poverty had more legal needs than any other population in Colombia. *See* Miguel La Rota et al. ANTE LA JUSTICIA NECESIDADES JURÍDICAS Y ACCESO A LA JUSTICIA EN COLOMBIA 378 (Dejusticia 2014)

sees the clinic as a laboratory-style experience in which the main experimental subjects are poor individuals.[258] Back in 1969, in one of the first reports on the situation of legal aid in Latin America, R. Benson evaluated one of the clinical programs in Brazil and observed:

> "There is cynicism and condescension on the part of some students toward the poor. Many students view their legal aid experience chiefly as a means to polish their preparation for professional life . . . . One law school fears that if it sends its students into the slums they will charge the poor for their work. Other students have been known to display arrogant and disparaging attitudes toward the uneducated clients who are asking them for help."[259]

Benson's remarks and observations were part of a larger critique to the establishment of legal aid systems in Brazil, which apparently was far from being designed to solve the structural causes that bring the poor to the legal system in the first place. In fact, Benson emphasized the absence of any significant effort to offer legal services that included "preventive law/community legal education and law reform activities aimed at eliminating the causes of poverty."[260]

A similar critique was made in the context of the Neighborhood Law Firms for

[258] *See* Alviar, *supra* note 7, at 200.
[259] *See* The Survey, *supra* note 145, at 87.
[260] *Id.*

the Poor in the United States, the system that was designed to provide legal services for the disadvantaged in the 1960s. Some authors were very critical of the work of these offices. Specifically, they did not believe that the individual work to help the poor in specific cases undertook by these law firms would have the strength to promote a significant social change for the poor.[261] As a solution, some critics proposed that these neighborhood law firms spend more time and resources on law reform projects and less on individual casework. The idea with these law reform projects was to promote a significant change of the law on behalf of the lower classes.[262] This could be possible through: (1) legislative advocacy efforts; (2) *test case* litigation, like the one that led to the decision of the Supreme Court in *Brown vs Board of Education*, and (3) class action litigation in which members of a class seek compensation and changes in specific harmful practices.[263]

These strategies, however, are not exempt from their own set of challenges and critiques. On the one hand, the legislative advocacy efforts could be useless in front of certain legislatures uncommitted to social change or to the protection of the rights of the disadvantaged under a constitutional framework that did not require them to do so by law. On the other hand, strategies that promote social change in the judicial arena were commonly accused of not having sufficient legitimacy to facilitate the

[261] *See* BRYANT GARTH, NEIGHBORHOOD LAW FIRMS FOR THE POOR: A COMPARATIVE STUDY OF RECENT DEVELOPMENTS IN LEGAL AID AND IN THE LEGAL PROFESSION 171 (Alphen aan den Rijn, Sijthoff, 1980).
[262] *Id.*
[263] *Id.*

enforcement of the Court's orders related to the protection of the rights of the poor.[264] This sort of criticism is not strange within the Latin American context either.

3. The Emergence of PILCs in Colombia

The aforementioned critiques have justified the creation of an alternative type of law school clinic. Instead of being focused on the individual representation of clients, these clinics seek to address the underlying structural causes of injustice. This does not mean that the LACs do not execute a very important task. As Bonilla has explained: "While legal aid clinics focus on the rights of individuals who represent, the second (PILCs) focuses on the structural tensions that generate conflicts that clients and other individuals face in similar situations. The two types of tasks are extremely important."[265] Bonilla explains that in fact these tasks are complementary and also differ in important respects.

First, public interest law clinical work in Colombia is not limited to the representation of low-income clients who cannot afford the costs of basic legal services. For instance, Colombian PILCs have worked in partnership with NGOs and human rights activists to challenge national laws at the Colombian Constitutional Court. They also have been active in the protection of collective rights of broad

[264] *Id.* at 177
[265] *See* Bonilla, *supra* note 2.

sections of the population,[266] such as the right to a safe environment. In addition, PILCs develop a broader set of activities such as lobbying, nonlegal advocacy, legislative consulting services, or a human rights pedagogy.[267]

Public interest law clinicians recognize the importance that traditional LACs have played against formalism of the legal education system in Colombia.[268] For instance, GDIP members have held that traditional LACs have contributed to provide professional skill instruction to students (such as legal writing and negotiation skills). However, they also hold that traditional LACs have had some limitations. For example, they have not contributed to the reformation of structural problems that they solve on an individual basis and they have not used extensively those judicial mechanisms that could promote social change.

Unlike the professors of traditional LACs, professors of PILCs in Colombia are usually faculty members with full-time dedication to teaching and scholarship. This is important for at least two reasons. First, public interest law projects are usually extended in time, so the presence of a faculty member is a guarantee of permanent and continuous support and supervision for the students. At the same time, clients and partners can be sure that their cases or matters will not be abandoned when the students leave the clinic. Second, faculty members are usually researchers who are

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[266] *See* GDIP Website http://gdip.uniandes.edu.co/interno.php?Id=1&Menu=2&lang=es (last visited May 1, 2010).

[267] I am aware of the controversy among clinicians, particularly in the U.S., who discuss whether these activities should or should not be considered a part of a clinical program. *See*, Wilson *supra* note 79 at 423

able to use clinical legal education work as input for their personal research projects so the clinical experience also allows the strengthening of other components of the law school program.[269]

In Colombia, students are required by law to take a mandatory legal aid clinic. Back in 1971, Article 30 of National Decree 196 established that every law school in the country must start legal clinics. The article added that it was mandatory for students in the last two years of law school to work in these clinics under the supervision of law professors in order to serve the interests of poor individuals in criminal, labor, small civil cases, among others. Today it is still mandatory for Colombian law students, in public and private institutions, to take a legal aid clinic during the last year of law school.

While the participation of the students in traditional LACs is mandatory, this is not required for the PILCs. Consequently, the students who work in the PILCs tend to be more committed to their work. These are usually students who have defined their academic and professional interests in fields related to public interest law.[270] In some

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[268] *See* Alviar, *supra* note 7 at 209.

[269] Several years ago, Mark Tushnet proposed an alternative strategy to overcome the marginality of clinical legal education in U.S. law schools. He suggested that clinicians should use writing and research to compete with traditional instruction. Tushnet thought that it would be a mistake for clinical professors to deny the importance of research and writing. Instead, he thought that traditional professors were more vulnerable because their writing and research does not show enough engagement in the topics covered in the courses. Thus, clinicians were in a better position to do a more constructive intellectual work than the traditional members of the law school. He believed that with that kind of work grounded in clinical experience, traditional scholars cannot say that clinical instruction is just a more expensive method of teaching law. *See* Tushnet, *supra* note 123, at 278.

[270] *See* Beatriz Londoño, *supra* note 206, at 26

universities, public interest law programs are part of the structure of the main legal clinic[271] (*Consultorio Juridico*) but in any case, the participation of the student in the public interest law program is usually voluntary. Because there is limited admission, students must demonstrate their motivation and interest in being admitted to the program.

4. Two PILCs in Colombia: GAP and GDIP

The following section describes briefly the work of two PILCs in Colombia. These two clinics have pioneered public interest law teaching within the country. The data collected from the clinics was obtained from websites, press releases, informal conversations, and some of the clinic's publications (*e.g.* books or law review articles). However, this information shows at least what these clinics aim to do and some of the results that they have accomplished during the last decade.

4.1. ***Public Actions Group (Grupo de Acciones Públicas (GAP)) – Universidad del Rosario (Bogotá)***

GAP is a public interest law clinic that was launched at the Universidad del

[271] This is the case of the public interest law programs at Los Andes University. *See* Legal Aid Clinics website available at https://derecho.uniandes.edu.co/en/impacto-social/consultorio-juridico- (last visited December 2016).

Rosario[272] in 1999 with three general goals: to promote the use of constitutional mechanisms in defense of the public interest; to strengthen legal research within the University; and to help disadvantaged communities affected by the violation of human rights. GAP was the first public interest law clinic of this kind in the country.

By way of background, the Colombian National Constitution of 1991 incorporated a more expansive and generous list of rights—including civil, political, economic, social, cultural, and collective rights—than those found in Colombia's 1886 Constitution. The 1991 Constitution also instituted major reforms to the country's political institutions, including the introduction of new judicial mechanisms designed to protect and enforce constitutional rights.[273] According to Beatriz Londoño, one of the founders and current director of GAP, the creation of the clinic is a response to the challenge of "creating not only new pedagogic spaces but also spaces of legal and social action that allow the learning and proper development of these constitutional instruments to protect human rights."[274]

From 1999 to 2009, GAP handled more than 114 cases.[275] Forty-six of these

[272] The "Colegio Mayor de Nuestra Señora del Rosario - Universidad del Rosario" is a Colombian University, located in Bogota, originally founded on Roman Catholic principles, in 1653 by Fray Cristobal de Torres. The University is one of the oldest, traditional and more influential universities in the country. 27 Presidents of Colombia have been students of Universidad del Rosario.
[273] For example, the 1991 Constitution established: 1) the *tutela* action (Article 86), which is a mechanism that provides for the immediate protection of fundamental constitutional rights; 2) a Constitutional Court (Article 241), which replaced the Supreme Court as the final authority on constitutional interpretation; and 3) a Human Rights Ombudsman, or *Defensoria del Pueblo*, (Article 281), which promotes and defends human rights through the provision of legal aid and public interest services. *See* Constitution of Colombia, Arts. 86, 241 & 281.
[274] *See* Beatriz Londoño, *supra* note 206 at 13.
[275] *Id*. 18

cases led to a judicial claim or supposed the participation of the clinic in a judicial process. Four cases were part of lobbying activities at the Colombian National Congress. One case resulted in the submission of an international *amicus curiae* brief.[276] The rest of the cases have been denominated as non-judicial claims, study cases for research purposes, or legal opinions that GAP has given to its clients.

One of the major strengths of GAP has been its work on collective rights such as environmental rights, public health, public safety, access to public utilities, or the right to public space. Nearly 20% of GAP's judicial cases were brought to Colombian courts using the "*Acción Popular*." This is one of the judicial mechanisms designed to protect and enforce collective rights within the Colombian Constitution of 1991. Using this mechanism and with the support of the communities, for instance, GAP has obtained injunctions for an adequate solid waste management in San Andres Island (Colombia), or the protection of the right to prior consultation of the Indigenous Community Wayuu (Guajira, Colombia) when local civil authorities decided to start works within their territories.[277]

GAP is an active member of the Latin American Network of PILCs. This group of clinics has met every one or two years since 1996. The purpose of these meetings is to share some of the cases on which the clinics are working and to discuss

[276] This Amicus brief was submitted in the trial of Alberto Fujimori, former Peruvian President, who was found guilty of grave human rights violations and sentenced to 25 years in prison. The amicus brief was submitted in partnership with a group of Latin and North American clinics with the leadership of Professor Gorki Gonzalez at the Public Interest Law Clinic of Universidad Catolica del Peru.
[277] These cases are studied in depth in Beatriz Londoño, *supra* note 206, at 28.

future avenues or strategies to advance their goals. At the same time, these meetings give participants the possibility of discussing substantive topics on human rights and public interest law in Latin America.[278] In 2003 and 2009 GAP was one of the organizers of such meetings in Bogota.

4.2. Public Interest Law Group (Grupo de derecho de interés público (GDIP)) –Universidad de los Andes (Bogota).

GDIP is a public interest law clinic at the Universidad de los Andes[279] in Bogota, Colombia. GDIP is not the only non-traditional legal clinic at Los Andes School of law. The Global Justice and Human Rights Program (Justicia Global)[280] and the Program of action for equality and social inclusion (PAIIS)[281] have also the structure of legal clinics in which students work for the enforcement of human rights, from different perspectives and with diverse approaches.[282]

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[278] *See* Network website, *supra* note 227.

[279] Universidad de los Andes is a private university located in Bogotá, Colombia. The university was founded in 1948 by a group of Colombian intellectuals led by Mario Laserna. At the time of its foundation, Los Andes was the first university in the country to be non-sectarian, that is, independent of political parties or influence from the state or the church. *See* www.uniandes.edu.co. Los Andes has been traditionally considered as an elite prestigious institution which seeks academic excellence through a major focus on graduate education and research

[280] *Justicia Global* program promotes the enforcement of international human rights law through legal actions, courses, seminars, research projects and public interventions. *See* the program website available at https://derecho.uniandes.edu.co/en/impacto-social/programa-de-justicia-global-y-derechos-humanos (last visited December 2016)

[281] The Program of action for equality and social inclusion (PAIIS) was founded in 2007 as a public interest law clinic with a focus on especially vulnerable groups such as people with disabilities. The research and actions of the program are aimed to achieve material conditions of equality and social inclusion. *See* the program website available at http://paiis.org/ (last visited December 2016)

GDIP has three general goals: the first is to set up links between the university and the society. More concretely, the goal of GDIP is for students to understand their roles and promise as future lawyers in a society with profound inequalities like Colombia. The second goal of GDIP is to contribute to the renovation of a still very formalist and traditional Colombian legal education system through the development of an innovative clinical program with a public interest law focus. Finally, GDIP aims to contribute to the solution of structural problems within the society, particularly, those problems that affect the most vulnerable groups.[283]

The Clinic works in three different areas to serve these purposes. First, the clinic engages in teaching of human rights to empower the citizens in the knowledge of their rights and the judicial mechanisms designed to protect and enforce them. Second, the clinic provides legislative consulting services with a special focus on legislative bill drafting that benefits vulnerable or discriminated groups. Finally, GDIP works on strategic high impact litigation to advance in the protection of the rights of broad sections of the population.

This last area of work has been a key focus area or GDIP in the last five years. In partnership with NGOs, social organizations, academics and human rights activists, the Group has brought to Colombian national courts a wide variety of public interest law issues. For instance, GDIP, in partnership with the NGO Colombia Diversa,

[282] A later and more detailed version of this work is intended to study the work of these new clinics too, but given the fact that GDIP was the first public interest law clinic at Los Andes, I will focus exclusively in its work on this paper.

participated in the elaboration of a set of lawsuits that challenged Colombian National legislation that did not recognize same rights to same sex couples. This led to two landmark decisions that expanded the rights of same-sex couples. The first decision of the Colombian Constitutional Court recognized same patrimonial effects to same sex unions as those recognized to heterosexual cohabitants. A second decision recognized also the right to pension substitution for those same sex partners who survived the death of their couples.

GDIP has also been active in the protection of rights of indigenous and Afro-descendant communities. In 2008, the Colombian Constitutional Court decided a legal action of GDIP against a national law that had established the National Forestry System in the country.[284] The Court ruled that the law was unconstitutional because the government did not previously consult with indigenous and Afro-descendant communities who inhabit most of the territories affected by the regulation. This prior consultation is mandatory according to several national laws but especially pursuant to the ILO Convention 169 concerning Indigenous and Tribal Peoples.[285]

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[283] *See* GDIP website, *supra* note 266.

[284] The object of the law 1021/2006, according to Article 1 was "establishing the National Forest System, consisting of a coherent set of legal rules and institutional coordination in order to promote sustainable development of the Colombian forest sector within the National Forest Development Plan. To this end, the law provides the necessary administrative organization of the state and regulates activities related to natural forests and forest plantations"

[285] This Convention is mandatory at the domestic level in Colombia not only because the country is a party of the Convention but also because the convention is part of the "Constitutionality Block" or "*Bloque de Constitucionalidad*". This notion basically means that some rules, that are not included in the text of the Constitution, can enjoy constitutional hierarchy based on provisions in the Constitution itself. In the case of ILO Conventions, the pertinent rules are article 53 and article 93 of the Colombian National Constitution.

Most of the strategic litigation work of GDIP has been at the Colombian Constitutional Court using the *Accion Publica de Inconstitucionalidad (i.e.*, "C Cases"). This is a judicial institution that any Colombian citizen can access to challenge national laws for violation of the Constitution, without showing any particular interest, specific harm, or standing. Even though this institution has existed in Colombia since the early 20th Century, its use has been used more regularly within the country during the last 18 years with the adoption of the Colombian Constitution of 1991.[286] The 1991 Constitution, unlike the 1886 Constitution, recognized a binding legal character to its rules.[287] The new Constitution is not only a political document but also a legal and enforceable norm. A second reason for increased use is the creation of a Colombian Constitutional Court, which is in charge of protecting the integrity and supremacy of the Colombian Constitution through its judicial review function.

As with GAP, GDIP is also part of the Latin American Network of PILCs and has also encouraged the development of other PILCs in Colombia. Indeed, GDIP members have traveled to different law schools in the Colombian regions teaching a seminar entitled "PILCs: theoretical framework, challenges, backlashes and opportunities." The seminar has four objectives. First, it discusses critically some central texts of Latin and Anglo-Saxon literature on public interest law and the role it

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[286] *See* HELENA ALVIAR, NICOLÁS PALAU & ESTEBAN HOYOS, USO Y LÍMITES DE LA ACCIÓN PÚBLICA DE INCONSTITUCIONALIDAD IN TEORÍA CONSTITUCIONAL Y POLÍTICAS PÚBLICAS. (Universidad Externado de Colombia 2007)

[287] Article 4 of the Colombian National Constitution states: "The Constitution is the supreme law of the land. In any case of incompatibility between the Constitution and the law or any other rule, the

has played, plays and could play in the teaching of law and social problem-solving. Second, it presents the main strategies and lines of work that could be developed within a clinical public interest law. Third, the seminar seeks to explain the different types of clinics that could be created and logistical challenges that may exist in creating a clinic within a law school. Fourth and finally, it aims to create networks of collaboration among the different faculties of law in Colombia through work in public interest law.

5. Some observations of Colombia's PILCs

Unlike the traditional LACs, which are spread throughout the national territory in Colombia, PILCs have emerged mainly in Bogota, the capital city of the country. This proliferation is in stark contrast to the increasing regionalization of legal education in the country over the last twenty years. These phenomena have possible explanations, consequences and challenges for the development of clinical legal education with a public interest law focus in Colombia.

The PILCs that have been presented in this Chapter belong to two private elite Colombian universities located in Bogota, which is definitely a center of the legal education ideas within the country. These universities have had the resources to support the development of these new clinical programs. But this alone is not enough

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constitutional provisions shall prevail. It is the duty of citizens and of foreigners in Colombia to abide the Constitution and laws, and respect and obey the authorities"

for the success of a public interest law program. These institutions count also on full-time faculty members who have been willing to start and direct the clinics and have had the support of the law school administration despite of the opposition of more conservative sectors of the law school faculties. Launching any public interest law program requires the political will of its funder, which in the case of Colombia is usually the university.

Professors of these new clinics are usually experts on Colombian Constitutional Law and they have completed their master and doctoral degrees abroad.[288] They participate in international networks of public interest law clinicians.[289] Particularly, they have supported the consolidation of a Latin American network of PILCs that meets to discuss clinical legal education experiences. Once again, when they have met in Colombia, these workshops have taken place, not surprisingly, in Bogota.

The main consequence of this centralization of clinical work is that the cases that they take have also a central impact. This is particularly true with GAP because of their focus has been mainly in the protection of collective rights of communities located in Bogota and Cundinamarca (the department or administrative region in

[288] Legal education is an effective vehicle for legal transplants. In the case of the United States, for example, Gail Hupper has argued that U.S. graduate legal education is one of the mechanisms through which U.S. legal institutions are transplanted to other countries. *See* Hupper, *supra* note 44 at 444.
[289] Two of these networks are the Latin American Network of Public Interest Law Clinics and the Global Alliance for Justice Education (GAJE).

which Bogota is located and also its capital).[290] In the case of GDIP, this would not be completely accurate because most of the clinic cases are cases of constitutionality (C-Cases), which are litigated at the Colombian Constitutional Court, and have national impact.

However, at the same time, this poses a challenge for the development of PILCs in the Colombian regions. The fact that the highest courts are also located in Bogota makes the strategic litigation of certain cases for those clinics that are or will be located in the Colombian regions difficult. The same situation happens if clinics plan, for instance, to lobby at the Colombian National Congress. There are different ways to address this challenge, which are not mutually exclusive.

The first and most difficult is that the clinics try to find the necessary resources to advocate or litigate at the national level. Funding of PILCs in Colombia comes mainly from the universities. To try to find those resources, which are usually scarce, means to justify that they are needed not only before the administration of the law school program but also before the more traditional and conservative sectors of the faculty that look at the clinics suspiciously.[291] Clinics could also try to find external sources of funding but this is a complex process and it will depend particularly on the kind of case that the clinic selects. One of the main challenges for clinicians, as

[290] *See* Beatriz Londoño, *Las Clínicas Jurídicas de Interés Publico, Retos y Posibilidades de una reciente experiencia* available *at* http://www.ceja.cl/index.php/biblioteca/biblioteca-virtual/doc_view/2389-las-cl%C3%ADnicas-jur%C3%ADdicas-de-inter%C3%A9s-p%C3%BAblico-en-colombia-retos-y-posibilidades-de-una-naciente-experiencia.html (last visited December 2016)

Cummings and Rhode have pointed out, is "to select cases based on pedagogical value and to accommodate students' schedules, time commitments, and level of experience."[292] If in addition to this, the clinic is compelled to find an external source of funding that supports its work, it will be more difficult for the clinic to achieve its goals.

A second way to address the problem of the centralization of institutions is to decide to act locally. Colombian regions have serious and profound problems to which PILCs could contribute toward solutions. Many important decisions adopted at the local level, such as the ones taken by a town council or a local mayor, can affect community life in profound and important ways. There are also local courts in which students can bring petitions to protect the rights of individuals or communities. Therefore, a public interest law clinic can decide to limit the scope of their activities and actions to a particular city or region, and to participate sporadically in cases that require the clinic's presence in national scenarios. The fact that a case is litigated at the domestic level does not mean that this case cannot have a significant impact at the national level.

A second observation of the PILCs in Colombia is their emphasis on litigation before Colombian Courts. GAP and GDIP represent different models of clinical legal

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However, this clinic has also worked in a few cases in other regions of Colombia such as Valle, Guajira and San Andres.

[291] *See* Bonilla *supra* note 2.

[292] *See* Scott Cummings and Deborah Rhode, *Public Interest Litigation: Insights from Theory and Practice.* Fordham Urban Law Journal, Vol. XXXVI, 627 (2009); UCLA School of Law Research

education. GAP is a model more focused on the protection of collective rights through the use of *Acciones populares,* and GDIP has concentrated much more on its work before the Colombian Constitutional Court through the *Accion Publica de Inconstitucionalidad.* These are not the only activities in which these clinics have engaged, but in numbers, they represent a significant percentage of the work of each clinic. Below, I evaluate the merits of this approach and attempt to answer the question as to whether there is a problem with the public interest clinics' emphasis on litigation before national courts.

The first answer to this question should be "no." One of the goals of any clinic, even the more traditional ones, is to train the students for the practice of law. Litigation is one of those activities that lawyers perform every day. So with public interest law litigation, the clinics are providing students with practical tools that will be useful in their work as lawyers. In addition to this, the Colombian Constitution of 1991 created or strengthened a set of judicial mechanisms to enforce constitutional rights, which, as mentioned, were sporadically used by the more traditional LACs.

However, behind this question there is an enormous discussion on the limits of public interest litigation to bring about social change to a society. In particular, as Cummings and Rhode point out, there has been a constant critique according to which the "over-reliance on courts diverts effort from potentially more productive political strategies and disempowers the groups that lawyers are seeking to assist." This is a

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Paper No. 09-19; NYLS Clinical Research Institute Paper No. 08/09 #19. Available at SSRN:

highly complex issue and outside of the scope of the present chapter. But suffice it to say, at least, that PILCs should be aware of the limits of litigation even though they have obtained a positive response to their claims from the courts so far.[293]

Litigation should be located within broader political campaigns using it as a mean to an end and not as an end in and of itself.[294] This basically means two things. First, it means that PILCs should use not only the tools that lead to the judicial solution of a case but they should look for other tools or other spaces in which a solution can be achieved within the legal system. One example would be the use of an alternative dispute resolution method, which could avoid going through the complicated judiciary system. Another example would be to go before an administrative authority, that is capable of resolving the problem, and demand a solution. Litigation should be used only if it is the most effective way of advancing broader objectives.[295]

Moreover, the idea of litigation as a means and not as an end is also an idea that highlights the importance of the non-legal advocacy work. This is something unthinkable for a traditional legal aid clinic but not for a public interest law clinic that understands adequately, for instance, the significant role of the media or the political mobilization to advance in broader social justice goals. Beside litigation, PILCs in

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http://ssrn.com/abstract=1425097 (Last visited December 2016)

[293] This is particularly true in the case of GDIP that has obtained several positive decisions from the Colombian Constitutional Court in a wide variety of cases.

[294] See Cummings and Rhode, *op.cit*, at 615

[295] *Id.* at 616

Colombia develop other activities and projects such as lobbying, pedagogy of human rights to communities, or the drafting of bill proposals. Like the regionalization, the diversification of the activities of the clinics is essential. Nonetheless, the issue is whether these activities are being developed within the context of the cases that the clinics take or as isolated projects. That one is a question that remains open and needs to be explored. In this chapter, I did not analyze specific clinical relationships between Colombian and U.S. clinics. I will explore that relationship with some of its challenges and opportunities in chapter 4.

CHAPTER 4

NORTH-SOUTH CLINICAL COLLABORATIONS: DEBATES AND CHALLENGES

After exploring the relationship between the U.S. and Latin America on clinical legal education from the point of view of the origin and ongoing transformations of the clinics, in this chapter I will move to the issue of collaboration. By collaboration I understand any activity that involves the joint work of law school clinics from the North and from the South. This type of collaborations can adopt different forms. For instance, a law school clinic in the north can provide technical assistance to a law school clinic in the south to start a new clinical program. A law school in the North can organize a conference about the objectives and methodologies of clinical work. An international human rights clinic can collaborate with an *amicus curiae* or a shadow report on a specific topic to support a domestic litigation.[296]

When I first started writing this chapter, I received an email from a U.S. clinical law professor sent to a U.S-based Human Rights Clinicians' list serve to which I subscribed. The e-mail read as follows:

"All,

I am looking forward to seeing many of you next weekend!

I am writing on behalf of a friend and colleague. She is looking for potential clinic projects involving international environment law/justice/human rights in Latin America, especially involving the mining industry, water, indigenous communities, etc. She is interested in human rights reporting, but also work before the Inter-American system. Do you know of any project, connections, or does your clinic need any help/collaboration with the work you are doing? Thanks in advance for any responses."[297]

X.

Many questions arose after I read this e-mail. How should be the relationship between law school clinics in the Global North and the clinics in the Global South? What are the consequences of the increasing work of International Human Right Clinics from the Global North in Latin American countries? Under what conditions should we establish the collaboration between clinics in the North and South? Are those collaborations desirable? How can law school clinics from the North and the South work together in the protection of human rights across the region? What can we learn from the teachings of critical legal theory and our own history on legal education collaborations to better address some of these questions? What is the best way to start and develop these clinical collaborations?

I will not answer all of these questions in this chapter. They are, however,

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[296] See DANIEL BONILLA, *CONSULTORIOS JURÍDICOS UNIVERSITARIOS EN EL NORTE Y SUR GLOBALES*: ENTRE LA IGUALDAD Y LA SUBORDINACIÓN IN *GEOPOLÍTICA DEL CONOCIMIENTO JURÍDICO* 43 (Siglo del Hombre – Uniandes 2015)

[297] Personal communication (On file with the author)

related to the main topic of this thesis, which is the relationship between the U.S. and Latin American countries regarding clinical legal education. This topic of collaboration has received recent attention from both clinicians and scholars in the North and South.[298] The literature has focused on the advantages and disadvantages of those collaborations; the functional differences between clinics in the North and South; the need to establish horizontal dialogues between clinics, and other normative criteria to try solving the possible conflicts that can emerge in clinical collaborations. In this chapter, I give account of some of those discussions. Those discussions are key given the increasing work of international human rights in the U.S. These types of collaborations seem to consolidate the objectives of a global clinical movement.[299] Interestingly, the debate has been promoted for U.S. educated law professors from the South but it has found interesting responses from clinicians and professors of the Global North.

After introducing the theoretical terms of the debate, I analyze two case studies: First, a recent initiative of Higher Education for Development[300] and USAID[301] in Colombia to establish law school partnerships between the U.S. and Colombia on Human Rights. This partnership included setting new HRCss in

[298] *See* for instance the works of Bonilla, *supra* note 12; Bilchitz, *supra* note 15, Perelman *supra* note 15, Jaramillo, *supra* note 15, and Silk, *supra* note 15.
[299] *See* Bloch, *supra* note 5.
[300] Higher Education for Development (HED) mobilizes the expertise and resources of the higher education community to address global development challenges. Higher Education for Development (HED) works closely with the United States Agency for International Development (USAID) and is founded by the nation's six presidential higher education associations to support the involvement of higher education in development issues worldwide.
[301] The United States Agency for International Development (USAID) administers "the U.S. foreign assistance program providing economic and humanitarian assistance in more than 80 countries

Colombia and strengthening the practice of existing clinics. Second, I will study the case of the Cornell international human rights clinic working for the economic accessibility of the right to education in Colombia. Based on those two cases I present some of the challenges and opportunities that not only the clinics but also the entities and agencies involved in international cooperation face when dealing with collaboration between law schools clinics in the Global North and the Global South.

1. Human rights clinics in the U.S.

As I showed in chapter 1, human rights clinics emerged in the U.S. during the 1980s and early 1990s.[302] These clinics have appeared as a consequence of the increasing development of international human rights law and human rights institutions during the last two decades of the 20th Century.[303] Also, during this time, human rights advocates, national and international NGOs have sprung up around the world and to some extent have pushed for the consolidation of an international human rights movement.[304] At the same time, these clinics have brought the original social justice mission of clinical legal education to a transnational arena.[305] Indeed, HRCs have become actors that use international human rights law to improve the situation of

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worldwide". *See* USAID website available at www.usaid.gov. (last visited December 2016).

[302] According to Deena R. Hurwitz, the first international human rights clinic operated at SUNY Buffalo School of law from 1979 to 1986. This clinic became later an asylum and immigration clinic. Then, in 1989, Yale Law School offered for the first time its international human rights clinic, and American University's Washington College of Law did it in 1990. *See* Deena R. Hurwitz, *Lawyering for Justice and the Inevitability of International Human Rights Clinics,* 28 YALE J. INT'L L. 505, 525 (2003)

[303] *Id.* at 524-525.

[304] *Id.* at 526.

[305] *See* Carrillo, *supra* note 10, at 540.

marginalized and underserved populations across the globe.

The work of HRCs has included the struggle for the recognition and enforcement of civil and political rights, social and economic rights, collective rights, and other human rights recognized in international instruments of international law. HRCs have emerged also as a response to the need to close the gap between the theory and practice of human rights law. As Deena Hurwitz has correctly posited: "one of the aspects that distinguishes clinical human rights from conventional lecture or seminar courses is just that opportunity for students to participate in *making rights real*—for them to experience the utility of norms as applied to real world situations."[306]

HRCs use different strategies to accomplish their goals. Some clinics have brought human rights cases before national courts whereas others have specialized in litigation before regional and international systems of human rights such as the Inter-American system. While some HRCs have focused on the elaboration of fact finding reports on the situation of human rights[307] (*e.g.*, the "naming and shaming" approach), others have decided to lobby and push for improving the human rights conditions of individuals or groups before national or international authorities. However, clinicians have quickly understood that impact litigation should be located within broader

[306] *See* Hurwitz, *op. cit.,* at. 528

[307] Johanna Bond, *The Global Classroom: International Human Rights Fact-Finding as Clinical Method*, 28 WM. MITCHELL L. REV. 317 (2001; Tamar Ezer and Susan Deller Ross, *Fact-Finding as a Law-Making Tool for Advancing Women's Human Rights*, 7 GEO. J. GENDER & L. 331 (2006). Lisa Vollendorf Martin, *Using Fact-Finding to Combat Violence Against Women in Ghana, Uganda and the United States: Lessons Learned as a Clinic Student, Clinic Supervisor and Practitioner*, 7 GEO. J. GENDER & L. 349 (2006).

political campaigns. Impact litigation is a means to an end, and not an end in itself,[308] and the clinical model rightly posits that such litigation should be used only if it is the most effective way of advancing broader legal and social objectives.[309] As a consequence of these generally held beliefs, most clinics engage in a variety of different activities, and not litigation exclusively, to advance and realize project goals.

HRCs have also been subjected to criticism. In recent years for instance Eric Posner,[310] a professor at the University of Chicago Law School, has questioned their work and has called clinic activities as being left-wing oriented. Examples of these left-wing activities, for Posner, include helping undocumented migrants obtain asylum; developing a best-legal-practices guide for responding to domestic violence in Mexico and Guatemala; advocating for public housing in New Orleans after Hurricane Katrina; drafting a petition to the Inter-American Commission on Human Rights after a local government denied dialysis funding to certain immigrants; and writing reports to help Haitian residents in the Dominican Republic who suffer from political repression and discrimination.[311] But Posner's main argument is that there is indeterminacy and ambiguity in the international human rights law, which has historical reasons.[312] And when a HRC decides to advance a particular claim within international human rights law, there is a political agenda of clinical law professors and students involved that for him should not take place in a law school.

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[308] *See* Cummings and Rhode, *supra* note 292 at 615.
[309] *Id.* at 616.
[310] *See* Eric A. Posner, *The Human Rights Charade* available at http://www.chronicle.com/article/Peace-LoveGrandstanding/149961/ (last visited December 2016)
[311] *Id.*

The clinical community has reacted against Posner. Sital Kalantry, clinical law professor at Cornell for instance, has argued that Posner has a narrow understanding view of human-rights law and his comments reflect a lack of understanding of what students in HRC clinics and lawyers in the real world do. She also believes that Posner's critique is more a critique to international human rights law itself and not to the work of the clinics. Kalantry makes a case for the pedagogical value of the clinic[313]

As Louise Trubek has said it is important to remember that the role of clinics and legal education in the US is contested then and now. It is easy to make it seem like a single process with no internal disagreements. Right now there is substantial debate between clinicians and deans of law schools about the role of clinics in the roiling of legal education.[314] A recent example of these disagreements is the American Bar Association's Section of Legal Education and Admissions to the Bar (the accrediting agency for law schools) has issued new accreditation standards (already in effect) that define the criteria necessary for a law school course to call itself a "clinic." Courses that do not meet these criteria will not be able to be called a "clinic." A number of HR Clinicians are concerned that these new criteria may be unnecessarily narrow and may create incentives contrary to our pedagogical and social change goals. Specifically, the requirement of an "actual client" may be problematic as currently framed since it may be read to exclude work done in partnership with communities or individuals and not

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[312] *Id.*

[313] *See* Sital Kalantry *Eric Posner does not understand human rights* available at http://chronicle.com/blogs/conversation/2014/11/24/eric-posner-doesnt-understand-human-rights/ (last visited December 2016).

[314] Louise Trubek. Personal communication on February 2015 (On file with the author)

in pursuance of their representation.

2. Clinical collaborations: same issue, different views

In order to achieve many of those goals, international HRCss have increased their partnerships with law schools, clinics and organizations abroad. These sorts of alliances have advocates and opponents. For instance, Paoletti has advocated for the development of comprehensive exchanges between clinical programs around the world.[315] For her, promoting these collaborations and establishing transnational partnerships is important for two reasons: First, clinic collaborations provide a means for U.S.-based clinics to provide critical direct support to emerging clinics in the global South who must otherwise conduct their work with few resources and often in the face of political opposition in their home countries.[316] Second, she argues, clinics in the South provide U.S. clinical students with unique "access to client populations and first-hand accounts of legal systems and how they operate that they may not otherwise be privy to."[317]

On a more pessimistic note and offering a perspective from the Global South, Daniel Bonilla, an U.S. educated Colombian law professor and clinician, has been one of the most critical voices on this issue of the relationship between clinics of the global

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[315] *See* Sarah Paoletti, *Transnational Approaches to Transnational Exploitation: A Proposal for Bi-National Migrant Rights Clinics,* 30 U. PA. J. INT'L L. 1171, 1183 (2009).
[316] *Id.*
[317] *Id.*

north and the global south.[318] Even though, he does not deny the intrinsic value of the North-South collaborative work in clinical projects, Bonilla affirms that the relationships between PILCs in the Global North and South reproduce typically unequal relationships between the center and the periphery of legal academia.[319]

Bonilla affirms that in connection with the production of legal knowledge, its legitimization and effective implementation, legal clinics in the North have had a privileged role over their counterparts in the Global South and North-South clinical collaborations tend to deepen the enormous differences between clinics in these places.[320] He offers three different examples to illustrate his argument. The first one is when a law school clinic from the North decides to conduct a fact-finding mission in the Global South.[321] The second is when a clinical professor at a university in the North is hired as a consultant to create or strengthen a clinical program in the Global South.[322] The third one is the joint organization of academic events on topics of interest to both clinics in the Global North and South.[323]

In every one of these examples, Bonilla highlights the strengths of the collaborative work between legal clinics of North and South.[324] But then he notes certain norms, often implicit, that do not necessarily promote equal relationships

[318] *See* Bonilla, *supra* note 12, at 3.
[319] *Id*.
[320] *Id*.
[321] *Id*. at 22
[322] *Id*.
[323] *Id*. at 30
[324] *Id*. at 31

between the clinics of the Global North and South.[325] For instance, the lack of local academic knowledge involved in fact-finding missions that take place in the Global South[326]; the vertical character of many of the consulting projects to create or strengthen law school clinics in the Global South; or even in the organization of academic events in which clinics from the North tend to make the central decisions in terms of agenda, since they own most of the economic resources to pay for these events. These are serious challenges to clinical collaborations.

James S. Silk, clinical professor of law and executive director of human rights at the Center for International Human Rights of Yale Law School, responded to Bonilla and argued that an imperative of empathy must guide South-North clinical collaboration in human rights advocacy efforts. Silk only focuses in one aspect of clinical collaborations, which is the partnership between clinics of the North and South to work on human rights projects. This, of course, includes fact-finding missions.[327] Silk agrees with many of Bonilla's concerns but he believes his work is "incomplete in important ways and that a fuller account that considers not only structural, but also individualist, explanations of unequal clinic-to-clinic relationships is necessary for understanding and addressing the phenomenon comprehensively"[328] Specifically, Silk asks for a more detailed empirical analysis of those cases in which successful collaborations between clinics of the North and South have taken place.

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[325] *Id*
[326] *Id*. at 24
[327] *See* Silk, *supra* note 15, at 43

Other authors like Perelman advocate for a "middle" positioning in collaborative transnational human rights advocacy. He acknowledges the tensions that underlie the practice of Global North/Global South collaborative human rights advocacy, such as the equality/subordination dichotomy describe by Bonilla.[329] But he also believes in the possibility of transcending those tensions. For Perelman, designing collaborative clinical projects from the "middle" entails acknowledging and navigating Global North/Global South institutional, intellectual, and financial flows that shape the human rights and global clinical movements. It involves identifying and balancing the linkages as well as the inevitable tensions between internal and external political economies of accountabilities that inform the range of possible practices, but also making reflective, ethical and political choices on those when conceptualizing and implementing projects.[330] His invitation is to encourage human rights advocates and clinicians to openly address the underlying theoretical, ideological, institutional, and political groundings of their work, and to reflectively situate their diverse theories of change within broader trajectories of law, economic development, and social change.

This is not an easy task. Human rights clinicians have to balance teaching and project goals. Moreover, the long-term nature of many projects which involve complex issues, ongoing relationships with partners or clients and different advocacy strategies, require a time commitment that does not often correspond with the typical academic semester.[331] A satisfying practice of "ground work" according to Perelman

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[328] *Id.*
[329] *See* Perelman, *supra* note 15.
[330] *Id.* at 143.
[331] *See* Getgen Kestenbaum et. al., *supra* note 3, at 495.

might thus entail: 1. Extensive dialogue structured around the objectives, rules, and financial and institutional features of the project with both transatlantic and local partners; prior legal, socio-economic, and historical research by both faculty and students. 2. Methods of institutional and political economy mapping, qualitative or quantitative data gathering through official and/or grassroots level interviews, surveys, workshops and community organizing. Such methods would seek to identify local partners' and groups' priorities, and support the project's advocacy strategy through on-the-ground fact finding and research analyzing the context and sector-specific issues and political economies at play, as well as the local, regional, and transnational leverage points for and spillovers of advocacy. 3. It would also seek to enhance the students' learning experience by exposing them to real-life advocacy and research in a markedly different context, allowing them to both hone skills learned in the classroom and develop, on site, other legal and multi-disciplinary skills required for economics-oriented human rights advocacy. Finally, it would aim to gather data and insights for research about the very practice in which clinical teams engage.[332] In Chapter 5, I will go back to this proposal of Perelman because I believe it contains key elements to better address the practice of truly collaborative work between clinics of the North and South.

Finally, other authors like Jaramillo have invited us to transcend the North-South dichotomy to analyze clinical collaborations. The North-South explanation pays too little attention to the political character of legal knowledge, and thus the

[332] *See* Perelman, *op.cit.*, at 142-44.

constitutive role of legal knowledge in the creation of wealth and prestige.[333] For this reason, the North-South divide explanation does not give us an explanation of the particular concepts and fields of law that are dominant at a given point in time, does not account for the channels of dissemination of a particular configuration of concepts, and it cannot explain patterns of dominance within the North or within the South.

As can be seen, the answers to the objections of collaborative clinical work may be multiple. From a call to empathy in the case of Silk, through an invitation to map the middle in the case of Perelman or an invitation to overcome the North-South dichotomy in the case of Jaramillo.

3. Case 1: The project to establish an alliance of law school clinics in Colombia with U.S. support.

As I said earlier the project's sponsors are Higher Education for Development in cooperation with the United States Agency for International Development Mission in Colombia (USAID/Colombia). The project has three objectives: strengthening the institutional capacity of the selected law schools in Colombia to train future lawyers in human rights; enhancing the outreach ability of law schools in the regions to better serve vulnerable populations; and providing future lawyers "with an understanding of

[333] *See* Jaramillo, *supra* note 15, at 192-93

national and international standards of human rights and the skills to support human rights in Colombia"[334]

In the following chart I present the objectives and expected outcomes of the project according to The Assessment Report:

Objective	Output
1. To strengthen the institutional capacity of Colombian law schools to train future legal practitioners in human rights by introducing or strengthening curriculum in human rights as well as	- New or improved curricula in the broad area of human rights. -Legal clinics in specific human rights areas. - Development or strengthening of formal externship programs with state and civil society agencies as learning opportunities for law students - New or strengthened educational offerings in human rights in target law schools. - Courses to improve Faculty and students' learning of English - Faculty training manuals or materials on methods for teaching human rights. - International exchanges or internship programs for human rights professors to study and/or gain experience on human rights in the U.S. - Joint research projects, particularly those that address

[334] *See* USAID –HED, *Colombia – U.S. Human Rights Initial Institutional Assesment Report,* available at http://pdf.usaid.gov/pdf_docs/PA00J324.pdf 4 (Last Visited December 2016). Hereinafter Assesment Report.

experiential models of legal education, such as clinics and externships	vulnerable populations in Colombia, are carried out by Colombian and U.S. law professors - Human rights resource networks among participating Colombian law schools, U.S. and other Colombian law schools in the region -A regularly published law review of human rights in Colombia and other publications on human rights. - New or revised policies or initiatives to support access to law school education for members of vulnerable populations.
2. To enhance the outreach capacity of regional law schools to better serve vulnerable populations with limited access to or knowledge of the legal system.	- Legal clinics for high-impact and strategic litigation are established or strengthened. - Human rights centers, institutes or observatories to gather data and conduct research on local and regional human rights issues. - Working Group of law schools that convenes frequently to increase communication among civil society, state actors, and law schools regarding regional legal needs and strategies for prevention and remediation, particularly with respect to vulnerable populations. - Increased participation of Colombian law schools in regional, national, and international networks on human rights and legal

	education
3. To equip future legal professionals with an understanding of national and international standards of human rights and the skills to support human rights reform in Colombia.	- New and strengthened Practice Law Centers (consultorios jurídicos) in target law schools. - More students participate in national, U.S., or international human rights moot court or mock trial competitions. - Career development programs with job placement services established at law schools. - New or expanded initiatives to support student practical learning of human rights. - Student-led human rights courses conducted in school and community settings.

Table 4: Objectives of the project. Source: Assessment Report.

Summary of goals, expected output and suggested activities[335]

One of the strategies to achieve the project's goals is to create partnerships between U.S and Colombian law schools[336] to enhance the work of current law school

[335] *Id.*

[336] Specific partnership activities include: "the development of courses and modules on human rights, the expansion of Spanish language materials available in the UMN online Human Rights Library; faculty and student exchanges and guest lectures; participation in regional and international conferences on human rights law; human rights clinics at the Colombian partner institutions; intensive two-week summer workshops in Medellín for law students; engagement in litigation related to human rights;

clinics and to create new clinics in some law schools that do not have a clinical practice in human rights. For instance, in the State of Antioquia, there will be a partnership between the University of Minnesota and four law schools: Universidad de Medellin, Universidad Pontificia Bolivariana, Universidad Católica de Oriente and Universidad de Antioquia. Every one of these institutions has a traditional legal aid clinic, which is mandatory in every Colombian law school according to the law.[337] And except for the Universidad Católica de Oriente, all the law schools have had some sort of experience in alternative clinical legal practices.[338]

3.1 The project's strengths

The project from its inception has several strengths. First, the initiative focuses on law schools outside Bogota, the capital of Colombia. Unlike the traditional LACs, which are spread throughout the national territory in Colombia, PILCs have emerged mainly in Bogota, the capital city of the country as we saw in chapter 3. This proliferation is in stark contrast to the increasing regionalization of legal education in the country over the last twenty years as seen in chapter 3 of my work.[339]

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training in trial advocacy practice skills, and placement of Colombian students in externships with human rights organizations; and student participation in the Inter-American Moot Court Competition". *See*. http://www.hedprogram.org/ourwork/partnerships/COL-2012-10-19-b.cfm (Last visited December 2014)

[337] *See* chapter 3 of this dissertation to further discussion about Colombian clinical legal education.

[338] Universidad de Medellín has had a public interest law clinic with a concentration on environmental law issues for several years. *See* Universidad de Medellin website available at http://www.udem.edu.co/index.php/clinica-juridica-de-interes-publico/clinica-juridica-informacion-general (last visited December 2016)

[339] *See* Fuentes, *supra* note 239.

Second, the project targets areas that have been heavily affected by the Colombian armed conflict.[340] Within those regions, the project not only addresses victims of the conflict but also groups disproportionally affected by human rights violations, including indigenous and Afro-Colombian communities, women, children and youth, members of the LGBT community, human rights activists, journalists and labor union members. Many of these groups are what the Colombian Constitutional Court has called "*subjects of special constitutional protection*". This is a judicial declaration that imposes the Colombian state special duties of prevention, care and protection of their individual and collective rights.

Third, professors from both the U.S and Colombian[341] law schools participated in the design of the project. This is important because a common critique[342] to this sort of projects in the region is the lack of knowledge of the local context. The inclusion of Colombian law professors helps to avoid this common source of criticism. Furthermore, it is evident in the initial assessment report that there is specific information of the current situation of human rights in the country, as well as hard data on the Colombian legal education structure, particularly outside Bogota.

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[340] Antioquia, Valle and the Caribbean Coast.

[341] According to the Initial Assessment Report: "HED assembled a design team of four professors from U.S. and Colombian law schools who traveled to Colombia from February 20 through March 2 to survey and assess the present and potential capacities and interest of 17 universities (16 law schools) in five regions of Colombia regarding their education and community outreach in human rights. The regions visited are some of the most affected by violence and concentrate significant vulnerable populations. To better understand the context in which these law schools work, the team also met with national, regional and local human rights experts in state and nongovernmental organizations (NGOs) and officials in USAID national and regional programs". *See* Assesment Report, *supra* note 334, at 5.

[342] *See* Bonilla, *supra* note 12.

3.2 Clinical legal education here and there: the concept of clinical legal education in the project

Despite its strengths, the project has also several weaknesses. The first one is an idea that *consultorios jurídicos* (called *practice legal centers* in the assessment report*)* are not legal clinics in the U.S. sense of the term. In one of the footnotes the initial assessment report says:

Consultorios differ from U.S. legal clinics in that they are not as tied to considerable seminar instruction on substantive law, legal analysis and advocacy skills; have fewer and less qualified supervisors; and limited linked instruction[343]

I do not deny that there could be different definitions of clinical legal education. In my initial chapter, I presented several definitions of clinical legal education and decided to adopt one for the purposes of this dissertation. Specifically, a legal clinic is a course that students take for credit (usually in their lasts years of law schools) in which they work on real cases with real clients, which usually do not have the resources to pay a lawyer for their services. Under this definition, it is clear to me that *consultorios jurídicos* or *practice law centers* are legal clinics.

The definition of the report is problematic because, again, it implies that the U.S. legal aid clinic is the model to imitate because clinics in the U.S. have more supervisors and linked instruction. In a context like the Colombian, in which the law

requires professional legal representation in almost every judicial proceeding and in which law students are key to defend the interests of low-income citizens, this attitude toward the more traditional legal aid instruction is highly problematic.

As a solution to the current problems of *consultorios jurídicos*, the project proposes to develop a plan to create or strengthen LACs in the selected law schools. This plan includes establishing mandatory training courses for supervisors; ensure that all students complete a mandatory human rights course prior to their service at *consultorios* and developing a course on skills needed for student practice (such as client intake, interviewing and advocacy skills and topical substantive law and procedure).[344] Behind these proposed activities seems to be the belief that law clinics can become "authentic legal clinics" if they perform certain activities similarly to their counterparts in the United States. And again that seems problematic because it ignores that local legal clinics have a history, knowledge, a know-how in the performing of certain activities. Resources of international cooperation should build on that experience rather than ignore it because it simply does not resemble the U.S. clinical legal education experience.

3.3. The tension between a language of collaboration and an uneven design of the activities.

[343] Assessment Report, *supra* note 334, at 5.
[344] *Id.* at 19.

In general, there seems to be a language of inclusion and collaboration in the project. The Assessment Report, for instance, concludes with this paragraph:

Based on the assessment, it is clear that **close collaboration** between U.S. law schools with law schools in Colombia should be the starting point for a successful development of the partnerships. This will include **working together** in the design of curricula and teaching methodologies, criteria to promote internships and exchanges of faculty and students, language programs, legal clinics, and advanced degree support to be provided as part of this program. While the main purpose of the Colombia–U.S. Human Rights Law School Partnership is designed to strengthen the Colombian human rights capacity through legal education and outreach to the community, **many of the partnership activities will be mutually beneficial**. Encouraging a continuous presence of faculty, researchers and students from U.S. universities with law schools in Colombia – through exchanges, joint research projects, or other activities - will also give U.S. partners greater awareness and understanding of Colombian society, law and human rights context, which is essential for developing appropriately tailored approaches to enhancing Colombian capacity in human rights.

Expressions like *close collaboration, working together* or *mutually beneficial* are ubiquitous in the Assessment Report[345] and also in public declarations made by

[345] In a press release, University of Minessota affirmed "We are eager to partner with law students and faculty from Medellin," says Barbara Frey, director of the U's Human Rights Program. "We know it will be an exciting and rewarding experience working with faculty and students who are committed to the rule of law as an alternative to violence in Colombia. We will certainly learn as much as we will

U.S faculty involved in project. For instance, in a press release, Professor Barbara Frey director of the University of Minnesota Human Rights Program said:

We are eager to partner with law students and faculty from Medellin" (…) "We know it will be an exciting and rewarding experience working with faculty and students who are committed to the rule of law as an alternative to violence in Colombia. We will certainly learn as much as we will teach.[346]

Despite these statements, this initiative is still a very unbalanced project in which there is an idea that a particular knowledge in the Global North needs to be transported to the South in order to improve the current situation of human rights through legal education. I can bring several examples of the proposed project's activities to justify what I say here but I will mention two:

The first and foremost is the mere suggestion of curricular change as an expected outcome of the project. There is a clear intention in this project that law school curricula in Colombia change to incorporate mandatory courses on human rights. Let me be clear, I am not against the presence of these courses in the law school curricula. In fact, I think that given the role that international human rights law plays at the domestic level, many of the human rights' contents are or should be incorporated in our own constitutional and international law courses. What I disagree is that these curricular changes would be the result of a USAID sponsored initiative that claims on paper to promote collaborative partnerships in Colombia. Moreover, it

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teach." *See* University of Minnesota News Website available at https://www.law.umn.edu/news/2012-11-19-u-m-human-rights-program-receives-125-million-usaid-grant (last visited December 2016)

is surprising that there is no recognition or a self-critique of the fact that many of these human rights courses are generally not mandatory for U.S. law students but should be mandatory for law students in Colombia.

Finally, at times, the project seems to ignore how difficult is to introduce changes to law school curricula in Colombia (and in the U.S. as well) in both private and public institutions. Curricular changes are usually complicated processes, which involve not only Faculty but also students, and school and University officials. Like in the past, as we saw in chapter 1 on the first efforts of the law and development movement in the region, it is feasible to anticipate that curricular changes could face opposition among faculty members or school officials who are against the idea these changes come from a foreign sponsored initiative.[347]

Another example of what I call an uneven design of activities is the issue of international exchanges. One of the expected outcomes of the project is the development of international exchanges or internship programs for human rights professors to study and gain experience on human rights in the U.S. As an example of the proposed activities that will be developed to achieve this outcome, the report mentions:

U.S. law schools could readily and efficiently host Colombian faculty as observers of substantive and clinical courses or as visiting researchers with library,

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[346] *Id.*
[347] *See* Gardner, *supra* note 106.

workshop and other privileges. Similarly, U.S. faculty could visit Colombian law schools as guest lecturers for students and to lead training seminars for faculty"

This is what I mean with the uneven/one-sided conception of the project. An idea of exchange in which Colombian law professors must assume a passive role, travel to the U.S. and "enjoy the privileges" of the American legal education system while U.S law professors go to Latin America as visiting professors and teach not only students but also faculty. Again, at times, the project seems to ignore that there is knowledge and experience at the local level, and that experience and knowledge could be relevant also to U.S. students and faculty.

4. *Case 2: the Right to Free Education case*[348]

In the following section, I will describe a second case: our work with the right to free education in Colombia. I participated in this case, first as an LL.M student at the Cornell International Human Rights clinic, and then (when I was a JSD student) as one of the petitioners before the Colombian Constitutional Court. Even though the right to free education case was not a case of collaboration between clinics from the North and South, it involved close collaborations between law school clinics and

[348] I have been working for many years in the right to free education project. Publications regarding this case include Getgen Kestenbaum et al, *supra* note 3. CAMILO ERNESTO CASTILLO SÁNCHEZ Y ESTEBAN HOYOS CEBALLOS (EDS.) ¿TODOS A LA ESCUELA? RETOS DE LA GRATUIDAD DE LA EDUCACIÓN PÚBLICA EN COLOMBIA: LA SENTENCIA C-376 DE 2010. (Universidad del Rosario 2012), and Esteban Hoyos Ceballos y Camilo Castillo Sánchez, *Toward Recognition of the Right to Free Education in Colombia* at INTERIGHTS Bulletin Volume 17 Number 2 Litigating the Right to Education in Africa, (Interights 2013)

organizations from the U.S., and Universities, NGOs and other groups from the Global South. My view is that the lessons we learned in that case can illuminate this entire discussion between North-South exchanges and clinical collaborations.

In part 1 of this case study I will describe the legal problem and main issues in the case. In part 2, I will move to describe our course of action and the main legal arguments that we submitted to the Colombian Constitutional Court. In part 3, I will briefly talk about the aftermath of the decision. Then, in Chapter 5 of the dissertation I will revisit the proposed framework for human rights clinical teaching and advocacy that we developed after working in the case. I will revisit that model taken into account the discussion on clinical collaborations that I outlined in this chapter.

4.1 The case for the right to free education in Colombia: the problem

Until 2011, Colombia was the only Latin American country allowing local governments to charge for primary education in public schools. These domestic laws contradicted international human rights law on the subject, thereby violating Colombia's international legal obligations. Academics, activists, human rights organizations and members of the international community, including the U.N. Special Rapporteur on the right to education, widely denounced the country's violation of the right to education.[349]

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[349] *See* Rodrigo Uprimny Yepes & César Rodríguez Garavito, *Constitución, Modelo Económico y Políticas Públicas en Colombia: El Caso de la Gratuidad de la Educación Primaria*, *en* LOS DERECHOS

A leader of this process was the Colombian Coalition for the Right to Education (hereinafter the Coalition). Founded in 2005, the Coalition is a network of organizations and social movements participating in the mobilization for the right to education in the country. Among its objectives, the Coalition lobbies on public policy that guarantees the full exercise of the right to education in Colombia. The Cornell Law School's International Human Rights Clinic provided *pro bono* legal assistance to the Coalition, which is part of the Latin American Campaign for the Right to Education (*CLADE*), in this constitutional challenge.

One of the first tasks the Coalition assumed was to work in a national campaign for free education in the country, seeking to create a broad mobilization to accompany legal enforcement actions at national and international level. The main objective was to push and obtain from the state, recognition and guarantee of the free primary education for all Colombians. In this task, the Coalition found allies in the country as the Center for Law, Justice and Society (Dejusticia), an organization that had a vast experience in strategic litigation for human rights protection and defense of the rule of law in the country.[350] Likewise, the Colombia's Ombudsman national

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SOCIALES EN SERIO: HACIA UN DIALOGO ENTRE DERECHOS Y POLITICAS PUBLICAS (Luis Eduardo Pérez Murcia y otros., eds 2007); KATARINA TOMASEVSKI, THE STATE OF THE RIGHT TO EDUCATION WORLDWIDE FREE OR FEE 27 (2006)

[350] Dejusticia defines itself as a Colombian human rights organization and think/do tank based in Bogota that works regionally and internationally. In their website they claim to produce expert knowledge on human rights, to influence public opinion and the design of public policies, and support and strengthen community and civil society organizations, bolstering a democratic state governed by the rule of law. They also argue that their national work has driven them to have a greater presence in other parts of the world: "As Global South actors, today we work in the different regions of Colombia, in Latin America and Africa, and we are beginning to develop projects in Asia. We produce high

office has also been a key partner in this process at the national level, in particular, through its program of Monitoring and Evaluation of Public Policy in Human Rights (ProSeDHer). The Colombian ombudsman office had conducted research on the issue of free education, analyzing the national development plans and administrative acts of a significant number of local authorities related to the educational fees for basic primary education in the country.[351] The diagnosis was the same: the structural failure of the Colombian government to fulfill its international obligations in this area. About 80% of the local governments were still charging for education even at the basic primary levels.

After much discussion, the Coalition and the lawyers involved in the petition decided to present an *acción pública de inconstitucionalidad* (Hereinafter C-Case). This judicial mechanism allows petitioners to request the Colombian Constitutional Court's judicial review of any law to determine whether the law is constitutional or

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quality legal and social science research, and our findings are published in academic and public policy documents, as well as in national and international media outlets. We participate in public debates, in forums, and networks on topics within our expertise. We also litigate or participate in strategic public interest litigation. In addition, we organize trainings for a diverse set of actors, including human rights practitioners, government officials and judges. We have an established presence in the main news outlets in Colombia, and an increasing presence in international media We view the law not only as a form of regulation, but also as a tool for social transformation. At Dejusticia, we give priority to research that examines the different ways in which citizens interact with the law to generate a more democratic legal culture and respectful of human rights. The main issue areas we work on are: the strengthening and defense of human rights, in particular economic and social rights, rule of law, environmental justice, discrimination, constitutional transitions and transitional justice and the analysis of the judiciary system" See Dejusticia website available at http://www.dejusticia.org/#!/nosotros (last visited December 2016)

[351] Even though Colombia is a highly centralized country, local municipalities administrate the resources for health and education and have an enormous autonomy. These resources usually come from the central government in what is known as Sistema General de Participaciones (general system of participations). Colombian National Constitution Art. 356 and 357. Bigger (and richer) municipalities do not depend exclusively on those resources to guarantee free education. Before our case, for instance, education in public schools in Bogota was already free. That is the reason it made a lot of sense that the Colombia's ombudsman office elaborated this report on the situation of educational fees.

unconstitutional. This process under Colombian Constitutional law is possible without having to prove standing or any other particular interest in the case.[352]

The lawsuit was prepared in Ithaca, Medellin and Bogota in the first months of 2009. Although all the time all the lawyers were involved in every part of it, the team decided to divide the work according to their strengths. Thus, members of the Cornell Clinic particularly devoted to aspects of regional and international obligations of the Colombian State regarding free public education. In Bogota, for his part, lawyer and adviser to the Coalition was especially concerned with reconstructing the jurisprudential history of the Colombian Constitutional Court regarding the right to education.

Another essential part of the work was the detailed review of the discussions in the National Constituent Assembly on Article 67 of the Constitution, which refers to the free education. This part of the lawsuit would be particularly persuasive ultimately before the Court. Once we had a draft of the lawsuit, there was a process of socialization of it. The Coalition had the support of Vernor Muñoz, the Special Rapporteur on the Right to Education and Camila Crosso, the president of CLADE,

[352] Acción Pública de Inconstitucionalidad or C-Cases is one of the most significant contributions from Colombia to the global discussion of Constitutional Law. Since 1910s Colombians can challenge with no particular standing rule, any law enacted by Congress that they consider to be unconstitutional. This could be for formal or substantial reasons. The use of the action increased dramatically after the enactment of the Colombian Constitution of 1991. Article 4 of the new Constitution conferred a normative character (and not just a political one) to the Colombian Constitutional and people took much more seriously the use of these legal mechanism. Acción Pública de Inconstitutionalidad allows the protection of constitutional rights but also the enforcement . To learn more about Acción Pública de Inconstitucionalidad *See* MANUEL FERNANDO QUINCHE, LA ACCIÓN DE INCONSTITUCIONALIDAD (Universidad del Rosario 2015) and Helena Alviar et al., *supra* note 286.

the Latin American Coalition for the Right to Education.

The lawsuit was admitted on October 23, 2009. The Ministry of Finance and the Colombian National Planning Department opposed to it. Their general argument was that charging for primary education in Colombia in public schools was not unconstitutional according to article 67 that allowed those charges for people who can afford them. However, the government's position against the lawsuit was not unanimous since the attorney for the Ministry of Education partly supported the declaration of unconstitutionality of the accused section of the law, considering that free primary level education is clearly an obligation established by the international human rights treaties.

The rest of the amici, also supported our claims. They were the Secretary of Education of the Capital District, the Colombian Ombudsman office, the Universidad Pedagógica Nacional, the Public Interest Law clinic from Universidad del Rosario, the Colombian main union of Educators (FECODE), the Central Foundation School for Development Studies (CESDE), the Corporation Women and Economy, the Center for Law, Justice and Society (Dejusticia) NOMADESC Association, the NGO Viva la Ciudadania. Some of these were member organizations of the Coalition. The Cornell International Human Right Clinic also submitted an *Amicus Curiae* with a comparative analysis of the right to free education in other Latin American countries and urged the Colombian state to comply with its obligations under international human rights law.

4.2 The main legal arguments

We presented three main arguments before the Colombian Constitutional Court. First, we argued that the law violated international human rights law on the right to free education. Specifically, the Coalition alleged the violation of article 13 of the International Covenant on Social Economic and Cultural Rights (ICESCR)[353], article 13 of the Protocol of San Salvador[354] and article 28 of the Convention of the

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[353] Article 13 of this international instrument read as follows: 1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
(a) Primary education shall be compulsory and available free to all;
(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.
3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the Stat

[354] This is the additional protocol to the American Convention on Human Rights in the area of the Social, Economic and Cultural Rights. The article reads as follows: 1. Everyone has the right to education. 2. The States Parties to this Protocol agree that education should be directed towards the full development of the human personality and human dignity and should strengthen respect for human

Rights of the Child (CRC).[355] Colombia has signed and ratified each of these international instruments, which have constitutional value at the domestic level. These international norms enumerate the immediate obligation of states parties to provide free primary education to all.

A second argument addressed the need to harmonize the jurisprudence of the Colombian Constitutional Court with the general education law regarding the right to free education. Specifically, the Court had recognized a right to free education in

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rights, ideological pluralism, fundamental freedoms, justice and peace. They further agree that education ought to enable everyone to participate effectively in a democratic and pluralistic society and achieve a decent existence and should foster understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and promote activities for the maintenance of peace. 3. The States Parties to this Protocol recognize that in order to achieve the full exercise of the right to education: a. Primary education should be compulsory and accessible to all without cost; b. Secondary education in its different forms, including technical and vocational secondary education, should be made generally available and accessible to all by every appropriate means, and in particular, by the progressive introduction of free education; c. Higher education should be made equally accessible to all, on the basis of individual capacity, by every appropriate means, and in particular, by the progressive introduction of free education; d. Basic education should be encouraged or intensified as far as possible for those persons who have not received or completed the whole cycle of primary instruction; e. Programs of special education should be established for the handicapped, so as to provide special instruction and training to persons with physical disabilities or mental deficiencies. 4. In conformity with the domestic legislation of the States Parties, parents should have the right to select the type of education to be given to their children, provided that it conforms to the principles set forth above. 5. Nothing in this Protocol shall be interpreted as a restriction of the freedom of individuals and entities to establish and direct educational institutions in accordance with the domestic legislation of the States Parties.

[355] *The article reads as follows:* 1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a) Make primary education compulsory and available free to all; (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; (c) Make higher education accessible to all on the basis of capacity by every appropriate means;(d) Make educational and vocational information and guidance available and accessible to all children;(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

public institutions in specific cases where families could prove that they did not have the resources to pay for education. However, the Constitutional Court had not made a general statement of free public education that benefited all Colombian families who sent their children to public institutions. Petitioners therefore asked the Court to interpret the general education law in line with its previous rulings recognizing the right to free education in Colombia's public schools.

Finally, petitioners argued that the Colombian Constitution authors' intent was that primary education was to be free. The Coalition submitted to the Court a summary of the main discussions supporting this claim from the Constitutional National Assembly in 1991. These documents were key as some interpreters of Article 67 of the Colombian Constitution suggested that charges for education were allowed at every level, including at the primary education level.

4.3 The decision and its aftermath

On May 31, 2010, the Colombian Constitutional Court announced its decision that all public primary schools in the nation must cease charging students tuition fees. In the ruling, the Court cited heavily to the Coalition's petition, the international instruments ratified by Colombia and its own jurisprudence on individual cases. Additionally, the Court reiterated Colombia's obligation to provide free education progressively even in secondary and higher education. Unfortunately, the Court did

not address the issue as to whether the government could charge for indirect costs of education, such as books, transportations and uniforms.

In the months following the Court's decision, some local authorities began to comply with the judgment. However, they did so to varying degrees. While some cities specifically excluded charges for both primary and pre-school education, a few took a more comprehensive approach by additionally addressing the indirect costs associated with education.[356] Finally, in December 2011, the Colombian national government issued National Decree 4807 establishing that education shall be free in public institutions at the primary and secondary levels. Article 2 of the decree stated that free education should be understood as not charging for fees nor for complimentary services in public institutions.

A recent study concluded on the recent changes on the right to free education policy in Colombia: "Although the right to free education policy introduced in 2011 has removed certain fees paid directly by the families, it is still based on a minimalist conception of the right to free education. This policy has only abolished fees but leaves untouched all costs associated with the educational process. By not eliminating the fundamental economic barriers for children to education, the policy leaves expensive items to the families and does not solve the structural problems with the education funding system. All this has an effect in the impoverishment of schools, and recurrent difficulties to develop pedagogical processes according to human rights

[356] *See* Getgen Kestenbaum et al., *supra* note 3.

standards"[357]

With the judgment and the decree began a new struggle for the full recognition of the right to free education in Colombia. On the one hand, the international experience shows that the legal recognition of the right to free education (or any other right) does not necessarily mean that the right will be respected. On the other hand, neither the Court nor the government addressed the issue of indirect costs of education, which have a significant impact on families who send their children to public schools. The challenge remaining for social organizations is not only to fully implement the judgment and Decree 4807, but also to promote a national discussion on the issue of indirect costs in education.

[357] Hoyos and Sánchez, *supra* note 348.

CHAPTER 5

LESSONS LEARNED IN COLLABORATIVE WORK IN HUMAN RIGHTS CLINICAL COLLABORATIONS: REVISITING THE MODEL FRAMEWORK FOR HUMAN RIGHT CLINICAL TEACHING AND ADVOCACY

During the time we worked on the Right to Free Education Project, we reflected critically on whether and how this project's pedagogical and legal outcomes have met the goals of international human rights clinical teaching. In order to guide clinicians and other organizations that wish to play an integral, yet clearly defined and appropriately limited, role as part of a local human rights and social justice movement, we developed a framework for project development and implementation.

When we developed this model we were clear that this was not a one-size-fits-all framework guaranteed to ensure successful results in a clinical legal education project on human rights. The complexity of human rights problems makes it impossible for any framework to guarantee these results. However, we believed that it could assist in developing and implementing local, long-term, multifaceted, collaborative projects. The framework consists of six general steps: (1) determining broad clinical legal education goals; (2) determining general project purpose and goals; (3) forming and strengthening strategic alliances among local clinic partners;

(4) developing local human rights legal and advocacy strategies; (5) implementing local legal strategy and human rights advocacy; and (6) reflecting and processing with partners and students while revisiting steps (4) & (5). We outline this framework and apply these steps in the context of the Clinic's Colombia Right to Free Education Project.

My plan in the following pages is to revisit this proposed framework for human rights clinical teaching and advocacy, thinking in particular in the role to be played by law school clinics both in the North and South to promote true collaborative work in the human rights clinical realm.[358] This was not the original purpose of the proposed framework that we developed after the right to free education. The right to free education case involved collaborations from Law School clinics of the North and South as well as other organizations but it was not since its inception a collaborative clinical project. However, our own reflection of what it worked and what it did not worked in that case can illuminate collaborative clinical projects and it can help me to put in context some of the normative criteria that authors like Bonilla or Perelman have suggested to guide North-South clinical. Again, human rights clinical projects are complex and a framework will not solve all the particular problems

In revisiting the framework, I will then take into account Perelman's proposal

[358] The complete analysis of the initial proposal can be found in Getgen Kestenbaum et al., *supra* note 3, at. 481-504. I will follow the steps of this framework with the factual support that we had when we first proposed it. However, I will add some reflections to enhance this model from a collaborative clinical perspective.

to map the middle in clinical collaborations[359] and Bonilla's proposed principles to guide North-South clinical collaborations: (1) mutual recognition of the parties involved in the project; (2) using consensus to establish, interpret, and apply the rules governing the clinical exchange; and (3) prioritizing the social justice objectives pursued over the educational and professional development purposes that are also part of the programs of cooperation advanced by the clinics.

5.1 The steps of the framework

5.1.1 Step 1: Determine Broad Clinical Legal Education Goals

Step 1 in developing and implementing localized, long-term, collaborative international human rights projects is to determine the broad clinical legal education goals that the project aims to further. These goals may include the overarching goals of advancing human rights and social justice on the ground for the individuals, groups, or organizations with whom the clinic is working.[360] At the same time, project goals may seek to educate and impart practical skills to law students in various aspects of

[359] As I showed in Chapter 4, Perelman believes that a satisfactory practice on the ground should imply 1. Extensive dialogue structured around the objectives, rules, and financial and institutional features of the project with both transatlantic and local partners; prior legal, socio-economic, and historical research by both faculty and students. 2. Methods of institutional and political economy mapping, qualitative or quantitative data gathering through official and/or grassroots level interviews, surveys, workshops and community organizing. Such methods would seek to identify local partners' and groups' priorities, and support the project's advocacy strategy through on-the-ground fact finding and research analyzing the context and sector-specific issues and political economies at play, as well as the local, regional, and transnational leverage points for and spillovers of advocacy. 3. It would also seek to enhance the students' learning experience by exposing them to real-life advocacy and research in a markedly different context, allowing them to both hone skills learned in the classroom and develop, on site, other legal and multi-disciplinary skills required for economics-oriented human rights advocacy. Finally, it would aim to gather data and insights for research about the very practice in which clinical teams engage. Perelman, *supra* note 15, at 142-144.

[360] Lauren Carasik, *Justice in the Balance: An Evaluation of One Clinics's Ability to Harmonize Teaching Practical Skills, Ethics and Professionalism with a Social Justice Mission*, 16 S. CAL. REV. L & SOC. JUST. 23, 26 (2006)

international human rights and social justice lawyering. Other goals may include teaching students to think and act both globally and locally toward improving access to justice and human rights, or assisting in the empowerment of historically marginalized groups by engaging them in the process of law and policy reform.

HRCs are ideally positioned to plan and implement strategies that further broader social justice goals, including improving access to justice for marginalized and vulnerable populations across the globe. Furthermore, clinical legal educators hold professional obligations to expose law students to the barriers individuals and groups face in accessing justice as well as to implement strategies to assist marginalized populations in overcoming some of these obstacles.

In designing the Colombia Right to Free Education Project, the Cornell Clinic faculty, students, and partners identified a particular structural violation of the right to education: a set of laws and policies that created a barrier to ensuring accessible education in Colombia. Indeed, the government's interpretation of the Colombian Constitution's Article 67 explicitly permitted the government to levy fees for educational services, even at the primary public education level. Fact investigation showed that these costs created severe economic obstacles for poor parents and children, many of whom are members of marginalized minority groups. In providing legal assistance to reform such policies in accordance with international human rights obligations, the Cornell Clinic furthered social justice and advocacy in collaboration

with local advocates on the ground in Colombia.

The other main goal of clinical legal education is to provide students with the practical lawyering skills necessary for international human rights practice. The skills include (1) problem-solving, (2) legal analysis and reasoning, (3) research, (4) investigating, (5) communication, (6) counseling, (7) negotiation, (8) litigation and mediation, (9) organization and management, and (10) resolving ethical concerns.[361]

[361] In addition to the MacCrate standards, there are particular human rights lawyering skills that law students who wish to practice in human rights and development ought to learn. These skills include: (1) understanding the past, present, and future directions of the international human rights movement as well as the legal advocate's role(s) within the movement, (2) recognizing the limits of international human rights law and advocacy, (3) conducting international human rights research, (4) planning and implementing a human rights fact-finding or other in-country mission to further project goals, (5) interviewing victims or their representatives, (6) building and supporting human rights coalitions, (7) identifying, negotiating, and overcoming cultural and other barriers among local and international human rights partners, and (8) developing and implementing media and advocacy strategies to advance a human rights issue. In the case of the Colombia Right to Free Education Project, students had the opportunity to gain many of these human rights lawyering skills. First, the right to education is an interesting and complicated right to discuss theoretically and practically. It is considered a "multiplier right" that "unlocks other rights when guaranteed, while its denial precludes the enjoyment of all human rights and perpetuates poverty." Although the right to education is considered an economic, social, and cultural right rather than a civil and political right, it arguably encompasses all rights given that education is fundamental for each individual to fully realize all other rights. In addition, there are multiple rights within the right to education itself, including the right to receive education, the right to choose education, and the right to equal education. Moreover, when considering certain aspects of the right, including the right to free and compulsory primary education or the right to nondiscrimination in education, the State's obligations are immediate. For other aspects of the right, such as the right to free secondary education, the State's obligations can be progressively realized over time using maximum available resources. These complexities and distinct obligations provided an interesting frame of reference on which to center class discussions regarding the human rights movement, international human rights law, and emerging issues, such as the justiciability of economic, social, and cultural rights in the United States and globally. Second, in addition to conducting in-depth research and analysis, students gained important practical skills in managing and organizing international human rights projects on the ground during the planning and implementation stages of in-country visits. For example, students developed presentations, itineraries, budgets, interview questions, and meeting agendas for human rights and legal advocacy strategy sessions. Moreover, clinic students experienced several "performance moments," in which students delivered the results of their human rights research and analysis as part of the local human rights advocacy strategy. Third, clinic students were involved in building and supporting a local coalition. Not only did students support the Coalition with international and domestic human rights research and legal strategy advice, but the clinic team also assisted with advocacy strategies around political issues that surfaced during the Colombia Right to Free Education Project. For example, Coalition members discovered that members of the Colombian Congress were proposing legislative reform that would potentially hinder the realization of the right to free education.The clinic team quickly analyzed the bill and provided the Coalition with the legal and policy

When we thought in this first step of the model we did not take a position regarding the objectives that should prevail in a collaborative clinical project. Bonilla's reasoning persuades me when he argues that in a case of conflict, the social justice objectives of clinical legal education shall prevail over the educational and professional development purposes that are also part of the programs of cooperation advanced by the clinics.[362] In particular, the idea that the huge impact that can have a poorly developed project on a client or community is much worse than the impact in the legal skills training of the students. Law school clinics serve vulnerable populations that rely on them for the defense of their rights. This does not mean that the interests of students should not be taken into account.[363] But one must recognize that there are notable differences in the kinds of effects on the interests of each group, as well as their intensity.[364]

An example of this conflict can be managing the diverse level of student

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arguments against passage of the bill. Moreover, international human rights law practitioners are constantly evolving to incorporate lessons learned from the past. Many factors, such as the proliferation and strengthening of civil society organizations and the development of national human rights movements in the Global South, have led to increased numbers of human rights advocates working locally to advance their communities' human rights and social justice concerns. These developments, combined with the oppressive regimes and policies of the not-so-distant past, call for international human rights advocates to act as catalysts for change. Advocates can provide technical assistance, international legal expertise, and access to resources. Professor Roxana Altholz at the University of California, Berkeley Law School's International Human Rights Clinic has explained that the professionalization of the human rights movement calls for human rights clinicians to consult with stakeholders to assess the value and intellectual capital that law students and clinics bring to projects, as well as their appropriate role.[120] In the case of the Colombia Right to Free Education Project, the Cornell Clinic had been developing institutional expertise on the international human rights framework for the protection of the right to education. The partnership with the Coalition ensured that students would play an important--albeit appropriately limited--role in collaboration with local organizations interested in advocacy to overcome economic barriers to accessing education in Colombia. Given the changing nature of human rights legal advocacy, such evolving roles reflect the work that students will do as human rights lawyers in the field. *See* Getgen et al., *supra* note 3, at 484-487. All the internal references can be found in the article.

[362] *See* Bonilla, *supra* note 12, at 39.

[363] *Id.*

experience that applies to law school clinics both in the North and South. Students working on clinical projects bring different levels of expertise to bear on the implementation of a project. Some students, especially in the U.S., tend to have a strong background in international law and international human rights law. Sometimes, however, students take the clinic with a limited understanding about the human rights field. They want to learn more about the subject in the context of the clinical work. This is good and, of course, that is one of the purposes of clinical legal education. However, if the low level of expertise of the student can have a negative effect in the development of a clinical project, the social justice goal of clinical education shall prevail. Clinicians have ways to avoid this situation. They can be stricter in determining the background in any particular field of the law as a prerequisite to the work in the clinic. They also can be more active in the supervision of the students. Many law school clinics rely on clinical teaching fellows who can serve an important role in the supervision of students. But also in providing continuity and the institutional memory for projects that span multiple semesters and engage students with different levels of expertise in long-term multi-phased advocacy efforts.[365]

5.1.2. Determine Specific Teaching and Project Goals

[364] *Id.*
[365] *See* Getgen et al., *supra* note 3. at 469.

Once broad project goals have been established, our second step requires to determine the specific short-term teaching and project goals, ideally broken down semester by semester, given the realities and limitations of the law school academic calendar. Long-term projects that span across several semesters can seem unmanageably large to clinical faculty, staff, and students alike. Thus, breaking down the project into smaller, incremental steps with a rough timeline and assignment of deliverables for completion makes these projects more manageable. In addition, it is necessary to divide project assignments and deliverables as evenly as possible in semester increments to ensure that clinic students are receiving roughly equal work for the credits they are receiving.

As mentioned above, for some clinics, human rights fellows play an important role in successful long-term project implementation over the course of several semesters. Indeed, fellows can ensure consistent contact with clinic collaborative partners and can work on project deliverables and provide case coverage during team transitions between semesters. Given that coalition building and maintaining partner trust and relationships is integral to long-term project advocacy, a fellow serves as an important bridge across clinic teams and provides support and institutional memory for successful project implementation.

The Colombia Right to Free Education Project was divided into several phases. Phase one was to provide legal expertise and technical assistance to the Coalition. Students identified the international human rights problem--the fact that Colombian laws permit the government to charge for primary public education in violation of its

international and domestic constitutional obligations--and researched the legal and advocacy strategy options for remedying the violation. Students ultimately produced a white paper outlining Colombia's international and domestic constitutional obligations to ensure the right to free primary public education and crafted arguments for policy and law reform.

Phase two was to deliver clinic students' findings in several presentations and strategy sessions in Colombia and to receive feedback from local partners and experts for refining the legal and advocacy strategies. Then, during phase three, students, in collaboration with legal advisor-members of the Coalition, drafted and submitted the C-Case petition to the Colombian Constitutional Court. In phase four, students researched comparative law and drafted the friend-of-the-court brief. Then, partners submitted the brief to the Constitutional Court as an *amicus curiae* in the case. Finally, phase 5, which is currently underway, is to assist in disseminating information about the decision to local communities and to enforce the Constitutional Court's decision on the ground in Colombia.

Although clinical legal educators would like to impart as many practical legal skills as possible to students, not every project will cover every skill in a practitioner's toolbox. Over the course of several semesters, however, a single long-term project (and clinic team if the same law students take the clinic over multiple semesters) can cultivate many critical lawyering skills. Ideally, each project phase will involve some international human rights law research, legal writing, meetings and other communications with local partners, and collaborative work among team members.

The determination of specific project goals in the case of a collaborative clinical project has to be in accordance with the clinical partners. Perelman suggests an extensive dialogue structured around the objectives, rules, and financial and institutional features of the project with both transatlantic and local partners; prior legal, socio-economic, and historical research by both faculty and students. That previous legal, socio-economic and historical research is desirable but it can probably exceed the time and possibilities of the students within a law school clinic. For that reason, it is extremely important in a collaborative project to take into account the local knowledge that the clinic in the south can provide when designing and determine the specific goals of a clinical project.[366]

Moreover, the objectives should be established in accordance with the strengths of every of the partners involved in a collaborative clinical project. The determination of appropriate roles varies depending on the case and context. However, International Human Rights Clinics tend to have access to international legal databases, international networks and technical expertise in human rights law and advocacy. Local partners tend to have more easy access to domestic institutions; local knowledge and other relevant systems in the local country.[367] The joint determination of objectives should be done in accordance with those strengths.

4.1.3. Form and strengthen Strategic Alliances among Local Clinic Partners

The third step of our model was to form and strengthen Strategic Alliances among local Clinic Partners. In a collaborative clinical project, the formation of the

[366] Bonilla, *supra* note 12, at 23

alliance with a local clinic must be a previous step. But an international human rights project is the result not only of alliances with local clinics but also with other local partners such a NGOs, local coalitions, public institutions, among others.

It is challenging to build and maintain relationships with local clinic partners in developing countries, especially with limited resources for travel.[121] The geographic distance is a challenge that face any international human rights clinic. It is difficult for students to develop empathetic lawyering in the human rights context if their client

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[367] *See* Getgen Kestenbaum et al., *supra* note 3, at. 472.

and partners are miles away.[368] Although time-consuming and extremely demanding, building and strengthening strategic alliances between the clinic and local partners is one of the most important steps--and one of the greatest skills that clinic students can learn--for successful long-term human rights project implementation. Furthermore, building strong partnerships can assist future project work by avoiding miscommunications and other pitfalls.

Before the Colombia Right to Free Education project began, the Clinic fellow developed important relationships with three Coalition members: the president, the secretary, and the legal advisor. Importantly, the Clinic fellow established a good rapport with Coalition leaders, speaking by phone and by Skype to share background information on each organization and agree on mutual goals. Then, in consultation with the Clinic faculty director, the fellow and Coalition leaders collaboratively developed an outline of the phases of the project and agreed on the deliverables within each phase. Moreover, one student team member was Colombian and planned to visit his country. Thus, the clinic arranged for him to attend a Coalition meeting; exchange informational materials about the Coalition; give background materials about the Clinic's experience and developing expertise on the issue of the right to education in Colombia; and gather reports, research materials, and legislative archival records on the issues affecting the right to free education that were only available in Colombia.

Top law schools in the U.S. have LL.M programs. These programs admit every

[368] *Id.* at 470

year foreign-trained lawyers. If I can think in one factor that helped to strengthen the alliances between the U.S. clinic and local partners was the fact that a Colombian LL.M was involved in the project. Of course there is no always someone available to work on a project. But international human rights clinic should be proactive in integrating LL.M students or event students from the clinics in the South.

This is how we developed trust with the local partners. At the beginning of the first semester and at the start of phase one of the Colombia Right to Free Education Project, it was important for the Clinic students to meet the Coalition members and other partners in Colombia. However, the Clinic could only afford one visit to Colombia, and the student team planned to travel to Bogotá in mid-April, months after the partnership began. Instead of meeting in person, the student team attended several conference calls by phone and by Skype with Coalition partners.

The initial conference call was crucial to the project's success. During the call, the student team received a summary of the project goals, as well as the roles and responsibilities of each Coalition member. Students asked questions regarding the project timeline and deliverables. For subsequent meetings, the students and partners agreed to meet by conference call every other week to share and discuss research findings. In addition, clinic students participated in the Coalition's monthly meeting by conference call and reported to Coalition members regarding the status of the project. Given that the Coalition was an all-volunteer organization, it was crucial to ensure that the Cornell Clinic was furthering the Coalition's goals without burdening volunteer

schedules.

In each partner meeting, one student team member had the primary task of taking detailed notes, while the other team member led the Clinic's agenda and asked any questions that clinic members brought to the meeting. The students exchanged these roles in future meetings. Of course, each team member's participation was encouraged in every meeting; however, dividing primary responsibilities ensured that the team operated efficiently and maximized the limited time with project partners. Also, during the clinic team's internal meeting with clinic faculty and staff, the team would take a few minutes to outline an agenda and brainstorm a list of questions to ask at the next partner meeting to ensure efficient use of scheduled meetings and minimize the potential for miscommunication.[369]

4.1.4. Develop Local Human Rights Legal and Advocacy Strategies

Like other forms of legal strategy development, human rights legal strategy development is a process that involves identifying the legal problem(s), pinpointing

[369] "Aside from regular communication, it is important to assist in small projects or tasks, if possible, to build and strengthen clinic partnerships. For instance, members of the Colombian Congress proposed a bill to reform article 67 of the Constitution, the article that permitted the government to charge tuition for primary public education in Colombia. The students determined that the proposed bill would actually make matters worse for children who were attempting to exercise their right to free primary public education. Generally speaking, the proposed Constitutional reform would have retrogressively made the government's immediate duty to provide free primary education a progressive obligation. The clinic team quickly delivered a short memo to the Coalition to assist them in their lobbying efforts against the bill on the ground. In the end, the bill was not successful, which was a positive outcome for the Coalition and project goals" Getgen et al. *Id.* at 488

and analyzing strategies to solve the problem(s), and weighing the pros and cons of each human rights litigation or advocacy strategy. To conduct this analysis, HRCs must understand not only domestic law and the domestic legal system, but also regional and international human rights treaties and systems. They must also understand the interaction of these systems with regard to the human rights issue on which the Clinic is working. All international human rights law and advocacy must begin--and ideally is implemented--at the local levels through an exhaustion of domestic remedies.

In the case of the Colombia Right to Free Education Project, previous clinic student teams and local partners had identified the problem--that Colombia's laws expressly permitted the government to charge for public primary education in violation of the country's treaty obligations--through research and on-the-ground fact-finding in Colombia. Pinpointing the solutions and potential legal strategies turned out to be an even greater challenge. Preliminary research led the Clinic student researchers to conclude that the Colombian Constitutional Court could not rule as to whether an article of the Colombian Constitution was (a) constitutional, or (b) in violation of international law. Rather, student researchers concluded that the only way to challenge the Constitution's Article 67 as a violation of international law was to either reform the Constitution or take a case to the Inter-American Commission on Human Rights. However, taking a case to the Inter-American Commission would require a petitioner and a domestic court challenge, and there was no guarantee that judges would deny children access to free education on a case-by-case challenge, thereby laying the groundwork for a human rights petition.

When Colombian constitutional law experts joined the clinic team, the clinic gained the domestic legal expertise needed to think in more nuanced ways. In fact, having two Colombian constitutional scholars--one on the clinic team and one partner coalition member--proved essential to the successful human rights legal research and strategic planning in furtherance of the Coalition goals. For example, the Colombian trained attorneys shifted the focus from Article 67 to the domestic implementing legislation (Article 183 of Law 115) that authorized charges at every level, including primary education. If the Constitutional Court could "harmonize" Article 67 with other constitutional guarantees and international obligations--something that the Court had done in past decisions--then the Court could find the implementing legislation permitting charges to be unconstitutional.

Moreover, Colombian constitutional law and jurisprudence has developed a specific method of interpretation called the "constitutionality block". Although Article 67 of the Colombian Constitution expressly identifies the right to free education as part of the list of enumerated social, economic and cultural rights, it is by no means the only constitutional norm that addresses the right to free education in Colombia. Under Article 93, the Colombian Constitutional Court has the power to interpret the Constitution as consistent with international legal obligations. Thus, collaborating with locally trained legal experts furthered the legal strategy to challenge domestic policies that contravened international human rights obligations.

Even with locally trained experts, the legal strategy was novel thinking at the domestic level. Thus, the Clinic and Coalition sought out informal legal advisors for consultation. Toward this end, Clinic students requested a roundtable meeting with the University of Los Andes' Public Interest Law Group during the Clinic's field visit in April 2009. For the Cornell Clinic students, it was one of the project highlights when Colombian legal scholars commended them on their research and analysis and then proposed the same or similar avenues to challenge the right to free education violations in Colombia.

This moment was our clinical collaborative moment because we had the chance to discuss the strategy with the members of a law school clinic at Universidad de los Andes. In a collaborative clinical project this conversation about strategy should have been much earlier with the determination of the objectives of the clinical project. However, something that called my attention in that meeting is how some local experts reacted to the strategy of clinical students. They have not considered this as a problem before. One should value and leverage local expertise but if there has been consistent work by clinical students from an international human rights, the dialogue with local experts can be also a learning experience for local experts who maybe have not appreciate or considered certain problem before. In the interaction with the local knowledge, an outside perspective can be very helpful for the development of a local problem.

Finally, Clinic students validated the importance of participation in the

collaborative human rights advocacy process by convening a Coalition legal strategy session. Students strengthened the strong partnership by traveling to Bogotá to participate in the Coalition's Colombian Campaign for the Right to Free Education launch. They worked with the legal strategy team to identify viable legal strategies. Importantly, clinic students gained experience in the essential, limited role of a human rights attorney to clarify the risks, rewards, and potential backlashes to different advocacy avenues. The Clinic was a catalyst that provided technical assistance in furtherance of the Coalition's chosen strategy.

After much discussion and debate, the Coalition agreed collaboratively and democratically that a petition of unconstitutionality to the Constitutional Court was the best avenue to challenge the implementing legislation responsible for school fees at the primary public education level. In addition, the Coalition divided responsibilities among member organizations to submit friend-of-the-court briefs in support of the petition. The Clinic team agreed to assist in finalizing the petition, contributing an *amicus*, and assisting in coordinating the briefs of other organizations and institutions.

4.1.5. Implement Local Legal Strategy and Human Rights Advocacy

Once the clinic partners agree to the legal and human rights strategy to pursue, step 5 is to implement the agreed-upon strategies. At this stage, it is important to revisit the original goals and assigned tasks and revise and supplement them if necessary.

Additionally, regular and open communication and information sharing among implementing partners across many disciplines is essential. Again, the role of the HRCs is best realized when students and staff act as catalysts for change by providing access to resources and offering technical expertise in international human rights law and advocacy. Moreover, agreeing to take on the coordination and management of the various tasks can greatly assist organizations with limited resources, so long as the process remains as inclusive and collaborative as possible.

In implementing the main goals of the Colombia Right to Free Education Project's legal strategy, Clinic students worked collaboratively and closely through email, conference calls, and Skype to draft and revise the petition of unconstitutionality. Once the Coalition approved the petition, we signed the petition and submitted it to the Constitutional Court. Then, the Cornell Clinic team drafted the *amicus* and, once it was finalized, Coalition members worked in collaboration with the RFK Center and the Colombian Association for Investigation and Social Action (NOMADESC) to submit the petition on behalf of themselves and the Cornell Clinic.

These project goals unfolded in rapid succession, allowing students to gain critical time management skills and to experience the reality of working under strict deadlines. Students learned to be flexible in negotiating language in their legal documents, to problem solve when necessary, and to divide tasks in order to effectively and efficiently meet the needs of their client and partners. In the end, students were able to contribute significantly to two legal documents for strategic litigation on the right to free education in Colombia.

5.1.6 Reflect & Process with Coalition and Students

The process of empowerment and internalization of human rights at the local level is a fundamental and transformative part of international human rights advocacy. It may be as important--if not more important--as the legal and advocacy outcomes. At the same time, teaching HRC students the challenges, rewards, and skills needed for successful local, long-term, collaborative international human rights projects is essential for their future as human rights attorneys. Human rights advocacy is changing. Activists are becoming increasingly organized and sophisticated. Human rights challenges are increasingly complex, involving local and global issues. International human rights norms and enforcement mechanisms are being employed in local contexts.

Throughout the many phases of the Colombia Right to Free Education Project, students engaged in ongoing critical reflection through in-class case rounds and participation in supervised meetings outside of class, culminating in the preparation of a final reflection paper at the end of each semester.[130] Case rounds were held twice a semester and gave students the opportunity to reflect on project goals, activities, and progress through team presentations and interactive discussions involving other members of the clinic. In particular, case rounds encouraged thoughtful and thorough assessment of key challenges and possible strategies. Finally, case rounds enabled student teams not only to receive constructive feedback and advice from their peers, but they also provided students working on the Colombia Right to Free Education

Project with important opportunities to learn from the experiences of other teams as they reflected on their respective projects.

Intensive team meetings, held weekly throughout the semester and under the supervision of the clinic instructor and clinical teaching fellow, further ensured that students regularly engaged in reflection. These meetings typically lasted two hours and involved a diverse range of activities and tasks designed to encourage critical reflection. For example, after providing a progress report about project deliverables and activities at the beginning of each meeting, students were asked to reassess and evaluate the project's strategy based on new developments and challenges. Similarly, the clinic would schedule conference calls--with the client, the RFK Center, as well as with partner organizations on the ground in Colombia--during this weekly meeting so that the team would have the opportunity to reflect on issues raised during each call. The reflection process initiated in these meetings, however, continued through the dissemination and processing of meeting notes. During each team meeting, students would alternate the task of taking notes, which they would subsequently digest, revise, and disseminate to the rest of the team for further reflection.

At the end of each semester, students were asked to prepare a short paper reflecting on their experience working on the Colombia Right to Free Education Project. The clinic instructor provided students with a list of possible items for consideration and later organized an informal gathering outside of class where students had the opportunity to share key topics addressed in their reflection papers. Topics for consideration included: (1) an ethical or professional responsibility issue

that students faced; (2) a skill set that students developed for their legal careers; (3) an insight from a particular seminar discussion; and (4) thoughts, ideas, or frustrations regarding the law or politics surrounding students' clinic projects. These facilitated conversations were some of the most thoughtful and rich discussions of each semester.

Reflecting on the Colombia Right to Free Education Project, students recognized the importance of the relationship that had been built and nurtured throughout the course of previous project phases for successful project delivery under stressful circumstances. The partnership was an exchange of information and knowledge for mutual benefit toward a shared goal. In addition, the diverse, multidisciplinary knowledge base among Coalition members-- including locally trained attorneys, economists, activists, and international law experts--proved useful in implementing a comprehensive, practical strategy for tackling the human rights problem of a lack of free education. By taking on the coordination role, students were much more cognizant of the need to think out of their professional silos and to call upon many professionals across disciplines to advocate for practical solutions to fully realize human rights norms.

I would add to this point on reflection that it is also necessary to reflect on the clinical collaboration in itself. Who is taking the main decisions on the project? How are the resources being managed? What sort of conflicts has emerged in the development of the project? What has been the role of the domestic knowledge and local experts?

5.2 Value of collaborative models and enduring challenges

Despite criticisms, projects between law school clinics of the North and South have to continue and must be strengthened. These projects not only train law students in many legal skills within HRCs and PILCs but most importantly serve a social justice objective. These projects usually serve the rights and interests of communities that need legal assistance, and a coalition of law school clinics can provide that legal aid with domestic and international tools. There is also the issue of resources. The resources of law school clinics are scarce. Therefore it is better the collaboration to add resources in order to achieve clinical objectives.[370]

There is also a symbolic value in the intervention of a HRC in a domestic issue. The prestige of U.S. legal education has a huge influence on our legal community. For example, an amicus brief of a good American university is very well received for a constitutional judge in a country like Colombia. Judges wonder why and how an international university is concerned with a case and it is willing to submit an amicus brief to the Court. In general, our judicial culture is opened to those forms of participation and the only institutional requirement is that a Colombian citizen brings

[370] The problem with the resources, as Bonilla has well-argued is when the principle to distribute them is "He Who Pays, Decides": "Second, clinics in the North have far more access to scarce resources, money, researchers, academic networks and libraries than clinics in the South. Those who control these resources should have the most decision making power in joint projects. This is the argument that I would like to call "He Who Pays, Decides." Again, the clinicians involved in the North South projects do not generally make explicit these assumptions. Nevertheless, they are the unstated background assumptions that determine the basic structure of the relationships between clinics in the Global North and South". *See* Bonilla *supra* note 12, at 8-9.

the document to the court. Therefore, there is a profound symbolic effect in these collaborations from clinics of the North. We believe the framework may enhance the reputation of clinic partners locally, nationally and internationally, which can have important ramifications for project development in terms of funding and community support.

Another advantage of clinical collaborations is the strengthening of the role of international law of human rights at the domestic level. A common feature of Latin American constitutional reforms in the last thirty years has been the openness of the domestic legal system to international human rights law, particularly the special and privileged treatment of human rights treaties. This special treatment has led to the application of international human rights standards by national courts through mechanisms such as the "constitutional block"[371].

When we proposed the framework, we thought that clinics working within this framework will have the potential to serve as catalysts for change by helping communities learn to drive their own strategies and attain their own goals. Clinical projects are all different and it is difficult to properly measure the level of involvement of a law school clinic in a particular project. However, as we said before building collaborative partnerships and purposefully engaging in participative human rights strategizing with communities and local leaders, clinics help to contribute to the

[371] See, Uprimny, *supra* note 199, at 1592.

process of human rights at the domestic level.[372] People living in these communities thus achieve a greater awareness of their rights and are empowered by the knowledge, skills and experience gained by working on projects within this framework.[373] The participation of a HRC is not necessary to incorporate a human rights discussion at the domestic level but as I mentioned earlier an international perspective can support a domestic litigation which itself has an enormous symbolic value.

Although there is much to gain toward fulfilling the goals of clinical teaching by implementing localized, long-term, collaborative HRC projects, there are many challenges that become more salient and relevant to consider prior to adopting this model framework.

These challenges include the preservation of clinical institutional memory which is critical to successful long-term project implementation; Leveraging Local Expertise; Managing Evolving and Conflicting Goals; Managing Power Dynamics, among others

Ultimately, it is important to emphasize that this proposed framework is by no means a recipe for success. Simply following its these general steps will not ensure success in achieving a project's human rights goals. Rather, this framework is intended to serve as a guide for clinicians who wish to play an integral, yet clearly defined and appropriately limited, role as part of a local human rights and social justice movement.

[372] Getgen et al, *supra* note 3, at. 487.
[373] *Id.* at 501.

CONCLUSION

In this thesis, I explored the relationship between the United States and Latin America, particularly Colombia, with regard to clinical legal education. In the first two chapters, I presented and discussed two narratives that have established an automatic connection between the U.S. and Latin America on clinical legal education. These narratives are still reproduced and commonly referred in academic circles in the U.S. and Latin America. I did not fully dispute the narratives but I introduced some elements that made them more complex to explore the relationship between the U.S. and Latin America as concerns clinical legal education.

According to the first narrative, the narrative of the origin, clinical legal education has been the result of a transplant process from the North to the South during the first phase of the Law and Development Movement in Latin America. The main finding of the first chapter was the pre-history of clinical legal education efforts in the region. In some Latin American countries there was a history of clinical legal education efforts even before the first wave of the Law and Development movement. I provided examples of early clinical legal experiences in countries like Brazil, Chile,

Colombia, Uruguay, Ecuador, among others. The other main finding of this first chapter is that the Law and Development movement, according to my research, did not have at the core of its project the introduction of clinical legal education. At least not in every one of the countries were the first ideas of the Law and Development movement arrived.

According to the second narrative, the narrative of the transformation, PILCs were the result of a second wave of law and development projects in which a new transplant arrived to the region to modify the clinical education practice. In the Chapter, I showed that there are other reasons that can explain more vigorously the beginning of PILCs in the region. I believe that clinical legal education in Latin America today is the result of a much more complex set of ideas, competing projects and ongoing economic, political and, very especially, constitutional transformations in the region that the metaphor of a legal transplant from the North to the South cannot fully comprehend.

In Chapter 3, I focused my study on my own country, Colombia. This is a particular case in relation to clinical legal education in the region. On the one hand, there were clinical legal education efforts before the arrival of the first projects of law and development. These projects, however, had a clinical component that came to strengthen clinical legal education efforts in Colombia. This type of clinical education was concerned with providing legal assistance to people who could not afford the resources to pay a lawyer. This legal aid is very important in Colombia because

judicial processes demand to go to court with a lawyer. But the State does not have a good system of public lawyers, perhaps with the exception of criminal law matters. On the other hand, PILCs started to operate at the end of the 1990s and early 2000s in mostly some private elite Colombian law schools. The international money of Foundations was not decisive to the beginning of its operations as it was the case in other Latin American institutions. I believe that the constitutional change, the professionalization of legal education, the return to Colombia of law professors who studied abroad, and the financial support of private universities were more decisive factors that explain the beginning of PILCs. Nevertheless, PILCs did not replace LACs. LACs are still the most widespread form of clinical legal education in the country because of the laws of legal education that require a mandatory legal aid practice all over the country.

In Chapter 4, I put my attention in a key aspect that also explores the relationship between the U.S. and Latin America on clinical legal education: the increasing internationalization of the human rights clinical practice, particularly in the last decade. In particular, the collaborative projects between law school clinics of the North and South. These collaborations revive the debate on legal imperialism in relation to clinical legal education and very specially the discussion on the distribution of legal knowledge between the North and South. I introduced two case studies to analyze this issue. The first one: a U.S. sponsored alliance between U.S. and Colombian universities to promote human rights in Colombia. I highlighted strengths and weaknesses of this project even though it is still early to evaluate its outcomes. A

second study was a clinical project in which I participated as an LL.M. and JSD student at Cornell Law School: An strategic litigation before the Colombian Constitutional Court in which the Court ruled that all public primary schools in the nation must cease charging students tuition fees. Finally in chapter 5, based on my own experience with the right to free education case and my work at the Cornell International HRC, I revisited a proposed framework for human rights clinical teaching that we developed after this project. Thinking in a U.S. audience, I reviewed that proposal with the aim of encourage and improving clinical collaborations between clinics of the North and South.

North-South clinical collaborations are desirable but tensions are inevitable given the nature and challenges of any clinical project. However, I believe that any type of clinical collaboration requires an understanding of our own history of clinical legal education efforts and the history of our own relationship with the U.S. legal academic community. We need also more detailed descriptions of the movement of people and ideas in legal education to improve our clinical legal education practices. In particular, those practices that demand a close collaboration between academic communities from the North and South. Law school clinics are an ideal space to reflect and practice our mutual understanding. That is the challenge for the next generations of students and law school clinicians.

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