A Manual for Environmental Law Service Learning Pedagogy in Central America and the Dominican Republic

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August 2011

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Introduction: Why Promote Clinical Environmental Law Education in Central America and the Dominican Republic?

The U.S. Department of State Higher Education for Development (HED) partnership program is part of a cooperative agreement awarded in October 2005 by the United States Agency for International Development (USAID) to the American Council on Education, with the American Association of Community Colleges, the American Association of State Colleges and Universities, the American Association of Universities, the National Association of Independent Colleges and Universities, and the National Association of State Universities and Land-Grant Colleges. HED awarded a grant to Georgia State University to develop a regional diploma in environmental law in the CAFTA-DR countries. This initiative also encourages graduates of the diploma program to return to their home legal academic institutions and promote the development of environmental law within the curriculum. Environmental law service learning, and especially clinical environmental law education is one important and underrepresented aspect of this curriculum.

This manual provides a reference guide to the design and development of contextually appropriate environmental law service learning programs in the CAFTA-DR countries. It can also be used as a tool to persuade administrators with limited resources of the pedagogical value of these programs. Based on extant models, this manual reviews the many forms of environmental law service learning programs that may be appropriate at any individual law school. It discusses structure and pedagogy, provides case studies (including success stories), and describes potential issues.

Service Learning as an Approach to Higher Education

A. What is Service Learning?

“Service Learning” describes the wide range of educational opportunities wherein students engage in experiential activities outside of the classroom, to further their understanding of educational topics. Such activities include community service projects, internships, field studies, and clinical opportunities. The Corporation of National Service defines “service learning” as a method in which students learn and develop through active participation in thoughtfully organized service experiences that meet actual community needs, that are integrated into students academic curriculum, or provide structured time for reflection that enhance what is taught in school by extending the learning beyond the classroom and into the community. Authentic service-learning experiences, while almost endlessly diverse, have some common characteristics.¹

Service learning experiences should be positive, meaningful, and real to the student participants. They involve cooperative rather than competitive experiences and thus promote skills associated with teamwork and community involvement and citizenship. They offer opportunities to engage in problem-solving by requiring participants to gain knowledge of the specific context of their service learning activity and community challenges, rather than only drawing upon generalized or abstract knowledge such as that which might come from a textbook. As a result, service learning offers powerful opportunities to acquire the habits of critical thinking, such as the ability to identify the most
important questions or issues within a real-world situation. There are no "right answers" in the back of the book. As a consequence of this immediacy of experience, service learning is more likely to be personally meaningful to participants and to generate emotional consequences, to challenge values as well as ideas, and hence to support social, emotional and cognitive learning and development.

**Characteristics of Service Learning**

Despite the myriad of possible goals and structures of service learning experiences, the essential characteristics of service learning experiences are the same.² Service learning should:

1. *Meet a genuine community need.* Service learning should achieve an actual goal, as determined by external or community-led assessments. The actions undertaken should make positive contributions towards solving a problem.

2. *Link the community need to classroom goals.* A strong linkage between the service action and ongoing classroom instruction ensures that students improve their skills, both in and out of the classroom.

3. *Provide opportunity for student reflection.* In addition to the benefit to the community, the students should grow as individuals through deep understanding of broader lessons, such as morality and justice.

Service learning is not simply an add-on to an existing curriculum or an episodic sporadic occurrence. True service learning has at its heart a goal far different than simply logging a set number of community service hours in order to graduate or compensatory service assigned as a form of punishment by school administrators. The distinctive element of service learning is that it enhances the community through the service provided, but it also has powerful learning consequences for the students or others participating in providing a service.

**Types of Service Learning**

- **Volunteerism:** An individual provides time and resources to a beneficiary where the service is primarily determined by the recipient. (Example: Individual volunteer at hospital)³

- **Community Service:** More structured volunteerism, wherein the focus shifts from not only the service action, but also broader education in the community about the beneficiary’s needs. (Example: Year-long project to raise money for breast cancer)

- **Internship:** Student engagement in service where the primary objective is to provide students with hands-on experience in the field. (Example: Student internship at a non-profit organization)

- **Field Education:** Students provide co-curricular service opportunities external, but necessary to their education. (Example: Education students engage in student teaching programs for a year)

- **Clinical Education:** Students provide services to beneficiaries in highly structured environment integrated into education, where outcome for client is primary focus. (Example: Clinical program at law school)⁴

**Value of Service Learning**

Service learning should be included in education for its value.⁵ Research findings show that service-learning benefits students by boosting their academic achievement, fostering a lifetime commitment to civic participation, improving social skills, and preparing students to enter the

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² Adapted from the text and figures in *Teaching for a Change: Service Learning Strategies for Community Engagement* by ideas, and hence to support social, emotional and cognitive learning and development.

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Service learning also gives students a sense of competency; students see themselves as active contributors rather than passive recipients. Through addressing real community needs and building stronger connections between schools and communities, students grow as individuals, which improves the overall school climate. Service learning provides a mechanism through which students' personal and social growth is tightly interwoven into their academic and cognitive development, for the greater benefit of the community at large.

**B. A History of Service Learning in Higher Education in the United States**

The concept of community service and civic engagement has existed on American campuses since the 19th century. Originating in Greek-letter organizations and faith-based groups, community service activities have long connected educational institutions to the communities in which they reside. Service learning, as an organized principle, gained momentum in the 1960’s, through the civil rights movement and the formation of the Peace Corps in 1961. In the late 1960s many of the emerging service oriented organizations promoted the service learning movement in American colleges and universities. These early pioneers believed that colleges and universities should encourage students to participate in community service, help to make sure that academic learning is a part of this service, and give academic recognition for that learning. They also believed that colleges and universities; private organizations; and federal, regional, and state governments should provide the opportunities and funds for students wanting to participate in service learning.

By the 1980’s service learning was a national initiative in universities, with movements such as the Campus Outreach Opportunity League and the National Association of Service and Conservation Corps. Finally, in 1990, Congress and President George H. W. Bush passed the National and Community Service Act of 1990, which authorized grants for states, schools, and community organizations to develop and implement service learning programs. In 1993 President Clinton approved the National and Community Service Trust Act, which expanded the federal role in service learning and provided funds for every state to incorporate service learning into schools.

Despite government involvement, a vast amount of support for service education has come from private sources. In 2000, the Corporation for National Service's Department of Service-learning distributed over $20 million in funds through its Learn and Serve America program to support local service learning efforts. Many influential American foundations, including the W.K. Kellogg Foundation, the Carnegie Corporation of New York, The Ford Foundation, Ewing Marion Kauffman Foundation, and others have invested large amounts of money into programs and into studying their results.

The present moment of renewed attention to the civic mission of universities has been a push toward a fully-engaged university as a whole: active, vibrant partnerships of the university as an institution with students and citizens, through support and resources to achieve extraordinary things in education and in transforming communities nationwide. Schools in all fifty states offer service learning programs, at every level of education. Despite external involvement, service learning continues to be primarily a locally-driven activity, with most decision-making and control occurring uniquely for each program. Community leaders, students, and educators in schools and organizations across the country continue to be outspoken advocates for service learning.
The Evolution of Environmental Clinic Legal Education

A legal clinic is an educational institution that operates as a law firm. Law students work in legal clinics as student associates, typically supervised by university faculty. Students are responsible for real cases and are treated as functioning attorneys by supervising faculty, judges, and opposing counsel. These interns are exposed to the stress of litigation, collegial working conditions, and the broader legal community.8

A common feature of many clinics is their propensity to represent the interests of groups traditionally unable to secure representation in legal disputes. Environmental litigation clinics are increasingly focusing on environmental justice issues, providing valuable services to previously unrepresented clients.9

A. In The United States

Clinical legal education developed in the United States in the late 1920s, when committed Yale law students began providing legal aide to their community without receiving credit, through volunteer arrangements.10 By the 1930s, five law schools had volunteer legal clinics and the concept of clinical legal education had “found its way into scholarly publications.”11 Proponents of legal clinics felt that it was important for students to be exposed to and to actively participate in the practice of law.12 Through clinics, students could learn to develop relationships with clients as well as negotiation and litigation skills.13 By the end of the 1950s, one-fourth of all accredited law schools provided some form of clinical legal education, although the standards for these clinics varied greatly.14

The community service focus of these early clinics persevered as the modern clinical movement emerged out of the social consciousness of the 1960s.15 Formal, for-academic credit programs emerged in the 1960s and 70s, the result of a growing concern that law schools were failing to “expose and sensitize students to issues of professional ethics [and] the moral and social obligations inherent in the legal profession.”16 These clinics focused on major social issues of the time, such as poverty law, civil rights, women’s right, consumer rights, and environmental protection.17 The University of Oregon’s law school instituted the first environmental law clinic in 1976.18 This clinic “attracted national attention by winning a number of high profile lawsuits.”19 In 2010, approximately one out in five law schools had an environmental law clinic.20

B. Internationally

Although legal clinics originated in the United States, there is a growing interest in clinical legal education globally.21 Today, legal clinics operate in almost every region of the world.22 And, as environmental law becomes an increasingly important specialty field, law schools around the world are beginning to launch legal clinics that focus on environmental law, in order to give law students practical exposure to the environmental law field.23 At a 2007 international conference of clinical law professors who specialize in the environmental field, countries represented included Argentina, Australia, Brazil, Canada, Chile, China, Costa Rica, the Czech Republic, India, Israel, Italy, Japan, Nepal, Nigeria, Norway, and Uganda.24
Latin America

During the 1990s, Latin America experienced a wave of public interest law clinics, emerging in Argentina, Chile, Columbia, and Peru. Legal clinics in Latin America date back to the 1960s, influenced in part by what was happening in the United States. However, these early legal clinics had yet to develop a public interest-based ideology—the idea that their purpose was to provide access to justice to insular minorities. During the 1980s and 90s, the growing influence of human rights law; coupled with evidence that the dominant formal legal culture did little to address Latin America’s problems of inequality, social exclusion, and political corruption; led to criticism of the region’s legal education structure. Some scholars felt that legal clinics could provide an answer for how law schools can help provide justice to insular minorities and promote fairer more effective social policy. The legal clinics of the 1990s focused on public interest law issues; such as free speech, minority rights, due process, human rights, and treaty enforcement. The clinics involved themselves in strategic litigation, trying to connect the law school to social issues, with objectives based in social justice and human rights.

It took another decade for environmental law clinics to develop in Latin America, but since 2000, environmental law clinics have sprouted up in law schools in Argentina, Chile, Brazil, and Costa Rica. The environmental advocacy community in Latin America has grown “increasingly diverse and sophisticated” over the past ten years, with networks of government and nongovernmental organizations and even “networks of networks,” all with an environmental advocacy focus. Although environmental law education in Latin America has “lagged behind the pace of developments in environmental law fostered by the professional advocacy community,” with environmental law only recently beginning to be recognized as a discrete discipline, the institution of environmental law clinics is one way in which law schools are catching up to and becoming more involved in environmental advocacy.

Clinical Legal Education: Law School’s Contribution to Service Learning

Law schools have been involved in service learning since its origin. As noted in the previous section, clinics became most prevalent in the 1960s, when social justice and law began to fully intersect. Since then, clinical legal education has been the primary vehicle for service learning within the law school curriculum. The method provides hands-on lawyering skills while providing legal help to underrepresented clients. Clinical courses mirror the essential values of the legal profession: provision of competent representation; promotion of justice, fairness, and morality; continuing improvement of the profession; and professional self-development. Professionalism, developed through clinical education, encompasses not only service to clients, but also ethical conduct and dedication to the public good. Law schools also provide a unique laboratory for social justice, providing a place where undesirable clients and untested strategies can converge.

Models of Environmental Law Clinics

As service learning in higher education becomes more prevalent, the structure of that learning becomes increasingly varied. Environmental and otherwise, clinical education’s institutional structure has become vastly important in determining the experience received by the student and the product received by the client. Some clinics focus on the student—work-study, internships, community-based
research, international experiences, alternative spring breaks, etc.—while some also devote significant attention to community partnerships, faculty development, and institutional engagement. There is no single “right” way to construct and sustain a clinical education program. Clinical programs are shaped by the assets and priorities of the campus and its partner communities or organizations. Clinics develop and evolve over time, as the interests and initiatives of students and administrators change. The following are questions to be considered: choices about names, academic scope, staffing and structure are very much dependent on the institutional mission, culture, and circumstances. All necessary considerations for starting a clinic, these options provide the platform for a broad spectrum of possibility in design.

A. Live Client or Simulation

A simulation course is one in which the learning environment simulates the experience of live practice through the use of experiential and public based case simulations. The purpose is to create for the students a simulation where students realistically address the legal context of real-life scenarios, in an insulated environment. The students assume the role of lawyers performing law related tasks in hypothetical situations under supervision with opportunities for feedback and reflection. The benefits of this type of course are that they are easy to set up, require few resources, and provide a manageable and predictable learning environment for students. The drawback of this type of course is that there is no contribution back to the community and it can lack the unpredictability of a “real-world” case or controversy, a key aspect of experiential learning.

A live client clinic is one in which students work to solve an actual problem for a real client. Live client clinics serve all purposes of service learning and are the typical model used for environmental law clinics. Unlike in simulated course, real clients force the students to fully engage in the legal system. Live client clinics demand time and resources. The considerations in the rest of this chapter are mainly for live client clinics. Despite these complexities, live client clinics offer far more, to the students, faculty, and community than a simulated course ever could.35

B. Nature of the Practice

- **Litigation:** Students represent clients before adjudicatory bodies. Litigation clinics may have additional student practice requirements imposed by the law of the state or country. Students also are heavily involved in the background work involved in preparing a case to go to trial.
- **Non-litigation (Transactional):** An overarching term for clinics where students represent clients’ non-litigation legal activities. This may involve planning, negotiating, and drafting of transactions; individual planning; community organizing; or regulatory and legislative rule making.
- **Dispute Resolution:** Students engage in informal negotiations or as neutral mediators or arbitrators. Again, the laws of the state or country may determine whether such negotiations have any binding effect on parties or whether students require any special certificates to engage in this practice. Mediation clinics have become increasingly popular.
- **Judicial:** Students work in chambers with judiciary, researching and providing memorandum. This is a less common form of clinic, as this form does not allow for representation of clients in the traditional sense.
Community Organizing: Students work with community groups to advocate for group issues and concerns (i.e. economic development or environmental justice). Students may help groups affected by a particular issue mobilize and, in doing so, generate more legal work for the clinic.

Legislative Activity: Students engage in legislative drafting and advocacy projects on behalf of clients seeking redress through legislative action. Legislative advocacy may also involve meeting with legislators and elected officials, or participating in legislative hearings on behalf of clients. Students and faculty should be careful to ensure that no lobbying restrictions are violated.

Ombudsman/Informal Advocacy: Students advocate on behalf of clients for informal, non-litigation solutions to community problems.

Interdisciplinary: The clinic topic crosses different academic or subject matter areas (i.e. an environmental and human rights law clinic).

Hybrid: A clinic that incorporates two or more of the above clinic types. Most clinics are not limited to a specific form, but instead are determined in nature by the needs of clients and available resources.

C. Degree of Representation

Full representation is where a clinic could allow students to manage the entire case, through to completion, as they would in a law firm. This model places the most responsibility on students, which can often be the most rewarding. However, the length of many transactions or litigations may be longer than any individual student’s tenure with the clinic, making the role of the supervising clinician especially important.

Partial representation allows students to provide initial advice. Students can assess cases, help where able, but ultimately refer the client to another firm or agency. Student can also provide preliminary case preparation, such as factual and legal research, for the client, or provide legal advocacy services.

Faculty Oversight is crucial, no matter what degree of representation is decided upon. Faculty members ensure that students do not provide inaccurate advice, or engage in the unauthorized practice of law. Depending on the law of the country, faculty members may be required by law to oversee student actions. For example, a student may be able to file a pro se environmental law case in constitutional court without oversight, but not represent a client in criminal court. A faculty member, serving as a supervising attorney, is vital for students navigating the legal system.

D. Structure of Clinic

In-House Clinic: Any clinic in which full time faculty supervise students in the direct representation of clients. The clinic is an integrated part of the law school and operates exclusively as a clinical practice. Faculty clinicians work directly with students to provide legal services.

External Clinic: The clinic functions as a separate law practice outside of the law school, with involvement from the law school deriving from use of students and faculty members to provide practitioners for the clinic.
➢ **Internship:** An opportunity for students to gain practical experience in a workplace environment, while providing labor to the host organization. Internships may be part time or full time. In an internship-structured clinic, students are assigned internships through the clinic, and work primarily outside the clinic for the client. The student receives academic credit, but faculty supervision is limited to training, reflective feedback and coordination of the internship with the client or law organization representing clients.\(^{36}\)

➢ **Externship:** The words “internship” and “externship” are often used interchangeably.\(^{37}\) Often viewed as “job shadowing,” externs are closely supervised by employees and provide samples of career possibilities.

➢ **Hybrid:** An academic experience where the students are in placements with legal service and government law offices away from the school. The day-to-day work is generally supervised by an attorney away from the school. Hybrid clinics typically contain components of both in-house and internship/externship programs.\(^{38}\)

➢ **Practicum:** A course designed to provide students with supervised practical experience, in which students apply learned skills to a situation. Practicums use focused implementation of theoretical and case studies to an actual work scenario. A supervising professor, who seeks to minimize the element of uncertainty, closely monitors this course. The difference between a practicum and an internship is nuanced, in that the focus of a practicum is more on the learning, and an internship more on working in the field.

➢ **Single Client Clinic:** A clinic that serves only one client, which is usually one organization. The structure may involve having the single client send work to the clinic, or the clinic provides student workers for the organization along the lines of the internship/externship model. The clinic and organization are often in a formal partnership.

### E. Academic Status

A **Curricular** clinic places the largest obligation on the students, as students would be working for a grade and credits. Faculty members would also be required to be more heavily involved in ensuring that the clinic is structured such that students are actively learning. The clinic itself is a course of study.\(^{39}\)

A **Co-curricular** clinic places similar obligations on students to engage in the clinic alongside their coursework, as well as obligating the faculty members to ensure that the clinic and learning intertwine. Less involved however than a curricular clinic, a co-curricular clinic follows the overarching principles, without the full requirements of a curricular structure. The clinic complements, but is not fully part of the student’s day to day curriculum. Credit may be awarded, but the activity is often student driven and directed. Moot courts and student-edited journals are often handled in this manner in the United States legal education system.

An **Extra-Curricular** clinic falls outside the realm of student’s normal curriculum. Engagement in the clinic is entirely voluntary, and students likely receive no academic credit for their involvement. Due to its extra-curricular nature, the success of the clinic is highly dependent on the voluntary involvement of both the students and the faculty.
F. Non-Clinical Environmental Law Service Learning

A law professor interested in developing an environmental law service learning program may not want to embark on a full-fledged clinical program initially. There may be insufficient institutional “buy-in” for the idea or the Professor may not have the time to devote to it given other responsibilities. Under these circumstances there may be opportunities to pursue more modest objectives and still provide the service learning opportunities students desire. One example is to take an existing course and develop a skills component that requires students to complete a project that has a real world context and may even require interaction with stakeholders who would benefit from the knowledge developed by students. A faculty member could also repurpose an existing elective course, such as a seminar, and design projects that address “real world issues” based on the needs of NGOs and communities who can provide feedback on student work product. A course like this is sometimes referred to as a practicum. A key feature of this sort of course is absence of an attorney-client relationship and the expectation that students will continue to interact with the project at the end of the academic period.

One such example, in a Latin American context, is the work of Professor Alvaro Sagot, an environmental law professor at the University of Costa Rica’s satellite campus in San Ramon de Alajuela. As a part of his environmental law class, Professor Sagot requires his students to go into the field and identify an issue where environmental law is not being enforced. Using Costa Rica’s liberal standing laws the students then file administrative complaints (denuncias) before the agencies charged with administering the laws. Professor Sagot’s students have also filed constitutional complaints in their own name.

Building the Infrastructure of a Clinical Program

There are many institutional technicalities that are involved in building a clinical program. Although each educational program is unique, the following tips should be considered, when attempting to build a clinical program.46

- Identify the institutional policies and procedures the clinic must follow.
  - Will the clinic be subject to curriculum review by the faculty or administration?
  - Will clients, cases and projects need to be approved by someone outside the clinic, e.g. the administration or a faculty review committee?
  - What is the intended duration of the clinic (e.g. one semester or one year)?
  - How many credits or service hours will be awarded for participation in the clinic.
- Identify the potential liability the clinic will bring to the school and how that risk will be managed.
  - Is the clinic covered under malpractice or other liability insurance?
  - Are there standard contracts that must be signed by all potential clients?
  - Who is responsible for the supervision and safety of students at off-site clinic placements?
- Establish support from deans, administrators, other faculty, and any other internal resources.
  - Are there student associations that could help garner support?
  - Are there non-academic professional associations that can assist (e.g. the bar association)
• Identify the staffing and special needs of the clinic.
  o Will the clinic have designated space?
  o How will the clinic acquire and manage necessary supplies?
  o Will the clinic require additional support staff (clerical, administrative, staff attorneys)?
  o What will be the staff to student ratio?
  o Will the faculty receive additional compensation or a reduction in teaching load for supervising the clinic?

• Attempt to foresee logistical issues with clients.
  o Are students traveling to off-site locations?
  o Who is paying for travel expenses, court fees, etc.?
  o Are clients coming to the law school?
  o What are the procedures for students within the clinic office?
  o How will cases be managed?
    ▪ Records of interviews, court attendance, client database, etc.

• Understand your funding limitations.
  o Is the clinic allowed to seek external funding?
  o What strings are attached?
  o Is the clinic required to be self-sustaining?

**Pedagogy: Strategies of Instruction**

**A. Skills Development**

The legal clinic is a client oriented, service centered model of teaching. This model is tied to skills development, as clinics teach students the basic professional skills needed to perform legal work. Clinic supervisors can employ teaching tools such as conceptual discussions of the task, simulated practice through role-play, and supervised delegation of actual cases.

Many clinics also require interns to perform the mechanical details of case management as part of their internship. Interns may be required to organize multiple case files, note case events, document filings and correspondences, calendar meetings and relevant events, manage and record billable hours, and coordinate deadlines on collaborative calendars.

**B. Reflective Learning**

Reflection provides interns with an opportunity to consider their experiences and ways to improve outcomes. Student journals and student interviews are two methods of reflective learning. Both of these methods encourage goal setting, allow supervising faculty an opportunity to give feedback, and give supervising faculty more to work with as they assess student performance.

Many clinics require interns to complete some type of written work product as part of the clinic experience. These may include client agreements, memoranda and case updates to supervising attorneys, policy papers with client-specific recommendations, or research reports design to enhance institutional knowledge.
C. Classroom Teaching

Many clinics include a classroom or seminar component as part of the clinic experience. This classroom teaching component may include substantive instruction on specific doctrines relevant to the clinical work to be performed, social policy or value-based assessment of the work to be performed or the clients to be served, law office management and practice skills, lawyering theory and practice skills, and ethical practice in the legal profession.

D. Collaborative or Interdisciplinary Projects

Many clinics place students in teams to work together on a single project or pair law students with students from other disciplines to work on clinic projects. These approaches introduce students to the importance of interdependence in the practice of law and challenge students to move beyond the individualized, competitive environment of the classroom toward collaboration, as well as respect for other disciplines and points of view.\(^\text{41}\)

Issues

A. Funding

Lack of monetary funds is the major challenge facing clinical legal education generally.\(^\text{42}\) Because of the low student-to-faculty ratio, legal clinics are extremely expensive for law schools compared to large lecture-style courses.\(^\text{43}\)

- **“Hard” Money**: Financing directly from the university; hard money is often difficult to obtain due to university budgetary restraints, and low faculty student ratios.\(^\text{44}\)
- **“Soft” Money**: Outside financing (such as grants); also difficult to obtain and unreliable.\(^\text{45}\) Soft money runs the additional risk of subjecting the clinic to outside interference from donors, which will be discussed further in the following section.
- **Seed Money**: The university or a donor provides funding for some years, hoping that in time the clinic will become financially self-sufficient.\(^\text{46}\)
- **Attorney’s Fees**: Attorney’s fees are often difficult to secure in the environmental law field and are not recoverable until the conclusion of litigation, sometimes requiring a separate action to collect them. A clinic that relies on attorney’s fees for funding may go unfunded for a significant period of time.\(^\text{47}\)

B. Legal Formalism & Curricular Rigidity

“Curricular rigidity” is a term of art used to describe unnecessary rules limiting the number of hours a student can devote to non-doctrinal and elective courses.\(^\text{48}\) Some have observed that the curriculum at civil law universities tends to be limited in their skills course offerings, with few electives, and curricular change in Latin America tends to be “slow and cumbersome, making it difficult to introduce new courses into already crowded schedules.”\(^\text{49}\)

The driving reason behind this is “legal formalism,” the treatment of law as a science with the purpose of legal education being to instruct students in the elements of this science.\(^\text{50}\) Under a formalist
legal education regime, “[p]ractical courses do not exist or are not important [as the] aim of education is not skill’s development but the acquisition of information.”51 The primary teaching method is the lecture, in which “[p]rofessors know the subject and teach it to students, who have very few things to contribute to the education process.”52 Two problematic results of formalist legal education are that law school graduates find it difficult to apply what they learned in law school as practicing lawyers, and that graduates have not been exposed to the larger social responsibility that lawyers have to promote justice for all elements of society.53

Obstacles that Legal Formalism & Curricular Rigidity Pose to the Creation of Environmental Law Clinics

- Political opposition from university administrators, deans, and professors due to (1) suspicion from faculty of clinics being associated with political perspectives, and (2) fear from formalist scholars that clinics will threaten the dominance of legal formalism in the law school.
- Lack of political will to hire clinical professors or redistribute existing professors’ workloads to allow them time to work in clinics.
- Inherent rigidity in the law school’s structure and decision-making procedures that either bars the creation of clinics or makes the procedure for creating clinics extremely slow.
- Lack of student interest—students may undervalue clinical legal work because formalist legal education has not emphasized its benefits and importance.54

Strategies to Combat Legal Formalism & Curricular Rigidity

- Create publications and organize academic events to discuss alternatives to legal formalism and the benefits of law clinics. Emphasize the importance of clinical legal education and the role of law schools in serving society.
- Promote among students the importance of clinical legal education to their own careers as well as to benefit society.
- Create or strengthen links with those law schools that already have established clinics.55

C. Political Interference with Clinics in the United States

In 1969, the American Bar Association promulgated the ABA Model Student Practice Rule, which stated that the bar had a duty to assist in “providing competent legal services for . . . clients unable to pay for such services and to encourage law schools to provide clinical instruction.”56 The ABA itself encourages clinical programs to promote access to justice by representing poor and unpopular clients and causes.57 However, in their attempts to fulfill this mission, clinical faculty and law students found that some politicians, business interests, and even university officials would sometimes attack law school clinics for their choices of clients and cases.58

Perhaps the gravest problem faced by environmental law clinics in the U.S. is outside interference and political attacks.59 Because environmental law clinics often represent clients who would be less likely to obtain legal services outside of the clinic, and these clients often seek redress for alleged environmentally destructive behavior by economic interests or governments, environmental law clinics may face hostility.60
Why?

“[T]he true concern of law clinic critics is that clinics are ‘bringing suits that wouldn't be brought at all if the clinic didn't do it.’” Environmental law clinic clients frequently adopt anti-development, anti-pollution positions that threaten important and firmly established economic and political interests. Environmental law cases by their nature often tend to jeopardize some economic interest. Environmental law clinics supporting clients with these positions have been threatened with revocation of funding, lawsuits, and legislation limiting the nature and scope of their representation.

How?

- Funding

State-funded law schools are especially vulnerable to outside interference by legislatures via threats to withhold funding to the clinic, the law school or university. Disagreement with the use of tax dollars to fund legal services for the poor or to fund suits that in turn aim to require the state to take some action have led state governments to threaten revocation of funding if the clinic does not comply with the state’s requests of ceasing the disagreeable suit. Despite the ABA’s call for providing legal services to poor and unpopular clients, there is a degree of perceived impropriety in a state-funded institution suing a state entity and thus state legislatures will attempt to restrict the scope of clinical practice by conditioning the university’s receipt of public funds on the clinic not bringing suits against the state. Disgruntled private defendants may also back state government initiatives against environmental law clinics at state-funded institutions.

Private law schools are susceptible to similar attacks from benefactors, alumni, and boards of trustees. Financial supporters might attempt to sway the politics of clinics with their donations or put financial pressure on the law school to eliminate a clinic they find objectionable. The same principles apply to soft money such as foundation money and grants. Alumni, in particular, are also potential employers of graduating law students and students facing a difficult job market may avoid participating in a clinic that they feel an alumnus may disapprove of.

- SLAPP Suits

Another obstacle that environmental law clinics in the U.S. can face is known as the “Strategic Suit Against Public Participation” or SLAPP suit, a litigation tool used by defendants in environmental law suits to intimidate plaintiffs from pursuing their claims in court. SLAPP suits counter environmental suits with common law tort actions such as defamation, interference with contract, restraint of trade, abuse of process, or malicious prosecution. “Most SLAPP suits are dismissed before trial . . . [their] aim is not legal victory but intimidation.” SLAPP suits are basically a bullying tool used by lawyers that takes advantage of the comparative economic insecurity of, in the case of environmental law clinics, students and clinic directors, as well as indigent clients. Clinic plaintiffs, facing potentially ruinous legal bills and risk of liability, drop their suits in exchange for the defendant dropping their SLAPP suit.

- Legislation
A third way that clinic opponents attempt to stifle environmental law clinics is through legislation. Throughout the years legal clinics in various states in the United States have faced legislative attempts to end state funding of their law schools, create faculty committees to select cases for the clinics, prevent clinics from filing suits against state or political subdivisions, prevent law professors from assisting in litigation against the state, and ban courses, clinics, or classes in which students assist or participate in any suit against a state, to name a few examples. The success of these attempted initiatives has varied.

Legacy
- In some cases, legislative or university-imposed restrictions have foreclosed environmental law clinics from representing certain clients, advancing certain types of legal claims, or advancing claims against certain parties.
- More commonly, environmental law clinics self-impose similar restrictions out to fear that pursuing such cases could threaten the clinic’s continued existence. Environmental law clinics that have experienced this type of intimidation are careful about what cases they accept and will often try to avoid “high profile” cases.
- Environmental law clinics that intentionally take challenging or controversial cases in order to expose clinic students to more complex legal issues run a heightened risk of being targeted for political interference.
- Ultimately the greatest victims of political interference are the potential clients whose rights are lost due to lack of legal representation.

Preventative Measures
The extent to which clinical programs in Latin America currently or could potentially encounter political interference is unclear, but some lessons from the U.S. experience are as follows:

- The goal of those who interfere with environmental law clinics is to intimidate clinic faculty or university administrators into avoiding cases against certain businesses or government entities. When a clinic drops or refuses to take an otherwise good case out of fear of interference, the clinic is succumbing to this intimidation.
- It is important to have support for your environmental law clinic in the academic, legal, and greater community prior to an instance of political interference.
  - “[C]ultivating support for clinical programs among non-clinical faculty and law school deans is key to withstanding political interference. Such support generally flows from explaining what the clinic does, and how cases are selected based on pedagogical values and, when it is a goal of a clinic, the legal needs of the community.”
  - Cultivating contacts within the local media is also important. Explain to them the important work that the clinic is doing.
- In the event of political interference, it is important to point out the interference as soon as it arises, and take steps to mitigate its intended effect.
Selected Cases and Case Studies in Clinical Environmental Law Education

The case studies below offer a glimpse into a few of the environmental law clinics that illustrate the diversity in form and function of clinical legal education in Latin America. The Latin American environmental law clinic descriptions provided here are based on the personal knowledge of the authors. The forms of service learning generally, and environmental law service learning in particular, are undoubtedly more numerous and diverse and the region. In the United States there are more than 30 environmental law clinics that employ a wide variety of models. One example is selected here to provide a cautionary tale on the effect of political interference in clinic activities.

A. Costa Rica: The University of Costa Rica Environmental Law Clinic (Consultorio Juridico Ambiental)

History

The Environmental Law Clinic of the University of Costa Rica began in 2002 as a volunteer project of a group of Costa Rican law students with the support of the Dean of the law faculty, one of the country’s leading environmental law scholars and litigators. It initially received supervisory and financial support from faculty associated with the University of Florida/University of Costa Rica Joint Program in Environmental Law, a relationship that continues in a more limited capacity. The Consultorio has also enjoyed an informal relationship with a not-for-profit environmental law organization, CEDARENA (Centro de Derecho Ambiental y de los Recursos Naturales), and more recently a community support organization known as CoopeSolidar.

Structure and Methodology

The UCR Consultorio represents an in-house hybrid model, though the extent to which it has actively engaged in litigation has been limited. It has a part-time supervising attorney and dedicated space. Students do not receive academic credit but all law students at the University of Costa Rica must participate in a Consultorio Juridico and must log 250 hours as a condition of graduation from law school.

Success Story

The intensive use of agrochemicals in banana and pineapple plantations in Caribbean Costa Rica has resulted in the contamination of rivers and the death of fish and other animal species, despite the existence of guidelines for the proper management of these highly toxic products. The effects of this pollution extended as far downstream as the coast, where it impacted animals like sea turtles that arrive on the beaches to lay their eggs. Following an increase in the frequency of these contamination events, environmental groups concerned about the impact of agrochemical spills sought advice from the Environmental Law Clinic at the University of Costa Rica regarding legal options to address the problem. The Clinic students began with an investigation of the problem through field trips and a review of the applicable regulations. Based on this research, the students suggested that instead of initiating legal action against the banana companies, they work to prevent spills and develop an emergency management system should they occur. This strategy allowed greater access to the banana companies.
and associated companies that managed the agrochemicals. The Clinic suggested to these companies that there was a need for an emergency plan to contain chemical spills and prevent the pollution plume from moving downstream. This plan was articulated in the form of a protocol for handling agrochemical spills in rivers. The protocol was designed by students and supported by the most important companies in the Caribbean banana industry. The protocol begins with the notification of downstream actors about the spill. It also outlines the steps to take for the containment or neutralization of the chemicals, and requires the documentation of each spill. Rather than harming the companies, the documentation associated with the protocol often helps to identify those responsible within the chain of command of the company. This information is useful for the legal handling of the case and for the improvement of the protocol itself. Currently, the protocol remains in force and is continuously updated.

B. Argentina: The Center for Human Rights and Environment (CEDHA)

Human Rights and Environment Legal Clinic

History

CEDHA founded the Human Rights and Environment Legal Clinic in 2003, in Córdoba, Argentina, in association with the Universidad Nacional de Córdoba. The objectives of the clinic were three-fold: (1) to “utilize Córdoba’s hitherto dormant system of provincial environmental laws to litigate against environmental degradation in and around the city” and increase awareness of the connections between environmental degradation and human rights violations; (2) “to provide free legal services to poor and indigent victims of environmental harms;” and (3) to introduce law students to public interest work and create future environmental justice advocates. Eventually CEDHA became the sole operator of the Clinic, and continues as such today with some supervisory and administrative assistance from the University.

Structure and Methodology

Students who participate in the Human Rights and Environment Legal Clinic receive mandatory externship credits. In its first year of operation, six students participated as clinic interns. By its second year, the clinic was able to take on twenty interns and maintain a docket of about ten cases. These twenty interns are divided into three smaller groups, each of which handles three to four cases.

“Upon beginning work with a given case, a group prepares an initial memorandum presenting the facts of the case, identifying numerous possible strategies for approaching litigation, and noting potential counterarguments.” Subsequent meetings and discussions allow the students to work together and with their coordinator to hone the various proposed legal strategies. Next, the group selects the two strategies most likely to produce a favorable outcome and presents them to the entire clinic for further discussion and refinement. “When possible, students present and argue cases before the appropriate administrative and judicial bodies; otherwise, Clinic staff attorneys manage the formal legal process on behalf of the students.” Cases are selected for their clear connection between environmental degradation and human rights violations, as these cases have the greatest potential for redress. In addition, interns sometimes prepare amicus curiae briefs in support of environmental cases managed by other attorneys and organizations.
Success Stories

- **Cañada Honda, Edisur**

  A corporation’s plans to construct a large apartment complex near a natural canal in Córdoba threatened destruction of the canal, possible overload of the sewage system, and aggravation of traffic problems. With assistance from the Human Rights and Environment Legal Clinic, the community successfully compelled the municipality to suspend construction pending review of the corporation’s compliance with local regulations.\(^{101}\)

- **Chacras de la Merced**

  A poor community in Córdoba, with no access to the municipal water supply system, suffered from gastrointestinal diseases and other illness as a result of contamination of their well water by pollutant discharged from a nearby sewage treatment plant. The Human Rights and Environment Legal Clinic facilitated scientific analysis of the contamination levels in the wells and brought the results before a provincial judge, who ordered the city of Córdoba to provide clean water to the community.\(^{102}\)

- **San Vicente**

  The Human Rights and Environmental Legal Clinic was able to obtain an order suspending construction of a cellular antenna tower in the San Vicente neighborhood pending a thorough investigation of the project’s potential environmental impacts and the communication corporation’s adherence to municipal construction requirements. The company’s permit to construct the antenna was later revoked.\(^{103}\)

- **Brazil (Amazon)**

  In recent years, the Brazilian Amazon has been plagued by social and environmental problems. Rural conflicts over land tenure and indigenous rights have coincided with deforestation. Deforestation has reduced the Brazilian Amazon to 17% of its original rainforests, with inefficient and ineffective legal enforcement failing to adequately preserve Brazil’s “protected areas.”\(^{104}\)

  Recognizing this, the University of Florida launched a multi-year initiative known as the “Amazon Conservation Leadership Initiative,” supported by the Gordon and Betty Moore Foundation. One small component of this effort was the promotion of environmental law education in the Amazon and, in particular, the development of environmental law clinics. This effort began with the Federal University of Mato Grosso, which already had embraced the idea of environmental law service learning. From 2007-2010 Brazilian attorneys from the Amazon states of Mato Grosso, Para and Amazonas participated in the six-week University of Florida/University of Costa Rica Joint Program in Environmental Law for the express purposes of designing environmental law clinics, and implementing these designs upon their return to their home states.

**Universidade Federal do Mato Grosso**

The environmental law clinic at Universidade Federal do Mato Grosso (UFMT) offers professional practice for students and legal advice and advocacy for poor communities and NGOs.\(^{105}\) The clinic also provides consulting to administrative agencies, such as the state prosecutors’ office and
state environmental protection agency. Other services include environmental law training conferences, publications, and research for legislative improvements. The clinic is supervised by law professors and lawyers; specifically, a supervising attorney and the director of the UFMT College of Law. The clinic student body is comprised of volunteers and fourth-year law student fellows, who receive academic credit for their participation in the clinic. Fellows are responsible for cases, opinions, and legal consultations and are selected by means of a subjective exam and interview. A prerequisite for fellowship eligibility is completion of an environmental law course offered annually at UFMT. Volunteers are students associated with a research group, and are responsible for opinions, scientific publications, legal research, and other projects. Research groups meet weekly to engage in readings, discussions, debates, seminars, and lectures.

Universidade Federal do Pará
In 2009 Universidade Federal do Pará (UFPA) began its effort to create an environmental law clinic, which culminated in formal establishment in 2011. The UFPA clinic, the Escritório Modelo Agro-Ambiental (EMAM), focuses on territorial planning and environmental protection problems in regard to human rights, specifically the rights of “traditional peoples.” EMAM offers support to NGOs before courts, consultancy for administrative agencies, training conferences and publications focused on environmental law, and research for the improvement of state agrarian regulations and environmental laws.

Universidade do Estado do Amazonas
In 2011 the efforts of faculty and students at the Universidade do Estado do Amazonas (UEA) resulted in the creation of an environmental law clinic of its own, the Clínica de Direitos Humanos e Direito Ambiental – CDHDA. The UEA clinic offers judicial support for NGOs before courts, consultancy for administrative agencies, and training conferences and publications focused on environmental law and has sought to take on cases with a public interest angle.

Success Story
Although it is relatively new, the UEA clinic has provided factual and legal assistance in the preparation of a petition for precautionary measures to the Inter-American Human Rights Commission. The petition seeks to protect thousands of indigenous peoples and riverine people in Brazil, threatened by the imminent construction of the Belo Monte Dam. If built, this dam will be the third largest in the world.

D. United States: Tulane Environmental Law Clinic
Tulane University Law School started the Tulane Environmental Law Clinic (TELC) in 1989. Clinic students and supervising attorneys litigate environmental “citizen suits.” Each school year, approximately twenty-six law students join TELC to engage in a focused and intensive refinement of their research, writing, counseling, negotiating, and oral argument abilities. Students represent actual clients before courts and administrative agencies. Since its inception, TELC has provided free legal representation and community outreach to community organizations, low-income individuals, and local governments throughout Louisiana. Private foundations and contributors provide funding for TELC,
supplementing Tulane Law School’s contribution to the clinic’s budget. TELC’s twenty-six student attorneys receive academic credit, but no compensation. TELC also has a few paid staff members.

**Success Stories**

- On April 15, 2011, the U.S. District Court for the Eastern District of Louisiana entered a consent judgment that resolved a Clean Water Act enforcement case. The consent judgment prohibits Sun Drilling Products Corporation from discharging process wastewater, instead requiring disposal of this effluent at a permitted treatment facility. TELC represented the Louisiana Environmental Action Network in this citizen enforcement action.

- On March 18, 2011, the U.S. District Court for the Eastern District of Louisiana granted a joint motion to dismiss a Clean Air Act citizen suit. The settlement resulted from the participation of TELC’s client, Concerned Citizens Around Murphy, in Global Consent Decree negotiations with EPA, Murphy, the Louisiana Department of Environmental Quality, and the State of Wisconsin. The resulting consent decree includes Murphy’s commitment to construct and operate an ambient air monitoring station adjacent to the Meraux Refinery.

- On February 22, 2011, the U.S. District Court for the Southern District of Mississippi granted TELC’s client, Gulf Restoration Network, summary judgment that Hancock County Development, LLC violated the Clean Water Act when constructing a residential and commercial development near Bay St. Louis. The company violated the Act by discharging storm water to area streams without a state discharge permit and by destroying wetlands without a permit from the U.S. Army Corps of Engineers.

**Instances of Political Interference**

TELC has faced numerous instances of political interference. The first attack occurred in 1993 after TELC’s director made a statement critical of the Louisiana governor's plan to reduce the state tax on hazardous waste disposal. The governor called the Tulane University President and demanded he “shut [the director] up or get rid of him,” or else Tulane would lose state financial support for a new arena for the University basketball team, state financial assistance to Louisiana students attending Tulane, and the ability of Tulane medical students to gain access to state hospitals. The University’s president refused to get involved.

In 1997, Tulane’s president also refused to get involved when some petrochemical companies withheld donations to the University and refused to hire Tulane graduates until Tulane shut down TELC. Nor did the University get involved when a later governor urged business leaders to withhold their financial support of the University and threatened to revoke Tulane University's tax-exempt status, also due to TELC activities. In 2010, Louisiana Senate Bill 549 threatened to cut off an estimated $45 million per year in state funds unless the University shut down or crippled most of its litigation clinics. The petrochemical industry sponsored legislation in Louisiana that would require a university to forfeit all state funding for that fiscal year if any of its law clinics brought or defended a lawsuit against a government agency, represented any person seeking monetary damages, or raised state constitutional claims. The bill died in committee on May 19, 2010, after criticism that it would harm legal education
and cut off access to environmental representation at the very time the state was suffering the consequences of BP’s oil spill in the Gulf of Mexico.

TELC continues to aid clients. In July 2010, the Federal Bar Association’s New Orleans Chapter honored TELC with its Camille F. Gravel Jr. Award for pro bono service.\textsuperscript{115}

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