



The Human Rights and Environment Legal Clinic
Global Significance, Local Impacts

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November 2004

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I. Introduction

The Human Rights and Environment Legal Clinic of the Center for Human Rights and Environment (CEDHA) in Córdoba, Argentina, leads a localized effort towards social and environmental change, and serves as a dynamic example of the importance of clinical education within the legal academy. CEDHA's clinic is the first clinic in Latin America focused on environmental litigation. It successfully seeks to transform societal patterns of environmental and human rights injustice on several levels, ranging from the personal and professional empowerment of students to protect "the public good," to the unprecedented enforcement of environmental laws in Córdoba. This paper presents an overview of clinical education in general, and describes the mission, history, and influence of the CEDHA Clinic in Córdoba, Argentina.

II. Introduction to Legal Clinics

The concept of legal clinical education first emerged in the late 19th and early 20th centuries, in the United States and Europe. While American law schools were developing pedagogy rooted in casebook analysis and the Socratic method, law students across the United States began establishing legal aid clinics to offer free legal services to clients otherwise unable to afford attorneys.²

Concurrently, law professors, recognizing the dearth of opportunities for real-world practice within legal education, began to call for clinics similar to those found in medical schools. These professors envisioned legal laboratories in which law students, under the supervision of professors and professional attorneys, would take on real cases and assume the responsibilities of client representation. Such experiences would ideally provide opportunities for skill development and familiarization with the complexities of litigation, and would thereby prepare students to be competent lawyers.³

These combined efforts initiated the movement towards establishing clinical education as a central component of legal education. The mid-20th century scholarship of John Bradway, codifying principles of clinical methodology, further disseminated the importance and potential of legal clinics as educational tools.⁴ However, it was not until the political upheaval of the 1960s, and the resultant demand among law students for socially-relevant education, that clinics as instruments for social change gained widespread presence and popularity in law schools.⁵

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² Margaret M. Barry, et al., *Clinical Education for This Millennium: Third Wave*, 7 *Clinical L. Rev.* 1, 6 (Fall 2000).

³ *Id.*

⁴ *Id.*, at 8.

⁵ *Id.*, at 12.

Additionally, during this epoch legal clinics began appearing outside the United States, in regions such as South America, Africa and Eastern Europe.

The clinical movement continues to flourish today around the world, and continues to gain recognition in the legal academy as both a pedagogical device and a means of effecting justice and social change. Modern clinics participate in the full spectrum of legal practice areas, from constitutional law to environmental law, and from legal services to domestic violence victims to international human rights clinics.

Various United States scholars have commented on the significance of legal clinics for the enrichment of the standard law school curriculum and the enhancement of students' professional skills and abilities. As opposed to traditional law school coursework, which is grounded in hierarchy among students and distance between professors and students, clinical professors and students work together closely in small groups and constantly engage in collective problem solving. In this approach to teaching students to be lawyers, "clinical teaching does not aim merely to impart and foster the skill of legal analysis, but strives to develop a well-rounded legal professional who can learn from her own experiences through a rigorous process of critical self-assessment."⁶ Legal scholars have emphasized the transformative nature of clinical education for students, who may experience a marked departure from traditional legal pedagogy and learn to engage with their professors and fellow students as colleagues in the quest to responsibly serve their clients and effect positive social change.⁷

III. The Human Rights and Environment Legal Clinic at the Center for Human Rights and Environment, Córdoba, Argentina

A. Social and Cultural Context

The final decades of the twentieth century witnessed a decline throughout the Americas in the quality and availability of free, state-run social services such as healthcare and education. This decline, which continues into the present, emerged both out of intractable financial burdens such as international debt and poor internal management, and as well from governmental corruption and mismanagement leading to irresponsible resource investment and distribution.

In response to the resultant vacuum of social services, private facilities have increasingly become the primary providers of these services, a phenomenon that Daniel Taillant, Director of CEDHA, refers to as the "privatization of the public good".⁸ In this scheme, only those who can afford quality basic services can receive them, while the poor and indigent receive inadequate services or none at all; such a situation "can quickly risk compromising basic human rights and can reinforce existing inequities."⁹

⁶ David J. Herring, *Clinical Legal Education: Energy and Transformation*, 31 U. Tol. L. Rev. 621 (Summer 2000).

⁷ William Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor*, 28 Akron L. Rev. 463 (1995); David Dominguez, *Redemptive Lawyering*, 37 Cal. W. L. Rev. 27 (2000).

⁸ Jorge Daniel Taillant [et al.](#), *"The Social Tapestry of the Americas." Social Rules and Sustainability in the Americas*, 20. International Institute for Sustainable Development. Canada, 2004.

⁹ *Id.*

Clearly, those sectors of society which suffer most are those whose poverty has already relegated them to the cultural margins; however, privatization of once-public services also places increasing strain on the middle classes, forcing previously-engaged members of society into positions of marginalization and disenfranchisement.¹⁰ In this manner, the ‘social regime’ – defined by Taillant et al. as the “network of rules, regulations, and institutions that guarantee basic human dignity”¹¹ – begins to unravel, and overall societal well-being and progress begins to vary widely according to each societal sector’s ability to afford care.

Addressing these problems requires an approach that is at once systemic and responsive to individual injustices. The collapse of the social regime may be conceptualized as the disintegration of a social web, where torn strands set each family and individual adrift into vulnerability and suffering. In order to repair the web these discrete harms must be mitigated so that healthy, engaged individuals form the basis of a restructured and re-integrated society. However, the web must simultaneously be repaired so that societal resources and support, generated from an integrated system of social services, may effectively aid individuals.

Legal clinics, composed of young law students who generally prioritize social causes and who seek to serve as change agents, represent one possible method of this two-pronged strategy. In a clinic environment, students participate in rebuilding the social regime both on an individual level, helping their clients to receive basic services and break through barriers to social participation; and on a systemic level, advocating for broad-based change in the way that inequitable governmental treatment of individuals becomes codified and normalized as societal structure.

Clinics may thus facilitate societal transformation on many levels – through client empowerment and increased client access to society’s justice mechanisms; lasting political, environmental, economic or other systemic change; and increased student commitment, and thereby commitment among future professionals, to working for a better world.

B. Clinic Development and Operation

1. History

The legal staff of the Center for Human Rights and Environment (CEDHA) had three primary intentions in founding the Human Rights and Environment Legal Clinic in 2003. The first was to utilize Córdoba’s hitherto dormant system of provincial environmental laws to litigate against environmental degradation in and around the city of Córdoba, while simultaneously promoting awareness of the linkages between environmental degradation and human rights violations. The second intention was to provide free legal services to poor and indigent victims of environmental harms, and thereby to contribute to the reparation of the social regime. The third intention was generally to engage the legal academy, and specifically to introduce motivated and socially-conscious Cordobese law students to public interest work, in hopes of creating future advocates working towards environmental justice.

¹⁰ Id.

¹¹ Id., at 11.

CEDHA created the Clinic in 2003 in association with the highly prestigious public university in Córdoba, the *Universidad Nacional de Córdoba*, and with the initial assistance of INECIP, another legal non-governmental organization. Eventually CEDHA became the sole operator of the Clinic, and continues as such today with some supervisory and administrative assistance from the University. Students currently participating in the Clinic receive mandatory externship credits for their participation, which they would otherwise obtain from private law practices usually focusing on profit-driven litigation.

Comentario [CSS1]: What does this stand for? I would add the full name in parentheses

Six students participated in the Clinic during its first year of operation, working with CEDHA staff and independent attorneys to develop the Clinic's structure, craft legal strategy, and achieve significant legal victories before Cordobese courts. Currently in its second year, the Clinic is now composed of twenty students, selected from an applicant pool of approximately forty students. The original six students continue to serve as clinic members, although with more active responsibility, acting as advisors and guides for the newer students. The current docket holds approximately ten cases, and together the Clinic members and staff continue to refine and enhance the strategy and process of the Clinic.

2. Guiding Principles

The clinic benefited from its outset from a CEDHA pilot program administered by law students from five universities across the region. These students came to Córdoba to help CEDHA identify salient environmental harms in and around the city of Córdoba affecting the human rights of its inhabitants. The initial cases identified by the pilot included a water contamination case, a case of harmful radiation emanating from a cellular antenna tower, and a case of a crematorium emitting air pollution.

These cases were selected specifically because of the clear interconnections between environmental degradation and human rights violations and because they showed potential for redress through available access to justice channels, both legal and public policy-related, at the city and provincial judicial levels. All three situations demonstrated the way in which environmental harms, resulting from poorly-regulated industrial development and inequitably-distributed resources, affect basic human rights to health and safety.

Moreover, these cases illustrated a globally-identified pattern in which poor, marginalized communities suffer both human-generated environmental degradation and lack of basic environmental services such as fresh water and sanitation infrastructure, simply because these communities lack the political agency or economic leverage necessary to properly protect themselves and demand their rights. As has been thoroughly documented and combated by the United States environmental justice movement, pollution is generally concentrated in communities with the least ability to resist.

However, in community after community worldwide, both internal organizing efforts and external legal assistance galvanize a process of community transformation and empowerment. When community members organize to fight, slow or halt polluting or extractive industries, each individual comes to realize his or her own power and potential as a change agent.

Often, legal aid is a crucial catalyst for this process. When lawyers assist community members in accessing channels of justice, these community members receive invaluable experience by participating as citizens in societal processes previously inaccessible due to lack of familiarity, resources, or prior connections. The legal actors, in turn, obtain fundamental experience in defending causes in favor of the public good. These experiences are especially rare in developing countries, where profit-driven litigation nearly monopolizes private law practice.

Comentario [CSS2]: I took out 'which is a rare occurrence' because I'm speaking generally here, and it's a pretty wide spectrum of how often lawyers help out

Lawyers, and by extension legal clinics with their dynamic multidimensional societal collaboration, can use their technical expertise and their position within the 'system' to serve communities in their struggles for civic and political equity. In this manner, justice before the law may expand beyond the province of the wealthy or powerful, and may truly be achieved among communities bearing inordinate burdens of social and environmental injustices.

3. Methodology

The twenty Clinical students are divided into three smaller groups, each of which handles three to four cases. Students engage in a complex process of preparation and research prior to presenting their cases before a judge or administrative agency.

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. In subsequent discussions both among the students themselves and between the students and the coordinator, the group develops and hones the various proposed legal strategies. Finally, the group selects and presents to the entire Clinic the two strategies most likely to elicit a favorable outcome from the court, and at these general Clinic meetings the groups attempt to help one another further refine the strategies for each case.

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. The Clinic students may also begin to prepare *amicus curiae* briefs in support of environmental cases managed by other attorneys and organizations.

The current docket holds a variety of cases, ranging from agricultural air pollution to high nitrate levels in a community's water supply, and from unauthorized mineral extraction to unregulated disposal of pathogenic medical wastes. All the cases illustrate both environmental harms and violations of basic human rights to good health, basic resources and services, and a decent quality of life.

4. Victories

The Clinic has already achieved important victories on behalf of communities impacted by environmental degradation. In the case of Cañada Honda, Edisur, a corporation located in Córdoba, had planned the construction of a large apartment complex close to a natural canal in the southern part of Córdoba city. Projected impacts included the destruction of the water canal running through the community; the possible collapse of the sewage system; and the aggravation of an already-severe traffic problem. The community organized itself to combat this project and,

with the assistance of the Clinic, has successfully compelled the municipality to suspend construction until further review of the corporation's compliance with local regulations.

CHACRAS de LA MERCED

In the case of Chacras de la Merced, an under-resourced Cordobese community had no access to the municipal water supply system, and could access only well-water contaminated due to the pollution of the river Suquia. This river, a lifeline for the community, was inundated by pollutants discharged from a sewage treatment plant located four kilometers away. A number of community members, including children, had contracted gastrointestinal diseases and other illnesses as a result of this contamination.

Neighbors organized to demand a vindication of their basic human rights to health and a decent quality of life, and in this endeavor sought aid from the Clinic. The Clinic facilitated scientific analyses into the extreme levels of contamination present in the community's wells, and subsequently brought the results of the investigation before a provincial judge. After hearing the case, the judge issued an order requiring the city of Córdoba to provide clean water to the community and residents are currently receiving a steady supply of fresh water, brought daily in a mobile water tank.

In a September 2004 hearing select community members and legal authorities from the Municipality and the Province of Cordoba attempted reconciliation. The principal aim was to get an agreement to provide a permanent water supply system for all the neighbors of Chacras de la Merced as well as the commitment of the Municipality to restructure the sewage treatment plant to cease the illicit river pollution. Conciliation was not possible. At present, the case is ready for the sentence.

ANTENNAS

In the case of San Vicente, residents of the San Vicente neighborhood sought help from the Clinic to halt construction of a cellular antenna tower situated nearby several of the community's schools, senior citizen facilities, and hospitals. In a September 2003 hearing before the Cordobese environmental administrative agency, the Clinic demanded suspension of construction until the agency thoroughly investigated both the project's possible environmental impacts, and the communication corporation's adherence to municipal construction requirements. In November 2003, the environmental agency ordered that construction of the tower cease until these investigations and all necessary mitigations occur. In October of 2004 the same authority ordered that the company permit to construct the antenna be revoked.

C. The Clinic's Impacts

Beyond these concrete victories, the work of the Clinic effects positive, lasting transformation in a variety of areas both external and internal to the Clinic.

1. Environment

The legal actions brought by the Clinic serve, on a concrete level, to mitigate environmental damage and conserve environmental sanctity. For example, when a judge orders the cessation of illicit river pollution, or when an administrative agency demands that an industrial operation comply with municipal environmental codes, previously-unchecked ecological destruction slows enough so that nature's abiding tendency towards homeostasis may begin to restore balance.

Further mitigation results when a court or an agency compels industry to protect the environment. Although emitting pollutants is cheap and simple in the short term, such a system is actually inefficient and costly over time because it wastes energy and depletes resources. Once an industrial operation is forced to internalize this high cost, often the company will engage in a restructuring of output systems to clean up production and reduce pollution. Such a process further ensures environmental protection in the long term, and can even serve as a model to other industries that a clean operation may be the most sustainable and cost-effective.

2. Target Communities

The primary guiding principle for the Clinic's operation is the concept that environmental degradation inevitably results in human rights violations. As such, when the Clinic's legal victories result in environmental mitigation, those community members experiencing the effects of the pollution are able once again to breathe freely, drink clean water, eat non-contaminated food, and interact with the earth's resources without harmful consequences. In this manner, basic human rights to health and physical safety are enforced and enhanced by the Clinic's actions.

Moreover, in communities whose interactions with the earth represent essential elements of their cultural heritage, environmental mitigation preserves these communities' essential rights to live according to their traditions and beliefs. When a community bases its life around a river, living on its banks and being nourished by its flow, the pollution of that river can yield only disintegration and death for the community. To halt pollution of the river is to restore well-being to the community.

Another important outcome of the Clinic's work is the political and social empowerment of clients. Once communities exercise their fundamental right as citizens to meaningfully participate in society's justice systems, or organize themselves to demand a just enforcement of the laws, these communities transform themselves from victims of the system to actors within the system. Individuals forced by circumstances of extreme and dangerous contamination to raise their voices against the political and economic forces arrayed against them, realize their communal strength and their ability to resist the environmental injustices they experience.

The students and staff of the Clinic essentially act as conduits for this process, aiding communities to navigate the legal establishment and effectively present their grievances before the courts. In this manner the Clinic exemplifies the fundamental role of the lawyer: that of a tool for members of society to access justice.

3. Jurisprudence in Cordoba

Environmental laws in Cordoba, though first implemented in the 1970s, remain largely unenforced. Environmental jurisprudence does not exist as a body of legal strategy or analysis,

as it does in the United States and elsewhere, nor is it generally taught in Argentine law schools. As such, every case brought before an Argentine judge serves as a legal landmark and an opportunity for judicial capacity-building.

With each case litigated, the Clinic increases and contributes to judicial familiarity with Cordobese environmental laws and thereby with the possibilities and parameters of environmental jurisprudence in Cordoba. Each legal brief presenting the salient arguments for a given case of environmental degradation, exposes to the judge innovative legal strategies and thinking on environmental law that can be derived from Cordobese environmental laws. Over time, judges exposed to numerous such cases develop awareness of the best and most sensible arguments, and the body of judicial decisions grows. In this way, environmental jurisprudence in Cordoba expands and gains credibility.

CEDHA itself also endeavors to supply judges with the tools and awareness necessary to adjudicate a growing number of environmental cases brought before Cordobese courts. In mid-2003, CEDHA implemented a four-month training process to educate provincial judges about the links between environmental harms and human rights violations. CEDHA has also submitted several *amicus curiae* briefs to international tribunals hearing environmental law cases, to enhance international judicial familiarity with these links.

4. Students

The traditional legal career path in Argentina is wholly profit-oriented. Upon graduating from law school, young lawyers traditionally seek employment in private firms or enter the firms of family members. Public interest legal work is nearly non-existent; the few public interest career opportunities that do exist offer only a fraction of the salary obtainable in private practice.

However, as demonstrated by the great and growing demand to participate in CEDHA's clinic, tremendous energy and will exist among students to use their legal training in service of the public good. The Clinic offers an arena for law students to learn and practice litigation in the public interest, to put into practice the theories and principles of justice which they have studied. Students in the Clinic describe both the dearth of opportunities for such skill-building practice during law school, and the lack of exposure to possibilities for work in the public interest. For these students, a year's experience in the Clinic plays a formative role in their professional development.

Because environmental laws are wholly under-enforced, and because of the steep curve of judicial capacity-building, when the Clinic students and staff engage in legal strategizing and client representation they are essentially laying the foundations of an entire legal practice area. As United States lawyers of the 1970s created pathways of litigation based on the new federal and state environmental regulations, members of the Clinic expand the legal field with their work.

For students and young lawyers, this is an invaluable experience, and one that will surely bear a strong influence over their future careers and perhaps over the parameters of legal education and practice. Students, especially, are uniquely situated to do this work because of their idealism, collaborative spirit, and drive to restore the world.

5. The Social Regime

Finally, the Clinic functions as a tool of democratization, as a means of re-incorporating marginalized communities and individuals into the social contract through rendering justice. In an epoch characterized around the world by “the reduction of the state... and increasing roles for private enterprises in the provision of public services,”¹² successful public interest litigation on behalf of vulnerable populations serves the very important purpose of highlighting state responsibility to engage in the protection of the public good and guarantee the realization of fundamental human rights.

When the court orders the state to redress citizens’ grievances, the state must honor its fundamentally inalterable obligation to ensure a decent quality of life for all citizens. The state generally reneges this obligation for a number of reasons, including lack of resources, governmental corruption, poor governance capacity, and a focus on growth and development at the expense of the well-being of the population. However, the rule of law in modern societies requires that the state adequately provide for its citizens despite any extant obstacles. In situations of state-perpetuated environmental harms or industry-perpetuated harms unregulated by the state, the Clinic’s actions in court help reorient state responsibility and force the state to recognize environmental health and sanctity as a right and basic necessity, and to act accordingly. This, in effect, helps revitalize the social contract and renews governmental investment in the populace.

III. Conclusion

The model presented by CEDHA’s Human Rights and Environment Legal Clinic, and its relative success in the short time since its founding, demonstrates the importance of progressive, innovative thought and action within the legal establishment. The Clinic provides essential legal services to communities threatened by environmental degradation, enriches the academic and professional development of students, and above all represents a single but substantial step towards a more participatory and equitable society. In a world marked by societal disintegration, the Clinic serves as one tool among many to revitalize an fair, inclusive social regime.

¹² Taillant, 19.