

Maryland Journal of International Law

Volume 26 | Issue 1

Article 7

Re-imagining The Human Rights Law Clinic

Arturo J. Carillo

Nicolás Espejo Yaksic

Follow this and additional works at: <http://digitalcommons.law.umaryland.edu/mjil>



Part of the [International Law Commons](#)

Recommended Citation

Arturo J. Carillo, & Nicolás E. Yaksic, *Re-imagining The Human Rights Law Clinic*, 26 Md. J. Int'l L. 80 (2011).

Available at: <http://digitalcommons.law.umaryland.edu/mjil/vol26/iss1/7>

This Conference is brought to you for free and open access by DigitalCommons@UM Carey Law. It has been accepted for inclusion in Maryland Journal of International Law by an authorized administrator of DigitalCommons@UM Carey Law. For more information, please contact smccarty@law.umaryland.edu.

Re-imagining the Human Rights Law Clinic

ARTURO J. CARRILLO*
NICOLÁS ESPEJO YAKSIC**

I. INTRODUCTION

In the fall of 2010, the Mexican Supreme Court sponsored an international conference on human rights clinics to celebrate the launch of a new clinic at a prestigious law school in Mexico City.¹ A colleague from the United States was invited to speak from a clinical perspective about impact litigation, or strategic litigation as it is known in Latin American parlance, because the newly inaugurated Mexican clinic would have such a focus. Instead, the American professor challenged the conference participants to think about better

* Arturo Carrillo is Professor of Law and founding Director of the International Human Rights Clinic at The George Washington University Law School. From 1991-1994, he was a Legal Officer and Human Rights Monitor with the United Nations Observer Mission to El Salvador (ONUSAL). Before joining Columbia Law School's Human Rights Institute in 2000 as the Henkin Senior Fellow, Professor Carrillo worked in his native Colombia for a number of years as the Attorney for United Nations Affairs at the Colombian Commission of Jurists, a well-respected NGO. He was the Acting Director of the Columbia Human Rights Clinic in 2002-2003. Professor Carrillo is grateful to Dean Phyllis Goldfarb and Professors Peter Meyers, Suzanne Jackson, Jeff Gutman, Jessica Steinberg, and Annie Smith for their constructive feedback on an earlier draft.

** Nicolás Espejo serves as a Professor at the Universidad Adolfo Ibáñez and Universidad Central de Chile, UNICEF Senior Consultant on Legal Protection, and founding Partner of the Public Interest Foundation (www.ipublico.cl), a legal non-profit organization. Professor Espejo's prior positions include: Representative in Chile for the Center for Justice and International Law (CEJIL) (1998-2000), Warwick Graduate Teaching Assistant in International Law (2001-2003), Tutor in Public International Law at Exeter College, Oxford University (2002-2003), Visiting Researcher at the European University Institute, Florence (2003-2004), and Professor of Law and co-founder and Director of the Human Rights Center at Diego Portales University, Santiago de Chile (2005-2008). Professor Espejo is grateful to Mariela Puga, Erika Castro, Diego Morales, and Domingo Lovera for their valuable comments and contributions to an earlier draft.

1. Seminario sobre Clínicas de Derechos Humanos: Una Alternativa para la Educación y la Sociedad (Sept. 30-Oct. 1, 2010) [hereinafter Mexico Seminar on Human Rights Clinics].

ways of structuring human rights clinics, urging them to move away from the region's heavy emphasis on strategic litigation and related approaches to promoting justice. In so doing, he stressed how most human rights work in practice does not actually involve litigation or even client representation.²

This colleague promoted a more expansive model of clinical activity popular in the United States that would focus on human rights monitoring, fact finding, reporting, and other less legalistic but common skills required for effective advocacy in the field. He warned that one danger of propagating the litigation model of human rights clinics was that "if you are set up as a hammer, everything looks like a nail;" in other words, you become predisposed to viewing human rights issues as primarily legal problems, thereby missing or minimizing their myriad social, political, and cultural dimensions.³ Thus, he argued that strategic litigation was too narrow a focus for a human rights clinic, which should instead seek to expose students to the diverse advocacy skills more commonly employed by activists in the real world.⁴

Although the U.S. professor did not expressly say so, it seemed as if he had applied several of Professor David Kennedy's critiques of the human rights movement in general to human rights clinics in particular.⁵ Primary among these were Professor Kennedy's admonition that human rights "view[] the problem and the solution too narrowly;"⁶ that they import "Western liberal" biases such as an overemphasis on the "universal" interests of individuals (at the expense of the community or collective action) which are enshrined in legal rights best defended through legal means;⁷ that as a result, human rights arrogantly promise more than they can deliver, given the limitations of law's compliance and enforcement, especially on the international plane;⁸ and that "human rights remedies, even when successful, treat the symptoms rather than the illness," leaving the

2. Casos de Impacto Público: Ventajas y Desventajas [Public Impact Cases: Advantages and Disadvantages], Address at the Mexico Seminar on Human Rights Clinics (Oct. 1, 2010).

3. *Id.*

4. *Id.*

5. See David Kennedy, *The International Human Rights Movement: Part of the Problem?*, 15 HARV. HUM. RTS. J. 101 (2002).

6. *Id.* at 109.

7. *Id.* at 114–15.

8. *Id.* at 116, 120–21.

underlying social, political, and cultural structures responsible for the pertinent violations untouched, even validated.⁹ There was an implicit (self) critique of lawyers, who tend to dominate the field of human rights law, and the international “bureaucracy” human rights law has engendered.¹⁰

Be that as it may, by critiquing the focus of human rights clinics that litigate, our colleague was referencing (whether he meant to or not) the inchoate debate in U.S. clinical circles about how best to configure and operate a human rights clinic in today’s globalized world. In other words, what should be the overarching pedagogic objectives of such clinics and why? To what extent does the context in which human rights clinics operate matter? Should their focus be litigation or other types of advocacy? From a U.S. perspective, how similar are clinics of the human rights variety to more traditional models that center on providing legal services to clients? What are the differences, and how do they affect the way we in the United States conceive of clinical legal education in the international human rights context? Does it make sense, for instance, to teach classical lawyering skills such as client interviewing and counseling to human rights clinical students who have broader advocacy objectives in mind? In short, should we be training lawyers or human rights activists?

This article seeks to advance this debate. Susan Akram rightfully identifies the challenges faced in conjugating traditional clinical pedagogies with human rights advocacy in the United States:

9. *Id.* at 118–19.

10. *See id.* at 119–20. This complex critique of human rights in general, and human rights litigation in particular, is rooted in several assumptions drawn from social theory, moral philosophy, and legal theory. It also has obvious parallels to debates that characterize critical legal studies discourse. *See infra* note 105 and accompanying text. Accordingly, any attempt to provide a more general answer to such challenges to human rights and their place within a theory of justice, democracy, and political emancipation exceeds the scope of this article. For a general review of such critiques, see, among others: KARL MARX & FRIEDRICH ENGELS, *THE GERMAN IDEOLOGY* (Progress Publishers 1976) (1848); LUC BOLTANSKI & EVE CHIAPELLO, *LE NOUVEL ESPRIT DU CAPITALISM* (1999); COSTAS DOUZINAS, *THE END OF HUMAN RIGHTS: CRITICAL LEGAL THOUGHT AT THE TURN OF THE CENTURY* (2000); Etienne Balibar, *Is a Philosophy of Human Civic Rights Possible?*, 103 S. ATLANTIC Q. 311 (2004); Jacques Rancière, *Who is the Subject of the Rights of Man?*, 103 S. ATLANTIC Q. 297 (2004).

IHR clinics are not focused on the usual kinds of skills-training that are associated with most traditional clinics: the familiar toolkit of interviewing, counseling, negotiation and trial advocacy skills. Although some IHR clinics do engage in litigation, it is not the core of most of their work. . . . [The question thus becomes] is there a core skill-set that students graduating from IHR clinics acquire? If it is not interviewing, counseling, negotiating or trial skills, what is it? Are there models of practice developing in “international advocacy skills” that are different from pre-trial and trial skills that can be standardized and measured in any meaningful way to test student output?¹¹

The most common response in the United States to this conundrum, as reflected in the recommendations espoused by the aforementioned speaker in Mexico City, can be summarized as follows:

Human rights lawyering, a concept at the heart of human rights clinics, is used . . . to indicate a range of diverse strategies, sometimes legal (for example, litigation, legal assistance and legislative advocacy) but *more often* non-legal (for example, community education, fact-finding and reporting). It is sometimes practiced in courtrooms, but *more often* in ‘the court of public opinion’, through the press, in the streets and in boardrooms, government offices and world conferences. . . . Thus, human rights lawyering involves litigation, advocacy, monitoring and reporting, policy and legislative drafting, organizing and lobbying. Human rights clinics aim to acquaint law students with this variety of practice, and to engage them critically and practically in developing one or more of these skills.¹²

Many if not most U.S.-based human rights clinicians subscribe to some version of this view,¹³ but other experiences provide

11. Susan Akram, *The International Human Rights Clinic Re-imagined* (Nov. 2010) (unpublished manuscript) (on file with the Maryland Journal of International Law).

12. Deena Hurwitz, *Engaging Law School Students Through Human Rights Clinics: A Perspective from the United States*, 11 AUSTL. J. HUM. RTS. 37, 38–39 (2006) (emphasis added).

13. In practice, a large number of U.S. law clinics revolve exclusively or primarily around non-litigation advocacy involving human rights research, monitoring, fact-finding, reporting, education, organizing, and/or lobbying. Though it is impossible to generalize, a typical human rights clinic syllabus in such clinics often looks more like the syllabus of a “Law and Human Rights” type seminar than

alternative perspectives on how to configure a human rights clinic. One of these is provided by the proliferation of public interest and human rights (PIHR) law clinics (*clínicas jurídicas de interés público y derechos humanos*) in several Latin American countries. Our goal in this article is to contribute to the aforementioned debate by importing a number of relevant insights drawn from the Latin American experience of the PIHR law clinics. We believe that the successful trajectory of these home-grown clinics in countries like Argentina, Chile, and Colombia can be contrasted constructively with the development of their counterparts at law schools in the United States. Several of the lessons learned from this Latin American model, we will argue, are relevant to addressing the methodological challenges described, and thus can inform the growing debate on how better to understand the role and function of human rights clinics at American law schools.

We proceed as follows. Part II describes the evolution, focus, and function of public interest and human rights clinics in Latin America. While some variation naturally exists among the different manifestations of this model, it nonetheless contains a common denominator of shared purpose, perspective, and practice. Once the PIHR clinic model is described, analyzed, and illustrated with select case studies, we turn in Part III to outlining a few general lessons drawn from the Latin American experience that in our view are relevant in the U.S. clinical context. Based on our collective Latin American and U.S. perspectives, we believe great value inheres in looking to other successful approaches to human rights clinical work and learning from them. And while there are certainly substantial differences between the two clinical worlds we compare, there are even more similarities that, to our minds, bridge the geographic divide and allow for productive and constructive comparison.

that of a traditional legal services clinic. Such a course will tend to take a “patchwork” approach to teaching human rights advocacy and related skills. Each class is dedicated to addressing a different topic, such as the evolution of human rights law, the human rights situation in country X or with respect to Y issue; fact-finding and report writing; media strategies; different types of lobbying; theoretical critiques of human rights, and so on, with little or no further interconnection among them. Not surprisingly, these courses rely—sometimes heavily—on adjuncts or guest speakers to assist the professor(s) in covering such a diverse array of topics.

II. PUBLIC INTEREST AND HUMAN RIGHTS CLINICS IN LATIN AMERICA

At the aforementioned conference in Mexico City, eminent Argentine jurist Martín Böhmer gave the keynote address on the origin of public interest and human rights clinics in Latin America. His talk was more of a testimonial than a lecture on the subject, since Böhmer himself has been one of the driving forces behind the modern clinical movement in his native Argentina and around the region. The first PIHR clinics that sprung up in the 1990s in Argentina and Chile were home-grown enterprises in all respects but one—inspired generally by the well-developed world of clinical legal education in the United States, where many of the Latin American professors had carried out advanced studies, the transplanted notion of law clinics nonetheless took on a distinctly local flavor and focus once cultivated in their home countries.¹⁴ What follows is an overview of the context in which public interest and human rights clinics developed, specifically their formation, evolution, and activities. This Part concludes with a short compendium of case studies from Argentina, Chile, and Colombia.

A. *Social Justice and Judicial Activism in Latin America*

Despite good signs of economic development, even in the context of a global crisis, Latin America is still characterized as a region with one of the highest levels of economic, social, and political inequality in the world¹⁵ and low levels of effective political representation and direct participation.¹⁶ At a socio-legal level, the general conditions of inequality and exclusion in the region may explain the deepening loss of confidence in political institutions and the growing use of judicial remedies as a form of obtaining the

14. Martín Federico Böhmer, Centro para la Implementación de Políticas Públicas para la Equidad y el Crecimiento [Center for the Implementation of Public Policies for Equity and Growth] (CIPPEC), Origen de las Clínicas de Derechos Humanos en América Latina [Origin of Human Rights Clinics in Latin America], Address at the Mexico Seminar on Human Rights Clinics (Sept. 30, 2010).

15. U.N. Dev. Programme, Regional Human Development Report for Latin America and the Caribbean, 16 (2010).

16. Roberto Gargarella, *Injertos y Rechazos: Radicalismo Político y Transplantes Constitucionales en América* [Grafts and Rejections: Political Radicalism and Constitutional Transplants in America], 77 REV. JUR. U.P.R. 507, 523 (2008).

satisfaction of social interests and rights.¹⁷ Accordingly, human rights activists, non-governmental organizations (NGOs), and local communities have taken advantage of several constitutional reforms adopted since the 1990s throughout the region to promote an active and progressive interpretation of new constitutional rules and international human rights treaties. This constitutional approach to the rule of law includes not only the defense of civil and political rights but also the enforceability of social rights; the judicial control of economic structures; the empirical verification of how general principles of justice apply in practice; the development of associative strategies between lawyers and social movements; and the promotion of a new legal culture, as taught within law schools.¹⁸ In this way, as suggested by Colombian law professor César Rodríguez, a “thin” conception of the rule of law, as typically represented by U.S. constitutionalism, may be distinguished from a competing “thick” version based on an expansive understanding of civil, political, and social rights, as developed in the Global South and in European social democracies.¹⁹

In this context, during the past two decades, several Latin American courts—chiefly constitutional courts or higher tribunals—have started to produce a body of judicial decisions in increasingly complex and collective cases.²⁰ Such decisions have had an important

17. Marian Ahumada, *Tribunales Constitucionales y Democracias Desconfiadas* [*Constitutional Courts and Distrusted Democracies*], in *CONFIANZA Y DERECHO EN AMÉRICA LATINA [TRUST AND LAW IN LATIN AMERICA]* 237, 237–58 (Marcelo Bergman & Carlos Rosenkrantz eds., 2009).

18. Mauricio García Villegas, *El Derecho como Esperanza: Constitucionalismo y Cambio Social en América Latina, con Algunas Ilustraciones a partir de Colombia* [*Law as Hope: Constitutionalism and Social Change in Latin America with some Illustrations from Colombia*], in *¿JUSTICIA PARA TODOS? SISTEMA JUDICIAL, DERECHOS SOCIALES Y DEMOCRACIA EN COLOMBIA [JUSTICE FOR ALL? JUDICIAL SYSTEM, SOCIAL RIGHTS AND DEMOCRACY IN COLOMBIA]* 201, 207 (Rodrigo Uprimny et al. eds., 2006) [hereinafter *JUSTICIA PARA TODOS*].

19. César Rodríguez-Garavito, *Toward a Sociology of the Global Rule of Law Field: Neoliberalism, Neoconstitutionalism, and the Contest over Judicial Reform in Latin America*, in *LAWYERS AND THE RULE OF LAW IN AN ERA OF GLOBALIZATION* (Bryant Garth & Yves Dezalay eds.) (forthcoming 2011).

20. See generally VICTOR ABRAMOVICH ET AL., *LA APLICACIÓN DE LOS TRATADOS DE DERECHOS HUMANOS EN EL ÁMBITO LOCAL: LA EXPERIENCIA DE UNA DÉCADA [THE INCORPORATION OF INTERNATIONAL HUMAN RIGHTS TREATIES IN DOMESTIC LAW: THE EXPERIENCE OF A DECADE]* (2007); CÉSAR RODRÍGUEZ GARAVITO & DIANA RODRÍGUEZ FRANCO, *CORTES Y CAMBIO SOCIAL: CÓMO LA CORTE CONSTITUCIONAL TRANSFORMÓ EL DESPLAZAMIENTO FORZADO EN*

impact on economic, political, and legal matters in their respective countries, creating a particular debate around the “judicialization” (*judicialización*) of politics in Latin America that we cannot comment upon here in detail.²¹ Regardless of the justification we may provide for the specific role of courts in the protection of all human rights and social rights in particular, several important considerations arise.²² First, a *thick* conception of the rule of law, with a strong focus on the protection of social rights, is probably one of the main features distinguishing human rights and public interest law litigation in Latin America from its counterpart in the United States. Based on constitutional models closer to the Social Democrat paradigm and generally less skeptical of collective rights, the Latin American legal framework—with few exceptions—allows for particularly fertile strategies in the justiciability of social rights. Second, the frequent complexity of the cases litigated by PIHR clinics in Latin America is characterized by: (a) the variety of political actors involved in each case, (b) the multi-dimensional nature of the reparatory measures that must be pursued by the State (e.g., legal reform, public hearings, international settlements, etc.), and (c) the need for subsequent monitoring of the effective compliance with courts’ decisions in rather weak institutional contexts.²³ Finally, there is the notion in these countries that the concept of human rights is encompassed by, and should be co-extensive with, the progressive constitutional guarantees enabled by the respective post-authoritarian political processes of democratic reform.

As we will suggest, this legal-political context is a key feature for assessing the role of both national courts and the strategies

COLOMBIA [COURTS AND SOCIAL CHANGE: HOW THE CONSTITUTIONAL COURT TRANSFORMED FORCED DISPLACEMENT IN COLOMBIA] (2010).

21. See Rodrigo Uprimny Yepes, *La Judicialización de la Política en Colombia: Casos, Potencialidades y Riesgos* [*The Judicialization of Politics in Colombia: Cases, Merits and Risks*], 6 SUR – INT’L J. HUM. RTS. 49 (2007); LA JUDICIALIZACIÓN DE LA POLÍTICA EN AMÉRICA LATINA [THE JUDICIALIZATION OF POLITICS IN LATIN AMERICA] (Rachel Sieder et al. eds., 2008).

22. See Nicolás Espejo Yaksic, *Derechos Sociales, Republicanismo y Estado de Derecho: Un Modelo de Justiciabilidad* [*Social Rights, Republicanism and Rule of Law: A Model of Justiciability*], in DERECHOS SOCIALES: JUSTICIA, POLÍTICA Y ECONOMÍA EN AMÉRICA LATINA [SOCIAL RIGHTS: JUSTICE, POLITICS AND ECONOMY IN LATIN AMERICA] 155, 155–93 (Pilar Arcidiácono et al. eds., 2010).

23. For a discussion of these elements in U.S. “public law litigation,” see Charles F. Sabel & William H. Simon, *Destabilization Rights: How Public Law Litigation Succeeds*, 117 HARV. L. REV. 1016, 1016–17 (2004).

followed by PIHR clinics in Latin America. For that reason, and despite certain stylized and abstract critiques of the “idolatry of human rights”²⁴ or the judicialization of politics by human rights litigators, we defend a politically conscious, context-driven interpretation of the role of PIHR clinics in Latin America.²⁵ By doing so, we try to provide an alternative understanding of the meaning, objectives, and implications of strategic litigation within institutional contexts that, from a purely academic perspective, may appear misplaced, misguided, or naïve.

B. *The Emergence of PIHR Litigation in Latin America*

With some meritorious exceptions, Latin American legal education has been characterized by the teaching of law as an exercise in memorizing legal rules contained within a vast set of legal codes.²⁶ At the same time, while classical clinical education and community legal services (*consultorios legales*) were both promoted and implemented in some Latin American countries more than thirty years ago (e.g., Chile and Colombia), the impact of these types of traditional clinics on legal education in Latin America has been marginal and largely ineffective.²⁷ (It is important to keep in mind

24. See generally MICHAEL IGNATIEFF, *HUMAN RIGHTS AS POLITICS AND IDOLATRY* (Amy Gutmann ed., 2001).

25. See James L. Cavallaro & Stephanie Brewer, *Reevaluating Regional Human Rights Litigation in the Twenty-First Century: The Case of the Inter-American Court*, 102 AM. J. INT’L L. 768, 770 (2008).

26. See, e.g., Victor Abramovich, *La Enseñanza del Derecho en las Clínicas Legales de Interés Público: Materiales para una Agenda Temática [The Teaching of Law in Public Interest Law Legal Clinics: Materials for a Thematic Agenda]*, in DEFENSA JURIDICA DEL INTERÉS PÚBLICO: ENSEÑANZA, ESTRATEGIAS, EXPERIENCIAS [LEGAL DEFENSE OF THE PUBLIC INTEREST: TEACHING, STRATEGIES, AND EXPERIENCES] 61, 61–93 (Felipe González & Felipe Viveros eds., 1999) [hereinafter DEFENSA JURIDICA DEL INTERÉS PÚBLICO]; MARTIN BÖHMER, *LA ENSEÑANZA DEL DERECHO Y EL EJERCICIO DE LA ABOGACÍA [LEGAL EDUCATION AND THE TEACHING OF LAW]* 16 (1999); Javier Barrientos, Paper presented at II Jornadas Ius Commune-Ius Proprium en las Indias: La Enseñanza del Derecho en Chile: del Ius Commune a la Codificación [The Teaching of Law in Chile: From the Common Law to the Codification] (2000).

27. See César A. Rodríguez Garavito, *Globalización, Reforma Judicial y Estado de Derecho en Colombia y América Latina: El Regreso de los Programas de Derecho y Desarrollo [Globalization, Judicial Reform and State of Law in Colombia and Latin America: The Return of the Programs of Law and Development]*, in JUSTICIA PARA TODOS, *supra* note 18, at 405, 405–71; Richard Wilson, *Three Law School Clinics in Chile, 1970-2000: Innovation, Resistance and Conformity in the Global South*, 8 CLINICAL L. REV. 515, 537–38 (2002).

that the study of law in most of Latin America is part of a five-year undergraduate degree.)

In the early 1990s, faced with this diagnosis of legal education, a small group of human rights legal clinics formed in Latin America with the aim of re-appropriating the public role of both international law and legal education in the South. Under the auspices of the Ford Foundation and the U.S. Agency for International Development (USAID), in 1995 a group of Chilean, Argentinean, and Peruvian universities formed a consortium of public interest law clinics coordinated by Diego Portales University, in Santiago, Chile.²⁸ The consortium, eventually called “Latin American Public Interest and Human Rights Law Network” (hereinafter “PIHR Network”) started a pilot clinical program in late 1995.²⁹ During the first stage of the program, from 1995 to 1996, four local workshops were held in Bogotá, Buenos Aires, Lima, and Santiago, while an international and comparative law seminar also took place in Santiago.³⁰ This stage was instrumental in identifying ways to permanently involve law schools in public interest and human rights law initiatives.³¹

In December 1996, a second phase was initiated in Argentina, Chile, and Peru. The program established a network of public interest and human rights law university clinics, involving litigation, clinical exchange, and research. Professors and students worked within each country and also interacted in regional meetings with their counterparts in other countries. Professors heading these clinics were encouraged to spend three to four weeks at a U.S. law school clinic with extensive public interest law experience.³² The PIHR Network evolved over the next fifteen years, incorporating PIHR clinics from México, Ecuador, and Colombia, and maintaining a strong base of cooperation with select U.S. clinical programs at Columbia University, American University, Stanford University, Harvard

28. See Wilson, *supra* note 27, at 536, 555.

29. *Id.* at 536.

30. Hugo Frühling, *From Dictatorship to Democracy: Law and Social Change in the Andean Region and the Southern Cone of South America*, in MANY ROADS TO JUSTICE: THE LAW RELATED WORK OF FORD FOUNDATION GRANTEES AROUND THE WORLD 55, 77 (Mary McClymont & Stephen Golub eds., 2000).

31. *Id.*

32. Felipe González, *Evolución y Perspectivas de la Red Universitaria Sudamericana de Acciones de Interés Público [Evolution and Perspectives of the South American University Network of Actions of Public Interest]*, in DEFENSA JURIDICA DEL INTERÉS PÚBLICO, *supra* note 26, at 61.

University, The George Washington University, and The University of Texas.³³

Despite their particularities, all PIHR clinics developed legal strategies based on a form of judicial activism that aspired to be effective in representing the rights, needs, and interests of persons and peoples traditionally excluded from power or otherwise in a position of economic, social, or political disadvantage *vis-à-vis* local elites. PIHR clinics thus operate by selecting leading cases in highly sensitive areas such as non-discrimination, the enforceability of social rights, access to information, political accountability, institutional and domestic violence, and the representation of workers unions, indigenous peoples, and grass-roots community organizations. In that sense, one major difference between more traditional community legal services and PIHR clinics has been the way in which the latter conceive themselves not only as a pedagogical tool for the teaching of law, but also as *agents of democratic change* in instances of institutional weakness or failure characterized by a lack of political will to act in defense of socially, politically, or culturally disadvantaged groups or individuals.³⁴ A good description of strategic litigation in this context comes from the Center for Legal and Social Studies (*Centro de Estudios Legales y Sociales*) (CELS) in Argentina, a prominent NGO that pioneered the PIHR clinic model in conjunction with the University of Buenos Aires:

[Strategic human rights litigation] seeks to operate on the nexus between the judicial and political spheres, based on the constitutional recognition of rights and new procedural mechanisms for representing [social] interests. The purpose of raising judicially public conflicts or those that transcend

33. See generally FELIPE GONZÁLEZ MORALES, *EL TRABAJO CLÍNICO EN MATERIA DE DERECHOS HUMANOS E INTERÉS PÚBLICO EN AMÉRICA LATINA* [THE CLINICAL WORK IN THE FIELD OF HUMAN RIGHTS AND PUBLIC INTEREST IN LATIN AMERICA] (2004). Although less active than in the past, the Network is still in place. See *Encuentros en la Red*, RED LATINOAMERICANA DE CLÍNICAS JURÍDICAS, <http://www.clinicasjuridicas.org/index.htm> (last visited Apr. 7, 2011).

34. See generally Martín F. Böhmer, *Igualadores y Traductores: La Ética del Abogado en una Democracia Constitucional* [Equalizers and Translators: The Ethics of the Lawyer in a Constitutional Democracy], in *ENSEÑANZA CLÍNICA DEL DERECHO: UNA ALTERNATIVA A LOS MÉTODOS TRADICIONALES DE FORMACIÓN DE ABOGADOS* [CLINICAL TEACHING OF LAW: AN ALTERNATIVE TO THE TRADITIONAL METHODS FOR FORMATION OF ATTORNEYS] 123 (Marta Villarreal & Cristián Courtis eds., 2007).

the plane of the individual is to introduce issues into the agenda of social debate, [and] to question the process through which state public policies are defined, the content of such policies, as well as their implementation and potential social impact.³⁵

So conceived, PIHR clinics have played an active role in the process of consolidation of a “thin”/liberal conception of the rule of law in Latin America, a task essentially associated with the defense of civil and political rights. By promoting strategic litigation in the field of social rights, environmental rights, and the legal representation of local communities generally excluded from access to both the political and judicial systems, PIHR clinics have also contributed to the consolidation of a *thicker conception of the rule of law*, one that establishes a necessary connection between law, social justice, and democracy. PIHR clinics are thus part of a political culture based on the public role of a private profession and the civil obligation to mediate between justice and those denied access to that justice. In that capacity, these legal clinics have developed several strategies aimed at the enforceability of international human rights obligations and constitutional guarantees that have a direct impact on the protection of the rights of the most disadvantaged, excluded, dominated, and exploited persons in their society.

Most certainly, PIHR strategic litigation at the domestic and international levels is not an original contribution of human rights clinics in Latin America. Several human rights clinics in the world, including in the United States, offer this type of approach.³⁶

35. See generally CENTRO DE ESTUDIOS LEGALES Y SOCIALES [CENTER FOR LEGAL AND SOCIAL STUDIES], LITIGIO ESTRATÉGICO Y DERECHOS HUMANOS: LA LUCHA POR EL DERECHO [STRATEGIC LITIGATION AND HUMAN RIGHTS: THE STRUGGLE FOR THE RULE OF LAW] (2008) [hereinafter CELS]. In this respect, the strategic litigation championed by PIHR clinics and Latin American activists is very similar to (and to a great extent modeled upon) what in the United States is called “public interest” or “impact” litigation. See generally Scott L. Cummings & Deborah L. Rhode, *Public Interest Litigation: Insights from Theory and Practice*, 36 FORDHAM URB. L.J. 603 (2009) (situating the U.S. debate over public interest litigation in theoretical and empirical context and arguing “that such litigation is an imperfect but indispensable strategy of social change”).

36. See David McQuoid-Mason et al., *Clinical Legal Education in Africa: Legal Education and Community Service*, in THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE 23 (Frank S. Bloch ed., 2011) [hereinafter GLOBAL CLINICAL MOVEMENT]; see also Bruce A. Lasky & M. R. K. Prasad, *The Clinical Movement in Southeast Asia and India*, in GLOBAL CLINICAL MOVEMENT, *supra*, at 36. For an example of strategic litigation conducted by a

However, this wave of Latin American clinics exhibits two characteristics that, in our view, may distinguish them from their original “founding fathers” in the United States. First, PIHR clinics have placed themselves in a more direct defense of the imperatives of social justice writ large, by engaging as social actors in a democratic-constitutional context (as distinguished from the classical liberal conception of the “rule of law”). Second, PIHR litigation by these legal clinics has reinvigorated the adoption and implementation of international human rights law by virtue of their creative and sustained strategies of enforceability, geared not only toward the effective implementation of civil and political rights but also the enforcement of economic and social rights as well. By doing so, PIHR litigation has had an impact on the way law is both conceived and taught domestically, as well as the extent to which human rights law can be both applied and developed from the ground up.

C. *The Pedagogy of Public Interest and Human Rights Clinics*

As we will indicate in the next section of this article, one of the main contributions of PIHR clinics in Latin America can be found in the type of human rights cases that have been litigated by these clinics throughout the past two decades.³⁷ But along with this contribution, it is also important to call attention to the pedagogical dimension of PIHR clinics in Latin America. As previously suggested, legal education in Latin America, as in the Continental tradition (Europe), has been mainly characterized by a black-letter law approach to the study of codes, regulations, constitutions, and even international law. As opposed to this traditional way of teaching law, PIHR clinics developed new and radically peer-oriented forms of education. Against the mere memorization of rules and doctrine, PIHR has pushed for context-based, impact-oriented, and case-driven ways of including law students in the practice of law. By analyzing the juridical possibilities as well as political implications of strategic litigation in human rights cases, PIHR law students in countries like Argentina, Chile, Colombia, and México, among others, have acquired hands-on experience in the practice of law that traditionally remained out of bounds for law students.

U.S. legal clinic, see Harold Hongju Koh, *Reflections on Refoulement and Haitian Centers Council*, 35 HARV. INT’L L.J. 1 (1994) (criticizing the Supreme Court decision in *Sale v. Haitian Centers Council*, a case litigated by Yale Law School’s Lowenstein Clinic).

37. See *infra* Part II.D.

On the one hand, PIHR students participated in seminars to address the main challenges of the cases in which they were taking part; they regularly participated in meetings with other lawyers who provided advice for taking on highly-complex cases; they engaged with NGO representatives to develop strategy for the cases as well as to discuss the legal initiatives spearheaded by the clinic; and in some cases, wrote newspaper articles, columns, or press releases related to the litigation. The PIHR students undertook all of this while simultaneously conducting legal research both under domestic and international law, drafting memos, and so on. Participation in this range of activities helped provide PIHR students with a more complex and robust knowledge of legal practice and human rights activism.³⁸

During the course of their clinical experience, PIHR students also learned how to engage with their professors in a less hierarchical way. Deeply influenced in this respect by U.S. critical legal theory, PIHR law professors attempted to overcome a long tradition of intellectual distance and authoritarian control of the educational process within the law school.³⁹ Unlike their colleagues in traditional classroom settings, PIHR students typically have been responsible for proposing to bring a case and weighing its merits under the PIHR umbrella; that is, analyzing if there have been any human rights violations, if the case is in the public's interest, if there is a group of people interested in pursuing the political agenda of the case, etc. At the same time, PIHR students have had to defend their case proposals before their law professors and student colleagues; this meant that they needed to be able to constantly review the strategy pursued. In all its activities, the PIHR clinic tended to operate—with some obvious restrictions—as a law firm in which all members play a significant and largely equivalent role. By doing so, PIHR law professors have made a considerable contribution to the democratization of legal education in Latin America.

38. See Erika Castro-Buitrago et al., *Clinical Legal Education in Latin America: Toward Public Interest*, in GLOBAL CLINICAL MOVEMENT, *supra* note 36, at 69, 69–86.

39. See generally Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591 (1982).

D. *PIHR Clinics in Argentina, Chile, and Colombia: Enforcing Social Justice While Training Capable and Ethical Lawyers*

The experience of both designing and establishing PIHR clinics in Latin America has already been documented to some extent.⁴⁰ Here we focus on a few examples of PIHR strategic litigation in Argentina, Chile, and Colombia that may be useful in grasping the particularities of such clinical experiences. To be sure, the selection of cases in this section is both limited and subjective and does not pretend or purport to be indicative of the global work more generally undertaken by PIHR clinics in the referenced countries. Nonetheless, we believe these cases provide some idea of what defending social justice and the rule of law may signify for both human rights lawyers and law students engaged in a PIHR clinic.

1. Argentina

The Argentinean clinical experience of strategic litigation led by PIHR clinics is both broad and successful in its impact. For practical purposes, we have decided to highlight two particularly successful experiences that have been in place for some time: first, the UBA-CELS Clinic,⁴¹ established by CELS and the Buenos Aires National University School of Law (UBA), and second, the Public Interest Law Clinic at Palermo School of Law.⁴²

Since 1995, the UBA-CELS Clinic has litigated a series of human rights cases with the express design and intent to support and

40. See Castro-Buitrago et al., *supra* note 38; Wilson, *supra* note 27.

41. *Capacitación, Clínica Jurídica UBA-CELS*, CELS, <http://www.cels.org.ar/servicios/?info=detalleTpl&ids=68&lang=es&ss=69> (last visited Apr. 7, 2011). CELS and the University of Buenos Aires also carry another innovative clinical program, specifically focused on migrants and refugees. See *Capacitación, Clínica UBA-CELS-CAREF*, CELS, <http://www.cels.org.ar/servicios/?info=detalleTpl&ids=68&lang=es&ss=72> (last visited Apr. 7, 2011).

42. *Clínica Jurídica de Interés Público*, UNIVERSIDAD DE PALERMO, http://www.palermo.edu/derecho/clinicas_juridicas/clinica_int_publico.html (last visited Apr. 7, 2011). The Palermo Clinic has also utilized, as an alternative, the joint venture UBA-CELS model in collaboration with organizations such as the Asociación por los Derechos Civiles [Association for Civil Rights] (ADC) and the Asociación Civil por la Igualdad y la Justicia [Civil Association for Equality and Justice] (ACIJ), while preserving some of the characteristics of a “laboratory model.” *Id.* Palermo School of Law also runs a clinical program on access to information. *Clínica de Acceso a la Información Pública*, UNIVERSIDAD DE PALERMO, http://www.palermo.edu/derecho/clinicas_juridicas/clinica%20_acceso_informacion_publica.html (last visited Apr. 7, 2011).

strengthen the Argentinean democratic regime.⁴³ Among others, the Clinic filed a constitutional action, known as the *acción de amparo*, before a federal court with the purpose of forcing the central State to produce a vaccine (Candid I) for the so-called Argentinean Hemorrhagic Fever (FHA), an epidemic and endemic disease.⁴⁴ Based on the State's obligations, derived from the Universal and American Declarations of Human Rights,⁴⁵ as well as the International Covenant on Economic, Social and Cultural Rights (Art. 12),⁴⁶ the Court ordered the Argentinean authorities to produce the vaccine within a fixed period of time. Due to the scientific and political complexity of the case, both the Court and the public ministry, in the form of the national ombudsperson, supervised the State's compliance with the ruling.⁴⁷

In a similar vein, the UBA-CELS Clinic submitted another *acción de amparo* denouncing a series of irregularities in both the delivery of medication and the analysis of viral levels in HIV/AIDS patients under the care of the *Programa Nacional de Lucha Contra el SIDA*, a federal program created to care for persons infected with HIV/AIDS, among other things.⁴⁸ In this case the Clinic requested, on behalf of the beneficiaries of the program, the continuous and proper delivery of medication and administration of medical exams.⁴⁹ The tribunal declared that the allegations made by the Clinic implied a serious breach of the right to life and the right to health of people living with HIV/AIDS, both recognized by the Argentine Constitution and international human rights law.⁵⁰

Particularly concerned with discrimination issues, the Public Interest Law Clinic at Palermo School of Law filed a petition designed to force the Argentine authorities to grant social security rights to gay partners living in "de facto" unions for more than thirty

43. See generally CAROLINA FAIRSTEIN, CELS, LA EXPERIENCIA DE LA CLÍNICA JURÍDICA DE DERECHOS HUMANOS CELS-UBA [THE EXPERIENCE OF THE UBA-CELS LEGAL CLINIC] (2009); CELS, *supra* note 35, at 17–21.

44. CELS, *supra* note 35, at 68.

45. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

46. International Covenant on Economic, Social and Cultural Rights art. 12, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3, 8.

47. CELS, *supra* note 35, at 68.

48. *Id.* at 75.

49. *Id.*

50. *Id.*

years.⁵¹ The Clinic argued that the denial of social security benefits (pensions) to a same sex partner was a violation of the right to equality before the law, as the Argentinean law recognizes de facto unions between heterosexuals.⁵² Both the First Instance Tribunal and the Federal Court of Social Security rejected the petition before the Argentinean Supreme Court of Justice finally heard the case.⁵³ Before the Supreme Court of Justice reached a decision, however, the National Social Security Agency decided to reverse its position and recognize the right to social security (pensions) for same sex couples.⁵⁴

Another interesting case the Palermo PIHR Clinic handled dealing with discrimination was the submission of a claim to the Court of Appeals of Buenos Aires against the *Instituto Superior de Educación Física* N° 1, Dr. Jorge Romero Brest.⁵⁵ The Institute, under the administrative control of the Council of the City of Buenos Aires, provided continuing sports education to residents.⁵⁶ The Clinic argued that the student selection system, which established different quotas for the number of women and men who could access programs on continuing sports education (morning: ninety women/sixty men; afternoon: sixty women/ninety men; evening: sixty men/thirty women), was discriminatory on the basis of sex.⁵⁷ Despite the Institute's "historical justification" for the distinction, the Court of Appeals of Buenos Aires declared the selection system to be discriminatory.⁵⁸ In doing so, the Court remarked not only upon the negative character of the non-discrimination clause (i.e., the requirement not to discriminate) but also highlighted the positive obligations that derived from it.⁵⁹

51. *Caso Derecho a Pensión de los Integrantes de Parejas Homosexuales* [Case Law on Pensions for Members of Gay Couples], UNIVERSIDAD DE PALERMO, http://www.palermo.edu/derecho/clinicas_juridicas/caso_pension.html (last visited Mar. 31, 2011).

52. *Id.*

53. *Id.*

54. *Id.*

55. *Caso Instituto de Educación Física de la Ciudad de Buenos Aires* [Case of City of Buenos Aires Physical Education Institute], UNIVERSIDAD DE PALERMO, http://www.palermo.edu/derecho/clinicas_juridicas/caso_inst_educacion_fisica.htm 1 (last visited Mar. 31, 2011).

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

2. Chile

Since its creation in 1997, the Public Interest Law Clinic at Diego Portales University (DPU Clinic) has developed a strategy of litigation firmly based on the connection between the use of judicial remedies for access to justice and the empowerment of civil society organizations.⁶⁰ Consumer rights organizations, sexual minorities, local communities, members of the police, and student and women's rights associations all developed joint ventures with the Clinic, enhancing the capacity of the former to interact with the system of justice. Particularly within its first ten years of existence, the DPU Clinic was able to play a paramount role in shaping public opinion on human rights issues; at the same time, the DPU Clinic ignited several legal and political debates on highly sensitive issues, such as police abuse, homophobia, and gender domination, in a legal community not unfamiliar with these forms of strategic litigation.⁶¹

Among the most successful cases litigated by the DPU Clinic was one demanding free diagnosis and access to medical treatment for people living with HIV/AIDS. Forming an alliance with a prominent NGO representing people with HIV/AIDS (*Vivo Positivo*), the Clinic sustained a long-term process of submitting constitutional cases against the Ministry of Health, in addition to simultaneously requesting precautionary measures before the Inter-American Commission on Human Rights.⁶² Although the Chilean Supreme Court ultimately rejected all the cases—including some which had received favorable rulings from the Santiago Court of Appeals—the wider political strategy convened with *Vivo Positivo* created the

60. Felipe Viveros, *La Participación de la Sociedad Civil en Acciones de Interés Público* [Civil Society Participation in Public Interest Actions], in CIUDADANÍA E INTERÉS PÚBLICO: ENFOQUES DESDE EL DERECHO, LA CIENCIA POLÍTICA Y LA SOCIOLOGÍA [CITIZENSHIP AND PUBLIC INTEREST: APPROACHES FROM LAW, POLITICAL SCIENCE AND SOCIOLOGY] 151, 151–212 (Felipe González Morales & Felipe Viveros eds., 1998).

61. See Fernando Atria, *Revisión Judicial: El Síndrome de la Víctima Insatisfecha* [Judicial Review: The Dissatisfied Victim Syndrome], 79 ESTUDIOS PÚBLICOS 347, 347–402 (2000). Some commentators criticized the strategy followed by the Clinic, calling attention to its negative impact on the republican-democratic system. *Id.*

62. Jorge Contesse & Domingo Lovera Parmo, *Access to Medical Treatment for People Living with HIV/AIDS: Success Without Victory in Chile*, 8 SUR – INT'L J. HUM. RTS. 143, 148 & n.24, 149, 151 (2008).

necessary conditions for the adoption of a national policy that granted all Chileans the right to free medication for HIV/AIDS treatment.⁶³

The DPU Clinic also has litigated a crucial case involving lesbian mothers' custody rights. In *Atala v. Chile*,⁶⁴ litigated before the Inter-American Commission on Human Rights, the Clinic submitted a petition against the Chilean Government for the violation of the right to equality before the law.⁶⁵ The Chilean Supreme Court had denied a lesbian mother (also a judge) custody over her daughters because the Court found that the public expression of the mother's sexual identity was not in the best interests of her children.⁶⁶ Challenging a misplaced interpretation of the principle of the "best interest of the child," the DPU Clinic obtained a ruling against the Chilean Government from the Inter-American Commission for a violation of the right to equality before the law and the right to special protection of children, under the American Convention on Human Rights.⁶⁷ The case is currently pending before the Inter-American Court of Human Rights.⁶⁸

Ignited by a progressive concern for clinical legal education in Chile, other universities have also developed PIHR clinics in some specific areas.⁶⁹ Since 2003, the School of Law of Universidad de Chile has successfully run its Environmental Law and Conflict Resolution Clinic.⁷⁰ Located within a traditional school of law, this Clinic is based on a methodology that incorporates both the

63. *Id.* at 150, 152.

64. *Atala v. Chile*, Case 12.502, Inter-Am. Comm'n H.R. (Sept. 17, 2010), available at <http://www.cidh.org/demandas/12.502ENG.pdf>.

65. *Atala v. Chile*, Petition 1271-04, Inter-Am. Comm'n H.R., Report No. 42/08, OEA/Ser.L/V/II.130, doc. 22 rev. 1 ¶¶ 1–2 (2008).

66. *Id.* ¶ 13.

67. *Atala*, 12.502 ¶¶ 1–6.

68. *IACHR Takes Case Involving Chile to the Inter-American Court*, INTER-AMERICAN COMMISSION HUM. RTS. (Sept. 20, 2010), <http://www.cidh.oas.org/Comunicados/English/2010/97-10eng.htm>.

69. Almost all well-established law schools in Chile have legal clinics as part of their formal curricula. Nonetheless, just a few of them have been able to design and put into place PIHR legal clinics as described in this paper. The Universidad Central de Chile, in Santiago, has decided to create a new PIHR legal clinic in the field of children's rights by 2011.

70. *Curso Clínico de Derecho Ambiental y Resolución [Clinical Course of Environmental Law and Conflict Resolution]*, UNIVERSIDAD DE CHILE, <http://www.derechoambiental.uchile.cl/docencia/42-curso-clinico-de-derecho-ambiental-y-resolucion-de-conflictos.html> (last visited Apr. 7, 2011).

promotion of research as well as legal assistance on environmental law matters.⁷¹ In this latter capacity, the Clinic has provided legal services in several public interest law cases by using established administrative procedures to obtain results in the local communities' favor.⁷² One case the Clinic worked on involved a factory in a poor and marginalized *comuna* of the Quinta Normal neighborhood of Santiago which processed animal fat (*grasas*) and which was in breach of water disposal rules and other administrative regulations. The Clinic succeeded in obtaining a decision in their favor from the urban and environmental administrative bodies in which the factory was ordered to be shut down.⁷³

Also concerned with PIHR litigation is the Legal Clinic on Access to Information established by the School of Law of Universidad Alberto Hurtado in consortium with *Fundación Pro-Acceso*, an NGO committed to the promotion and protection of access to information. Sponsored by the Open Society Foundation and established in 2009, this Clinic was created as a way to strengthen the enforcement of the new legal framework on access to information in Chile, as sanctioned by the Constitutional Reform of 2005 and the Law of Access to Public Information of 2008.⁷⁴ After

71. *Program: Clínica de Derecho Ambiental y Resolución de Conflictos* [*Environmental Law Clinic and Conflict Resolution*], UNIVERSIDAD DE CHILE, http://web.derecho.uchile.cl/pregrado/2011_1/pro_d.php?recordID=1040 (last visited Apr. 1, 2011). The Clinic is both part of the curriculum of the School of Law and an activity of the Center for Environmental Law. *Curso Clínico de Derecho Ambiental y Resolución de Conflictos* [*Clinical Course of Environmental Law and Conflict Resolution*], CENTRO DE DERECHO AMBIENTAL [ENVIRONMENTAL LAW CENTER], <http://www.derechoambiental.uchile.cl/docencia/42-curso-clinico-de-derecho-ambiental-y-resolucion-de-conflictos.html> (last visited Apr. 1, 2011).

72. *Curso Clínico de Derecho Ambiental y Resolución de Conflictos*, *supra* note 71.

73. María Nora González & Valentina Durán, *Clinica Ambiental Logra Clausura de Empresa Contaminante* [*Environmental Clinic Achieves Closure of Polluting Company*], DERECHO AMBIENTAL [ENVIRONMENTAL LAW] (Oct. 23, 2007), <http://cdauch.blogspot.com/2007/10/clinica-ambiental-logra-clausura-de.html>.

74. *Consultorio Acceso a Información* [*Access to Information Office*], UNIVERSIDAD ALBERTO HURTADO, http://www.derecho.uahurtado.cl/clinica_juridica_consultorio_acceso_info.html (last visited Apr. 1, 2011); Gonzalo Biggs, *Transparency and Access to Public Information*, BUS. MAG. CHILE, <http://businesschile.cl/en/news/reportaje-principal/transparency-and-access-public-information> (last visited Apr. 2, 2011); Law No. 20285, Agosto 11, 2008, DIARIO OFICIAL [D.O.] (Chile).

two years of work, the Clinic has litigated, among others, cases concerning immigration authorities denying information to civil society organizations regarding new migratory legislation and the representation of the main journalistic organizations in Chile who were seeking key government data on issues of public importance held by state authorities.⁷⁵

3. Colombia

The first PIHR clinic in Colombia was the Grupo de Acciones Públicas (Public Action Group) (GAP) at the Universidad Colegio Mayor de Nuestra Señora del Rosario in Bogotá, which was established in 1999. The GAP has a special focus on the judicial protection of vulnerable groups (ethnic minorities, displaced communities, and persons with disabilities, among others) and has developed highly innovative strategies for use in collective actions.⁷⁶

Among the many successful cases litigated by the GAP, a few stand out in particular. In May 2001, the GAP filed a constitutional writ known as a “group action” on behalf of residents of the municipality of La Gabarra who were forcibly displaced by a paramilitary terror campaign, carried out there in May 1999 with the support of the Colombian police and armed forces.⁷⁷ The administrative tribunals charged with hearing the case found the Colombian State responsible for the harm inflicted on the displaced residents due to the unlawful actions and omissions of its agents.⁷⁸ In 2004, the tribunals ordered the collective compensation of the victims or their beneficiaries to be distributed through a special fund established for that purpose.⁷⁹ In another case, the GAP, through one of its professors, lodged an action challenging the constitutionality of several articles of the Colombian Civil Code making reference to

75. Macarena Rodríguez & Moisés Sánchez, *The Clinic of Access to Information of Universidad Alberto Hurtado*, Speech at the Universidad Central de Chile School of Law Seminar: First International Seminar on Clinical Education (Jan. 5, 2011).

76. *Clinica de Interés Público*, UNIVERSIDAD DEL ROSARIO, <http://www.urosario.edu.co/Jurisprudencia/Clinica-de-Interes-Publico/ur/Que-es-el-GAP.aspx> (last visited Apr. 2, 2011).

77. See generally Adriana del Pilar Chacón Pinto et al., *Grupo de Acciones Publicas*, in ACCIONES DE GRUPO Y DE CLASE EN GRAVES VULNERACIONES A DERECHOS HUMANOS [CLASS ACTIONS AND CLASS IN CASES OF SERIOUS HUMAN RIGHTS VIOLATIONS] (Beatriz Londoño Toro & Arturo J. Carrillo eds., 2010).

78. *Id.*

79. *Id.* at 122–25.

mentally ill persons or mental illness using pejorative language which the GAP alleged “violate[d] the principles of human dignity and equality” guaranteed by the Colombian Constitution.⁸⁰ The Constitutional Court agreed, pointing out that the development of international human rights law had produced a conception of human dignity that embraces all persons, including those with mental or physical handicaps, and ensures them equal protection under the law.⁸¹ The offending provisions were accordingly excised from the Code.⁸²

The Universidad de los Andes in Bogotá has similarly developed a series of highly effective projects related to the promotion and protection of human rights and the public interest.⁸³ One of those projects is the so-called Public Interest Law Group (PILG), which conducts its work in three specific areas: (a) legislative counseling, (b) human rights education, and (c) strategic litigation.⁸⁴ Among others, the PILG has successfully litigated cases dealing with:

- Colombian legislation that denies the right to conscientious objection to military service, obtaining a ruling in 2009 from the Colombian Constitutional Court which recognized the right to reject forced military training for religious, philosophical, and moral reasons;⁸⁵

80. BEATRIZ LONDOÑO TORO, EDUCACIÓN LEGAL CLÍNICA Y DEFENSA DE LOS DERECHOS HUMANOS: CASOS PARADIGMÁTICOS DEL GRUPO DE ACCIONES PÚBLICAS – GAP [CLINICAL LEGAL EDUCATION AND HUMAN RIGHTS: PARADIGMATIC CASES OF THE PUBLIC ACTION GROUP] 247 (2009).

81. *Id.*

82. *Id.* at 250–51.

83. *Programa de Justicia Global y Derechos Humanos [Global Justice and Human Rights Program]*, UNIVERSIDAD DE LOS ANDES, http://derecho.uniandes.edu.co/index.php?option=com_content&view=article&id=53&Itemid=260&lang=es (last visited Apr. 2, 2011); *Programa de Acción por la Igualdad y la Inclusión Social [Action for Equality and Social Inclusion Program]*, UNIVERSIDAD DE LOS ANDES, http://derecho.uniandes.edu.co/index.php?option=com_content&view=article&id=52&Itemid=259&lang=es (last visited Apr. 2, 2011); *Grupo de Derecho de Interés Público [Public Interest Law Group]*, UNIVERSIDAD DE LOS ANDES, http://derecho.uniandes.edu.co/index.php?option=com_content&view=article&id=51&Itemid=258&lang=es (last visited Apr. 2, 2011).

84. *Lineas de Trabajo [Lines of Work]*, UNIVERSIDAD DE LOS ANDES, <http://gdip.uniandes.edu.co/interno.php?Id=6&lang=es> (last visited Apr. 2, 2011).

85. Corte Constitucional [C.C.] [Constitutional Court], Sala Plen. octubre 14, 2009, M.P: G. Martelo, Sentencia C-728/09, Expediente D-7685 (pp. 1, 2, 111) (Colom.), available at http://gdip.uniandes.edu.co/archivos/setencia_objecion.pdf.

- Colombian criminal rules on libel and slander, obtaining in 2010 a decision from the Colombian Constitutional Court which declared those rules unconstitutional, based on the right to due process and freedom of expression;⁸⁶ and
- Colombian legislation that denies the rights of same-sex couples in the field of social security, migration, and civil law, obtaining three rulings from the Colombian Constitutional Court (2007, 2008, 2009) which recognized the equal treatment of heterosexual and homosexuals couples under the law.⁸⁷

E. *PIHR Clinics in Latin America: Towards A Global Perspective*

Though PIHR clinics are our chosen model for illustrating a particular perspective on human rights clinical work, we are aware that the PIHR clinics are not themselves immune from improvement through comparative evaluation. For instance, although consciously based on international human rights law, PIHR clinics have not fully conceived their role as part of a global agenda for legal action in the field of human rights. With few exceptions, PIHR clinics in Latin America have tended to act based on domestic forms of enforceability of international human rights law, avoiding

86. Corte Constitucional [C.C.] [Constitutional Court], Sala Plen. junio 26, 2009, M.P: J. Pérez, Sentencia C-417/09, Expediente D-7483 (pp. 1, 2, 92–93) (Colom.), available at http://gdip.uniandes.edu.co/archivos/sentencia_libertad.pdf. This case was litigated in conjunction with the Foundation for Free Press (Fundación para la Libertad de Prensa or FLIP). *Id.* at 14.

87. Corte Constitucional [C.C.] [Constitutional Court], Sala Plen. febrero 7, 2007, M.P: R. Gil, Sentencia C-075/09, Expediente D-6362 (pp. 1–3, 56) (Colom.), available at http://gdip.uniandes.edu.co/archivos/sentencia_libertad.pdf; Corte Constitucional [C.C.] [Constitutional Court], Sala Plen. abril 16, 2008, M.P: C Hernández, Sentencia C-336/08, Expediente D-6947 (Colom.), available at <http://www.corteconstitucional.gov.co/relatoria/2008/C-336-08.htm>; Corte Constitucional [C.C.] [Constitutional Court], Sala Plen. enero 28, 2009, M.P: R. Gil, Sentencia C-029/09, Expediente D-7290 (Colom.), available at <http://www.corteconstitucional.gov.co/RELATORIA/2009/C-029-09.htm>. These cases were litigated in conjunction with the NGO Colombia Diversa. *Lineas de Trabajo: Litigio de Alto Impacto [Lines of Work: High Impact Litigation]*, UNIVERSIDAD DE LOS ANDES, <http://gdip.uniandes.edu.co/interno.php?Id=6&Menu=10&lang=es> (last visited Apr. 12, 2011); Julieta Lemaitre Ripoll, *Love in the Time of Cholera: LGBT Rights in Colombia*, 11 SUR – INT’L J. HUM. RTS. 73, 78–79 (2009).

complementary regional agenda on human rights matters that could be defined as strategic priorities. At the same time, PIHR clinics have not always been able to fully grasp the complexity of new human rights and public problems accompanying globalization—e.g., transnational migration and associated humanitarian crises, trafficking in persons and drugs, and economic colonialism and development—that, because of their inherently transnational character, affect a wider range of peoples and individuals. In that sense, it would seem natural to envision PIHR clinical development in Latin America as drawing on the experiences of their counterparts in North America and moving toward a more global agenda for the teaching and practice of human rights law in those countries.

III. RE-IMAGINING THE HUMAN RIGHTS LAW CLINIC: LESSONS FROM LATIN AMERICA

As we have seen, the early Latin American legal clinics were created during critical junctures in the history of their respective countries. The return to democracy in Argentina and Chile after years of authoritarian rule and repression represented not just an overhaul of the countries' respective political systems, but also a complete reconceptualization of the function and role of law in post-conflict democratic society generally.⁸⁸ Indeed, the notion of civil society *itself* was drastically reformulated, becoming that of a critical (in both senses of the word) change agent in the creation and consolidation of good democratic governance. Similarly, the adoption in Colombia of a new social democratic constitution in 1991⁸⁹ ushered in an unprecedented era of democratic consolidation that brought with it an invigorated social activism on public interest and human rights issues.⁹⁰ To some extent, the democratic spaces created by the political transitions in Argentina and Chile, and the new constitution in Colombia, were filled by non-governmental actors and organizations.⁹¹ But, as explained in the previous section, a handful

88. For a thorough discussion of the transformative role of law during periods of political transition, see RUTI TEITEL, *TRANSITIONAL JUSTICE* 11–26 (2000).

89. CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.].

90. See, e.g., Pinto et al., *supra* note 77, at 110, 113; LONDOÑO TORO, *supra* note 80.

91. See, e.g., *In Argentina, a Bahá'í-inspired NGO Works to Strengthen Civil Society in a Time of National Crisis*, ONE COUNTRY, http://www.onecountry.org/e141/e14106as_UNIDA_story.htm (last visited Apr. 2, 2011); Yianna Lambrou, *The Changing Role of NGOs in Rural Chile After Democracy*, 16 *BULL. LATIN AM.*

of university law schools, guided by progressive U.S.-educated professors, took up the challenge as well, seeking to train students to be better lawyers by using clinical methods that engaged with and impacted local realities.

A. *Lessons for U.S. Human Rights Law Clinics*

The success of the PIHR clinics in their home countries is evident from both the pedagogic and advocacy perspectives. We do not mean to suggest by the foregoing, however, that human rights clinics are generally best configured as PIHR clinics, in Latin America or elsewhere.⁹² Rather, our purpose has been to provide a snapshot of a well developed and successful external clinical model in the realm of human rights that offers us a number of general insights on the work we do in the United States. What, then, are some of the lessons that U.S. clinicians working on human rights issues can take away from the PIHR clinic experience? In our opinion, there are at least four, outlined below.

1. Context Matters

Human rights clinics are best configured as a function of the contexts in which they operate. Some context can be created, such as the areas of law in which one chooses to specialize; some cannot, such as the fact that these clinics are, by definition, university- and law school-based (more on this below). The observation that “context matters” has many permutations, but the one that we would highlight is the significance of working on human rights issues in your home country, whether locally, regionally, or nationally. PIHR clinics view human rights issues first and foremost as those affecting their communities and their country.⁹³ And they do something about it by “thinking globally but acting locally.” This approach is in sharp contrast to that favored by many U.S. clinical programs, which tend

RES. 107, 107, 111 (1997); ONG POR LA TRANSPARENCIA, <http://www.ongporlatransparencia.org.co/> (last visited Apr. 2, 2011).

92. There are, of course, a number of important challenges faced by U.S. law school clinics (and clinicians) that wish to engage in public interest or strategic litigation. See Cummings & Rhode, *supra* note 35, at 625–28 (describing as likely impediments limitations on clinician status such as law school resources and clinic capacity).

93. *Clínica de Interés Público*, *supra* note 76; *Grupo de Derecho de Interés Público*, *supra* note 83. Of course, as noted already, such a clear definition of purpose may entail tradeoffs and possible limitations. See *supra* Part II.

to focus on human rights issues abroad,⁹⁴ though this practice in recent times has begun to change.

All PIHR clinics tackle primarily, if not exclusively, local problems or institutional dynamics that negatively impact the human rights of their co-citizens. There are several reasons why ensuring a significant degree of domestic focus in human rights clinical work is important. First, it provides students with concrete opportunities to apply in practice much of what they have learned elsewhere in law school, making their clinical experience more relevant to their legal education generally. Second, it affirms for students the message that good human rights practice begins at home, and that human rights abuses are as much a U.S. problem as one faced by citizens of other countries. Third, by working on human rights issues through domestic legal and political systems, a human rights clinic and its students will be better situated to promote the internalization and eventual enforcement of basic rights than when they operate in a foreign country. Last, but certainly not least, addressing domestic human rights issues confers upon U.S. clinics that also work abroad an enhanced legitimacy when responding to skeptical counterparts in other countries who (rightfully) complain of U.S. moral imperialism and hypocrisy in the area of human rights.⁹⁵

2. Client-Based Lawyering is Human Rights Lawyering

Justice writ large starts with justice for individuals. PIHR clinics are thriving examples of how the benefits of pursuing justice through the direct representation of individual clients can be maximized when combined with other forms of strategic advocacy such as lobbying, legislative reform, media and educational campaigns, and academic study.⁹⁶ A good example is provided by the GAP in Colombia, which not only litigates group actions on behalf of victims of human rights abuses, but at the same time advocates for strengthening the constitutional remedies invoked in their cases through

94. See, e.g., Hurwitz, *supra* note 12, at 42–45; see also *supra* note 13 and accompanying text.

95. Akram, *supra* note 11; Caroline Bettinger-Lopez et al., *Redefining Human Rights Lawyering Through the Lens of Critical Theory: Lessons for Pedagogy and Practice*, 18 GEO J. ON POVERTY L. & POL'Y (forthcoming 2011).

96. See *supra* Part II.D.1–2; CELS, *supra* note 35 (detailing the different strategies involved in strategic litigation in Argentina).

complementary academic research and publication.⁹⁷ Though not all PIHR clinic projects involve clients—as when unconstitutional norms are challenged—most do. Indeed, the teaching methodology of most PIHR clinics is centered on such an approach.⁹⁸ Whether it be persons infected with HIV/AIDS or victims of paramilitary violence displaced from their homes, strategic litigation and advocacy on behalf of vulnerable sectors of society is the touchstone of the PIHR clinic.

As noted already, the predominant model of human rights clinical work in the U.S. emphasizes primarily non-client, non-litigation advocacy techniques.⁹⁹ In our experience, however, the pursuit of legal redress for victims of human rights abuses at the local, national, and international levels is an integral part of what human rights *lawyers* in most countries outside of the United States do on a regular basis; a fact which is often downplayed by U.S. human rights clinicians.¹⁰⁰ And while human rights *advocates*—a category that includes but is not limited to lawyers—also engage in the non-litigation advocacy emphasized by their colleagues such as monitoring, fact-finding, and reporting, that fact alone is an insufficient basis in our view for responding in any definitive manner to the questions of what and how we should teach the law students who take our clinics. In other words, we view the PIHR experience as a call for putting the practice of law back at the heart of the definition of “human rights lawyering,” rather than making the term synonymous and co-extensive with all human rights advocacy, regardless of who carries it out.

In so doing, neither we nor the PIHR clinicians we draw our inspiration from ignore the impact of various critiques of the function of law in the international human rights context.¹⁰¹ There are indeed legitimate bases from which scholars can criticize the role of law in

97. See *supra* Part II.D.3; Pinto et al., *supra* note 77; LONDOÑO TORO, *supra* note 80.

98. See *supra* Parts II.D.1–3.

99. Akram, *supra* note 11; Hurwitz, *supra* note 12, at 38–39; see also *supra* note 13 and accompanying text.

100. See, e.g., U.N. OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS & INT’L BAR ASS’N, HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE: A MANUAL ON HUMAN RIGHTS FOR JUDGES, PROSECUTORS AND LAWYERS 22–24 (2003), available at <http://www.ohchr.org/Documents/Publications/training9chapter1en.pdf>; Hurwitz, *supra* note 12, at 38, 40, 48.

101. See Bettinger-Lopez et al., *supra* note 95.

the promotion and protection of human rights generally,¹⁰² and we share the view that conscientious advocates must reflect upon the potential consequences of their actions.¹⁰³ But we do not agree that the solution is to reject, “trash,” or otherwise dilute the human rights discourse or legal strategies involved in this work.¹⁰⁴ On the contrary, the PIHR experience vindicates what other activist scholars have recognized: as a practical matter, the interests of victims’ grave human rights violations may be better served by taking strategic advantage of the opportunities that national, regional, and international legal norms can provide to promote human rights protections than by any realistic alternative offered by the critics of such discourse.¹⁰⁵ Which brings us to the third lesson.

3. Train Good Lawyers First and the Rest Will Follow

What then should be the pedagogic objective of a human rights law clinic? Recall the issues identified in the introduction and reflected in the question: Are we in the business of training lawyers or human rights activists? By now it should be evident that PIHR clinics suggest a different approach to addressing these issues than the one that currently prevails in the United States.

102. *Id.*; Kennedy, *supra* note 5.

103. *See* Bettinger-Lopez et al., *supra* note 95 (applying critical legal theory to ambivalent advocacy).

104. *Id.* (citing critics of human rights strategies that deal with abuses directly as opposed to attacking the structural inequities and hegemonic ideologies that underlie them); *see* Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1356, 1357 (1988).

105. Crenshaw, *supra* note 104. In a debate with obvious parallels, Kimberlé Crenshaw questions the “unrealistic” analysis of legal scholars critical of the civil rights movement’s reliance on rights discourse and “liberal legal ideology.”

[I]n addition to exaggerating the role of liberal legal consciousness and underestimating that of coercion, Critics also disregard the transformative potential that liberalism offers. Although liberal legal ideology may indeed function to mystify, it remains receptive to some aspirations that are central to Black demands, and may also perform an important function in combating the experience of being excluded and oppressed. This receptivity to Black aspirations is crucial given the hostile social world that racism creates. The most troubling aspect of the Critical program, therefore, is that ‘trashing’ rights consciousness may have the unintended consequences of disempowering the racially oppressed while leaving the white supremacy basically untouched.

Id. at 1357–58 (citation omitted).

PIHR clinics rely on case and litigation-based methodologies to teach their students basic lawyering skills, while enabling life-changing experiences through the promotion of social justice domestically.¹⁰⁶ Indeed, the social activist credentials of the PIHR clinic professors are beyond reproach. Yet their primary educational mission is not to create carbon copies of their activist selves, but to train capable and ethical attorneys whose legal skills will transfer across, and ensure success in, the legal profession. To be sure, the strategic litigation methodology favored by PIHR clinics is multifaceted and draws upon complementary non-legal activities to promote the causes being litigated.¹⁰⁷ But by acting locally (and sometimes internationally) to promote, defend, and vindicate fundamental rights through such strategies, these clinics have demonstrated that high-impact human rights work can be married to traditional clinical methodologies such as case-based teaching and individual client representation to achieve heightened degrees of pedagogic and advocacy success.¹⁰⁸

This approach tends to confirm our view that “human rights lawyering” that relies *primarily* on non-legal means such as monitoring, fact-finding, community education, reporting, and lobbying is better described as human rights advocacy done by lawyers (or law students), because it does not, strictly speaking, require legal skills. This difference in perspective about the nature of our work as human rights clinicians is more than semantic, since it determines the nature of the skills-building enterprise that takes place in our clinics. Human rights “lawyering” understood primarily as advocacy through non-legal means will (and does) translate into a clinical skills focus on a diverse range of non-legal activities—and thus *non-legal skills*—such as public relations and media strategies,

106. *See supra* Part II.B–D.

107. CELS, *supra* note 35.

108. *See supra* Part II.C–D. This experience has been replicated in U.S.-based human rights law clinics, including American University Washington College of Law (political asylum and counter-terrorism (Guantánamo) cases, as well as Inter-American human rights litigation) and The George Washington University Law School (Alien Tort Statute, Trafficking Victims Protection Act, and Inter-American litigation). *International Human Rights Law Clinic*, AM. U. WASH. C. L., <http://www.wcl.american.edu/clinical/inter.cfm> (last visited Apr. 8, 2011); *Overview*, GEO. WASH. L., <http://www.law.gwu.edu/Academics/EL/clinics/IHRC/Pages/Overview.aspx> (last visited Apr. 8, 2011).

organizing, fact-finding and reporting, and lobbying.¹⁰⁹ Human rights lawyering understood primarily as client representation and litigation, supported or complemented by non-legal advocacy, will correlate to a more traditional “tool kit” of professional skills such as legal interviewing and counseling, negotiation, oral advocacy, and the like.¹¹⁰ And in our view, a number of good reasons exist in the context of clinical legal education to favor the latter definition over the former.

First, as law professors teaching law students in a law school setting, it would seem we are tasked with the training, first and foremost, of competent, ethical *lawyers*, not human rights activists, *per se*. Second, students interested in becoming human rights activists as well as lawyers can get specialized training in human rights advocacy elsewhere more appropriately.¹¹¹ Third, in our experience, good lawyering skills in the classical sense are wholly transferable and provide an effective baseline for developing and exercising other non-legal human rights advocacy skills; conversely, the transferability of the non-legal skills emphasized by most human rights clinics to the conventional practice of law is less clear.¹¹² Fourth, while it is undoubtedly true that a percentage of the human rights clinic students who take the course do so to learn more about

109. *See supra* note 12 and accompanying text. The authors recognize that some sorts of reporting may engage in legal analysis, though it is not necessary that lawyers conduct it.

110. *See supra* note 108 and accompanying text.

111. Internships, outside placements, and volunteer work with human rights organizations are all good options available to law students who seek to learn about human rights advocacy in general. Also, numerous academic and advocacy training opportunities are available to specifically address human rights advocacy. For example, the Geneva-based International Service for Human Rights, an NGO, offers training courses for human rights activists on using the United Nations human rights system. *See ISHR's Capacity Building Activities*, INT'L SERV. HUM. RTS., <http://www.ishr.ch/trainings> (last visited Apr. 22, 2011). The University of Essex offers several post-graduate degrees in the field, including an MA in Theory and Practice of Human Rights, and a MSc in Human Rights and Research Methods. *See Postgraduate*, U. ESSEX, http://www.essex.ac.uk/human_rights_centre/current_students/postgraduates/Current.PG.aspx (last visited Apr. 22, 2011).

112. In today's competitive market, it could be argued (at least with respect to the vast majority of law schools) that we do our students a disservice by emphasizing non-legal advocacy skills in a human rights clinic that make them no more attractive to most traditional legal employers. *See Hurwitz, supra* note 12, at 44–45 (describing how students complain that such human rights work is “not legal enough”).

how human rights work is conducted, and may have an interest in going into the field, many do not. Putting the “law” (and the client) back into human rights “lawyering” by emphasizing pedagogical goals that integrate human rights work with traditional clinical methodologies is likely to be of more value to most students after graduation. Finally, there is a significant comparative advantage to conducting human rights legal work from a law school clinic that is lost when we engage in other types of advocacy that neither require nor benefit from having lawyers—or law school clinics—conduct it. Which brings us to the final lesson.

4. University Human Rights Clinics are Unique Social Actors with Comparative Advantages (and Disadvantages)

The success of PIHR clinics in Latin America illustrates at once their important role in the human rights movement of their respective countries, as well as their distinctiveness from other actors who populate that movement, particularly NGOs.¹¹³ Human rights clinics are typically pedagogic entities anchored in academic institutions from which they inherit a penchant for marrying theory with practice, as well as for rigor, reflection, and innovation.¹¹⁴ Moreover, another part of their distinct comparative advantage is that, of course, they operate out of university law schools with access to substantial intellectual, human, and, sometimes, economic resources. They can be, in other words, better suited to conducting effective *legal* advocacy than any other actor. And their work carries an aura, if not an actual “stamp,” of academic legitimacy that in most societies carries an influence not easily replicated by their NGO counterparts.¹¹⁵ Of course, human rights clinics have significant limitations as well, such as the inability to take on large case or project loads.¹¹⁶ For better or worse, these also distinguish such clinics from their non-governmental brethren.

PIHR clinics in Latin America are not without their critics, including traditional academics and practitioners who are resistant to changing conventional teaching methodologies and skeptical of the

113. See Arturo J. Carrillo, *Bringing International Law Home: The Innovative Role of Human Rights Clinics in the Transnational Legal Process*, 35 COLUM. HUM. RTS. L. REV. 527, 540–44 (2004).

114. *Id.* at 580–85.

115. *Id.* at 577.

116. *Id.* at 579.

value of non-hierarchical experiential learning for students. Nevertheless, the consolidation of university-based PIHR clinics in various countries around the region has ensured human rights abuse victims and the human rights movement in general a unique and important new partner.

From an advocacy point of view, the distinct comparative advantage of having university legal clinics work on legal causes through judicial and political channels is evident from the case studies summarized in the prior section. For example, the fact that a well-respected private law school clinic was the group responsible for litigating the first cases on access to medical treatment for HIV/AIDS in Chile was of enormous material and symbolic importance for the persons living and working with HIV/AIDS in the country.¹¹⁷ The same thing can be said for the case of the judicial and quasi-judicial (Inter-American Court of Human Rights and Committee on the Elimination of Racial Discrimination, respectively) representation of ethnic minorities by Colombian PIHR clinics. By making use of their legal capacity, public image, and domestic and international networks, PIHR clinics have substantially helped some of these people to be known, heard, and considered by the system of justice. The fact that two highly-valued law schools in Bogotá (Rosario and Los Andes) represent these people adds political significance to the cases and has a symbolic impact within the legal community (e.g., lawyers, academia, and the judicial system). Finally, the establishment of PIHR clinics by traditional Argentinean law schools (largely self-marginalized from the evolution of legal education) has granted them a particular status within the legal system. The experience of the UBA-CELS Clinic, in this sense, is probably the most solid example of this symbiosis between human rights activism and legal education and practice.

IV. CONCLUDING OBSERVATIONS

There is much we in the United States can learn from the Latin American PIHR clinics as we confront the basic questions highlighted in the introduction about how best to configure a human rights clinic. While there is no one right way to do so, and there seem to be as many approaches as there are human rights clinicians, the Latin American experience described offers important insights into the process through which we define our pedagogical values and

117. Contesse & Parmo, *supra* note 62, at 148 n.19, 155.

priorities in this country. In reality, this experience represents not so much an *alternative* to prevailing practices as a *variation*, a difference of pedagogic emphasis within the range of subjects and skills comprising human rights activism that we choose to teach. For this reason we find that PIHR clinics routinely rely on non-legal advocacy to support their clients' causes in court, while many (though not all) of the U.S. human rights clinics that favor non-litigation advocacy may nonetheless pursue or assist in domestic or international cases.

The idea, we submit, is not to promote one approach over the other, but to surface the debate around the pedagogic choices we make in choosing one or the other and the implications of those decisions. In so doing, we view this exercise as part of an open and honest dialogue between law clinics from the Global South and the North. This is a dialogue that aims at recognizing the early and permanent contribution of U.S. clinical legal education on Latin American law schools, while taking into account the way in which the latter have evolved to create through the PIHR clinics a rich, new educational and professional experience for future lawyers that should be of interest to U.S. human rights clinicians.

As noted already, differences in where you place the pedagogic accent within a given human rights law clinic will translate into differences in what you teach. This is particularly true with respect to the question of what professional skills to teach students—a constant bugbear of many human rights clinicians.¹¹⁸ In this regard, we firmly believe, based on the PIHR model and our own experience in the field, that the same core skill set promoted by most traditional law clinics in the United States—legal interviewing, counseling, negotiation, and oral advocacy—does have an important role to play in U.S. human rights law clinics, more than is generally recognized. Whether these skills are taught is a pedagogic choice made by the clinical professor, not a limitation inherent in human rights clinics *per se* or a function of any particular definition of human rights “lawyering.” Our experience and that of the PIHR clinics have shown repeatedly that these basic legal skills are highly transferable and thus invaluable to all kinds of advocacy, human rights included, and not just in the litigation context.

118. See *supra* note 11 and accompanying text.