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Free legal aid services and public interest clinic : Two models of practical education implemented in radically different law schools

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Abstract:

This article aims to examine two models of practical education at law schools: public interest law clinics and university free legal aid services. I will argue that the two models reflect different ideals of the legal profession and the role of lawyers in society. While university free legal aid services aim to provide a legal service to those who do not have the financial resources to face it and, hence, encourage students to develop a sense of empathy and concern for the most disadvantaged members of society, public interest law clinics' strategy is to choose a very small amount of cases of high public impact, that account for serious structural inequalities and that are capable of generating innovative and transformative jurisprudence. Taking this in mind, the question that should be posed is: In countries with high rates of poverty and serious deficiencies in access to justice, but also with serious structural and institutional problems, what kind of practical education should be provided in law schools?

Keywords:

Legal education, legal clinics, free legal aid services.

Resumen:

El objetivo de este artículo es estudiar dos modelos de educación práctica llevados adelante en escuelas de derecho: el modelo de las clínicas de interés público y el de los servicios de asistencia jurídica gratuita. Sostendré que los dos modelos reflejan diferentes ideales de la profesión jurídica y del papel de los abogados en la sociedad. Mientras que los servicios de asistencia jurídica gratuita buscan proporcionar un servicio a quienes no tienen recursos

This article summarizes the conclusions of the research carried out during my Master's Program at Oñati. The title is the one of my Master's Thesis. I would like to thank the people interviewed for their time, the authorities and teachers of UBA's Free Legal Aid Service for allowing me to observe the courses, and to Florencia Gialdi, Patricio Kenny, Martín Sigal and Liliana Ronconi for sharing with me their impressions about this research. Finally, I thank Rogelio Pérez Perdomo, who directed my thesis, for all his comments, suggestions and observations. All errors belong to me exclusively.

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económicos y, por lo tanto, animan a los estudiantes a desarrollar un sentido de empatía y preocupación por los miembros más vulnerables de la sociedad, las clínicas de interés público tienen la estrategia de trabajar con una pequeña cantidad de casos de alto impacto público, que dan cuenta de graves desigualdades estructurales y que son capaces de generar innovaciones y jurisprudencia transformadora. Teniendo esto en cuenta, la pregunta que se nos plantea es: ¿En países con altos índices de pobreza y graves deficiencias en el acceso a la justicia, pero también con graves problemas estructurales e institucionales, qué tipo de educación práctica debería impartirse en las escuelas de derecho?

Palabras clave:

Educación legal, clínicas jurídicas, patrocinios jurídicos gratuitos.

1. INTRODUCTION

Legal education in Latin America has been described as one that, being part of the "civil law tradition", is based on a theoretical and dogmatic approach to law, seen as an abstract and coherent set of norms, detached from the social, economic, and political sphere (Pérez Perdomo 2006, Merryman and Pérez Perdomo 2007). This form of conceiving legal education is currently in crisis. Academic efforts have been directed to account for the problems that this way of teaching law entails. Additionally, different experiences in Latin American law schools have been witnesses of important changes. However, it is not so easy to observe a radical transformation, and traces of the way legal education was conceived in the early nineteenth century can still be found (Montoya 2010).

Latin American law schools have traditionally disregarded the importance of practical training as part of the curricula. The introduction of legal clinics during the 60s and 70s was a failed experience and it was not until the 1990s that the movement of public interest law clinics started to consolidate (González Morales 2004). During this period in Argentina, the clinical model was seen as particularly appropriate for the consolidation of the democracy after a long period of dictatorship and instability. Public interest law clinics started to appear in private universities. Until then, the only serious experiences of practical education were those of university free legal aid services in public law schools. The clinical movement established itself as something different and critical of these familiar experiences.

This article aims to examine these two models of practical education –public interest law clinics and university free legal aid services–, thinking about the specificities and differences between them. My hypothesis is that *the two models reflect different ideals of the legal profession and the role of lawyers in society.* While university free legal aid services aim to provide a legal service to those who do not have the financial resources to face it and, hence, encourage students to develop a sense of empathy and concern for the most disadvantaged members of society, public interest law clinics' strategy is to choose a very small amount of cases of high public impact, that account for serious structural inequalities and that are capable of generating innovative and transformative jurisprudence.

The role of legal education in professional practice is undeniable. After graduation, students will engage in social change according to what they have been taught. So, the question that guided the research was: In countries with high rates of poverty and serious deficiencies in access to justice, but also with serious structural and institutional problems, what kind of practical education should be provided in law schools? The purpose of this paper is to make a contribution to the discussion on legal education showing that, despite the dispute of the early days of the clinical movement in Latin America, both models are necessary.

The research was carried out through case study methodology. Two case studies from the Argentine context were selected: the Free Legal Aid Service of the University of Buenos Aires (hereafter, UBA) and the Public Interest Law Clinic of the University of Palermo (hereafter, UP). The choice of these cases was made taking into account that both were pioneers in Latin America in the development of each one of the two models. In the case of UBA's Free Legal Aid Service, it has been working for almost 100 years. In the case of UP's Public Interest Law Clinic, it was established as one of the first university legal clinics of the decade of the 1990s. Their very different trajectories will allow an in-depth study of the dynamics of each model. The conclusions are based on analysis of documentary material,[1] interviews with key informants and exploratory observations.[2]

The paper is divided into three main sections. In the first one, I will describe the introduction of practical education through legal clinics in Latin America and Argentina, introducing how they intended to differ from existing models. In the second section, I will expand on each model under research emphasizing their main differences, and introducing the two case studies. In section 3, I will deepen the case study analysis, showing how students and professors relate to these different ways of teaching and learning. This will allow me to make conclusions about their sense of the role of lawyers in society.

2. PRACTICAL LEGAL EDUCATION IN LATIN AMERICA AND ARGENTINA

Latin American countries are frequently grouped as "civil law nations" together with many European countries, despite that there are important differences between the legal systems and legal traditions in Latin America and Europe, and among Latin American countries themselves. In 1968, Mirjan Damaška wrote a famous paper where he described the characteristics of the legal education that Continental lawyers received as one based on three "essential ingredients": (i) the grammar of law, which meant the study of concepts, subconcepts, and principles (their meaning, their nature or essence and their relation with other concepts and principles); (ii) the panoramic view, the presentation of the most important fields of law and the abstract study of the statutory and code provisions; and (iii) a way of reasoning that seeks the correct answer, the truth, rather than the best argument (typical of the way of reasoning of the common law tradition) (Damaška 1968). Damaška referred to European legal education, but these same characteristics usually appear –still nowadays– when legal education in Latin America is discussed as well. In fact, most of the criticism that legal education in Latin American countries receives "replicate what is

[1] It is important to highlight that I faced several difficulties in accessing certain information, in particular institutional documents. Despite this, the material collected was sufficient to perform the analysis.
[2] I interviewed authorities, professors and students of UBA's Free Legal Aid Service and UP's Public Interest Law Clinic, and carried out a few exploratory observations in UBA.

generally attacked about the Continental approach, with the addition of complaints distinctive to the region" (Montoya 2010, p. 546). According to Merryman and Pérez Perdomo (2007, p. 62), in the civil law tradition, scholars create a "legal science" in a similar way physicians create natural science: they take the materials of law (statutes, regulations, customary rules, etc.) as data from which principles can be discovered, they overemphasize on definitions and classifications, and they "produce the attitude that the definition of concepts and classes express scientific truth" (Merryman and Pérez Perdomo 2007, p. 63). Law is presented as detached from its factual and historical context, it is seen as autonomous, divided into clear fields (which are also autonomous from each other) and the study of it becomes highly abstract (Merryman and Pérez Perdomo 2007, p. 66). In this context, practical education is largely ignored.

This way law is taught dates back to the period of conformation of Latin American states, during the 19th century, but recent studies show that these characteristics are still present in many Latin American law schools (Pérez Perdomo 2006, Böhmer 2014). However, important changes should also be mentioned. In the first place, in most of the countries of the region, the expansion of higher education has impacted on legal professions, which are now more heterogeneous and diverse, as well as the different profiles of the Latin American lawyers and students. During the last years, the number of lawyers has been growing exponentially and, although there is still a lot to do in terms of economic inequalities and access to university education, there has been a clear diversification in geographical and gender terms and nowadays we can find lawyers that come from very diverse social backgrounds (Bergoglio 2007). The growth of cities and urban population also impacted the number and diversity of law students (Pérez Perdomo 2005).

The growing importance of the judiciary in many countries of the region has signified that a large number of lawyers have ended up working in this branch of the state (Bergoglio 2007, p. 14). However, nowadays lawyers are no longer part of an elite group of state workers. With the democratization of education came professional stratification. When analyzing this issue, Pérez Perdomo (2005, p. 214) points out that:

> The policies of national development involved the expansion of the state and required a vast army of officials to operate this machinery, as well as a good number who could help citizens navigate it (...). Lawyers, as traditional university graduates, were prepared to occupy many of the positions in the expanded bureaucracy or to serve as intermediaries with them.

I will go back to this point throughout the article as it is related to how practical training has been conceived, especially in public law schools.

Concerning changes in the curricula, it must be said that most of the innovations appeared in private law schools, that "introduced activities such as legal clinics and negotiation, and courses such as law and economics, law and society and human rights (...), also placed importance on an education in ethics (...), [and] some professors innovated their teaching methodologies" (Pérez Perdomo 2006, p. 111). However, these reforms were not part of a general broader movement, and to identify them it is necessary to go deep into the curriculum of each law school, since the situation varies from one to another (Montoya 2010).

In Argentina, as in many other Latin American countries, to become a lawyer it is only necessary to obtain an undergraduate degree in Law issued by an officially recognized university. This degree program lasts approximately five years and once it has been completed it is not necessary to pass any enabling exam to start practicing. Until very recently it was not mandatory for law schools to incorporate instances of practical training. Thus, most students acquired their practical skills from working in law firms or the judiciary while studying. In 2017, the Ministry of Education approved a regulation that establishes as compulsory the inclusion of practical courses in the curricula. This regulation is in process of implementation and it is known by the time that many law schools had to change their curriculum to follow these requirements and legal clinics in Argentina have numerically expanded.

The most traditional law schools in the country are part of public universities, which are tuition-free and have massive enrollments of students. Examples of these schools are the Schools of Law of the University of Córdoba, UBA and the University of La Plata. Since the 1990s a series of private universities emerged, especially in Ciudad Autónoma de Buenos Aires. Although the characteristics of Argentine private universities are very varied, some were created in the light of the American model by graduates of public universities that had gone abroad to do postgraduate programs and returned to Argentina with new ideas of legal education (Spector 2008). This is the case of the Schools of Law of the universities Torcuato Di Tella, San Andrés and UP. In addition, in the most recent years, several public universities in the suburbs of Buenos Aires and other cities of the country have appeared, strengthening the democratizing ideal of university education.

The first experiences of legal clinics in Latin America appeared in the decades of the 1960s and 1970s when the Ford Foundation organized a project (the Law and Development Project) intending to promote the creation of legal clinics in Latin American universities, taking the model of the ones that had been implemented in the United States. The project failed –probably due to a deficiency in the consideration of certain specificities of the region, such as the lack of resources of law schools and the legal culture that was different from the one of the United States (González Morales 2004, p. 24, Londoño Toro 2015). In fact, the Ford Foundation evaluated the experience in a critical way (González Morales 2004, p. 25).

In the decade of the 1990s, a new movement of legal clinics arose in Latin America. The crises of the political regimes and the massive violations of human rights that had been suffered in the region made the reflection around the role of law and legal education significantly relevant. The legal clinics that were established during this period had the distinguishing characteristic of being *public interest law clinics*, specialized in human rights and strategic or impact litigation. In the case of Argentina, this time also coincides with an important constitutional reform (which took place in 1994) in which new rights were incorporated, including economic, social, and cultural rights, human rights treaties were given constitutional status, and all this enabled collective action procedures and structural litigation.

Legal clinics in Latin America emerged not only through formal exchanges and financing but also through informal processes of exchange of legal knowledge with the American legal academy (Bonilla 2018). The case of UP is a good example of this. Many of the people who were interviewed in this research attributed the peak and importance of its legal clinic

during the first years directly to the person who founded it –in 1996–, a law graduate of UBA who later obtained his LL.M. and J.S.D. at Yale Law School. He believed that the incorporation of public interest law clinics was necessary to change the conservative perspective on legal education in the context of consolidation of constitutional democracy (Böhmer 2003). The legal clinics would differentiate themselves from the only practical existing experiences known by the time –university free legal aid services such as UBA's one– which, from his point of view, "not aspired more than to make students learn how to make a warrant, a simple document or the head of some main judicial writings" (Böhmer 2003, p. 29). Clinical strategy would be to choose a very small number of cases of high public impact, that account for serious structural inequalities and that were capable of generating innovative and transformative jurisprudence. Instead, free legal aid services provided legal service to all those who did not have the financial resources to face it and so, basically, all the demand that was received was taken. As will be explained later, this would have a negative impact on the learning process as it limited the space for deliberation and critical thinking of the strategies to be followed.

In 1997 the Latin American Network of Legal Clinics was created. This network led to the creation of many new clinics in the region and operated as a training space for clinic teachers and students. According to some professors that were interviewed some years ago by Londoño Toro (2015) in a study around legal clinics in Ibero-America, the network is currently going through some problems. Some of the reasons why this has occurred could be "a lack of discussion around clinical pedagogy, as well as no definitions of an agenda of priorities and a reflection around (...) regulatory constraints of many Latin American countries" (p. 13 –quoting Mariela Puga–). Likewise, the network needs someone who takes the leadership (p. 13 –quoting Ezequiel Nino).

Still, over the last 20 years, the number of legal clinics in Latin America has expanded. At present in Argentina there exist at least 16 legal clinics in universities.[3] These legal clinics have very different characteristics and most of them are not part of the obligatory curricula of the law schools. The fact that most of them were established as extracurricular activities integrated with both undergraduate students and law graduates gives us a guideline of the existing difficulty in the country for its formal and obligatory incorporation. According to Londoño Toro (2015), in Argentina, as well as in Mexico, the new movement of clinics, "although prolific, has had failed experiences, greater difficulties and less reception by the universities to institutionalize the new proposals" (p. 40).

Having presented the contextual background on the incorporation of legal clinics in Latin America and Argentina, I will now move forward to contrast their main features with the ones of free legal aid services. As said, the introduction of legal clinics in law schools had the aim of distancing themselves from these practical experiences known by the time. The following section was built on relevant literature as well as on interviews done during the research.

[3] These clinics are grouped in the Argentine Network of Legal Clinics.

3. Public Interest Law Clinics and Free Legal Aid Services: Two different models of practical education

According to Ortiz Sánchez (2005) legal clinics and free legal aid services can be conceptualized as two different forms of *social projection of law schools*. He defines this as the relation between the community and the university, where both feed each other. In this sense, the knowledge produced in the academy must be based on what happens in the social life and, at the same time, the university must have the duty to give back to the community its knowledge through concrete actions that seek to solve problems.

The two models differ in three main aspects: (i) their aims, (ii) the cases with which they work, and (iii) the methodology that is used.

Regarding the aims, as has been said, free legal aid services provide legal services to those who do not have money to pay a lawyer. This might sound similar to the pro bono activity that legal firms face. Yet, when the service is in the context of a law school, a balance should be made between this social aim and a pedagogical aim.

It was previously explained that in Latin American countries the state machinery is big and tremendously bureaucratic. This results, on the one hand, in making it very difficult for people with low social capital to exercise rights by themselves and, on the other hand, in transforming the work of lawyers into the execution of simple and bureaucratic duties. Free legal aid services, such as UBA's, receive an enormous amount of cases and take as much of the demand as they can. Thus, the social aim and the pedagogical one tend to get into tension. Some of the interviewed people defined these experiences as "meatballs making machines" referring to the mechanical, automatized, and unreflecting way students end up resolving the cases.

> When you have 80 cases to resolve in one month about forced displacements you cannot have a very deep and innovative discussion, you need to focus on defending the person so she is not displaced from her home. Maybe each case allows generating innovative jurisprudence, but the massiveness itself, the amount of cases, conspires against the time that you can dedicate to each of them. (Interviewee 1)

When so many cases are received, students get immersed in routine activities. Law appears as a tool for improving the individual life of the ones represented, but there is a limited critical reflection on the bureaucratic characteristics of the state and the power of law as a tool for broader social transformation. Comparing the model of free legal aid services with the one of public interest law clinics, one of the professors interviewed used this metaphor: "in the first case what you are doing is an operation, in the other one, you are introducing a virus in the system" (Interviewee 2). Public interest law clinics are committed to institutional changes with an emphasis on taking part in constitutional and human rights litigation, and the importance of collective dimensions of certain rights (Courtis 2005).

Legal clinics choose their cases carefully.[4] They should be emblematic, of high impact, or witness cases,

> – that can serve as models for the development of other cases and to strengthen jurisprudence; -where it is possible to detect structural defects of the internal legal order, to promote, through legal action, changes therein; -where it is plausible that the case may have a significant public impact; -where there is the possibility of using international instruments for the protection of human rights. (González Morales 2004, p. 33)

In Argentina, Courtis (2005, pp. 172, 175) highlights as the main thematic areas which public interest law clinics work with the followings: cases of discrimination (in particular gender discrimination and discrimination against the LGBT+ community); the right to a healthy environment; the right to health; consumer and users rights; cases of access to public information and the right to control the state activities. Although, as in free legal aid services, students in legal clinics learn through their practice, according to Maurino (2013), it is done in a particular way, through a deliberative process.[5] The clinical method pays special attention to making students reflect on their role and responsibility as future lawyers, the relationship between their activities and the willingness of clients, and the ethical conflicts that may arise from the practice. Although the role of the clinical professor is fundamental, the participation of the students is more important, and the method should serve to develop their capacity for self-assessment, to learn from themselves to obtain the maximum possible knowledge of each practical experience (Abramovich 1999). This breaks with the traditional teaching logic. The idea is to "move from the experiences in which the teacher has and transmits all the knowledge (...) to a more dynamic method in which, with the help and guidance of the teacher, students are responsible for making decisions..." (Flores 2018, pp. 52–53). The kind of cases selected enables this pedagogical method: the complexity of them demands a deep, reflexive and deliberative exercise.

In Argentina, public interest law clinics and free legal aid services have been developed in very different universities. Running out a big free legal aid service is only possible in universities that count with a huge number of students and professors, and that are well known in such a way that citizens approach to seek their service. On the other hand, adopting a model of legal clinics turns out to be particularly complicated in massive universities. This model requires not only working with limited cases but also working in small groups –with limited students– and with very specialized clinical professors. All this turns the clinical model particularly expensive. Traditional public universities have not

[4] Some legal clinics work with fictional cases. However, in Latin America, the model was thought to manage real cases.

[5] In Maurino (2013)'s words: "[I]t is not only that in these clinics one learns by doing (...) nor that you learn by doing with others –which enriches the process– but also that *you learn by reflecting and deciding collectively with others*, through *a particular form of communication: with good faith argumentation, in search of consensus* –and not of 'winning' the discussion–, *through a genuine effort towards empathy* –trying to understand the point of view of others, to adopt it as own and explore their potentialities before starting to assess their weaknesses– and *a self-critical attitude as a trigger and search engine* –the willingness to submit even our seemingly strongest certainties to review and scrutiny in the conversation, to study the issues under debate from different angles before making a decision, although it might be seen as obvious at first glance–. When this process of *reasoning, analyzing and deciding* is effectively practice under professional coordination, it produces especially complex arguments, raises an intellectual challenge for students and improves the working decisions" (p. 6)

always welcomed legal clinics. Besides, they have an extra problem, which is that in many cases they are more politically exposed.[6]

The University of Buenos Aires was founded in 1821 and its law school in 1874. According to the latest data published by the university, which corresponds to a census done in 2011,[7] the number of students of the Law School has ranged between the 1990s and 2011 from approximately 22000 to 31000. The University of Palermo started functioning in the year 1991 and its law school in 1993. It is situated in the Ciudad Autónoma de Buenos Aires and by 2019 had around 400 students.[8] As it can easily be perceived, UP's Law School is far smaller than UBA. This implies that the courses are taken by smaller groups of students which, perhaps, allows the incorporation of better teaching methodologies.

At UBA, all students must complete a course of "Professional Practice" during the last year of the degree. During this "Professional Practice" course, students must take part in the free legal aid service of the university. This means that to finish their degree, students must participate for one year on a free legal aid service coordinated by the university. When we observe how UBA's academic law curriculum is structured we see that there is no focus on practical skills before the "Professional Practice" course. At UP, the Legal Clinic is an optional course, one that students can take during their "Final Professional Practice", which lasts one semester.[9] Before having this final instance, students had to have pass-through eight courses and workshops which are intended to provide practical skills and tools such as how to write contracts, judicial writings, legislative projects; how to discuss and develop arguments; how to litigate orally; negotiation techniques, mediation and other forms of non-judicial resolution of conflicts; how to elaborate the "theory of the case", which are the inquiry and evidence strategies available; as well as issues related to professional responsibility (confidentiality, conflicts of interest, candor to the courts and others, the tension between "cause lawyering" and individual representation, etc.). All this knowledge acquired throughout the law degree could make participation in the clinic and its pedagogical methodology much easier.

In the next section, I will delve into the two case studies. From the analysis done so far, we can perceive that taking into account its structure it would be unimaginable for UP to run an aid service as big as the one established in UBA. At the same time, this small structure –together with an evident concern around practical education– allows innovative teaching methods as legal clinics that can more easily be applied with small groups of students. The analysis described below aims to take one example of each model and look at how it operates in practice. This analysis was mainly based on interviews, and some exploratory observations were also done, although this technique should be extended at a later stage of the research.

[6] As an illustration of this, a clinical professor of a public university commented that in the case of the legal clinic which she directed, the reason why it was closed was political, after winning an important case against the State.

[7] Despite several requests for more up-to-date data made to the institution, no response has been obtained, so this is the latest data that could be found.

[8] This data was provided by the Academic Secretary of UP Law School during the completion of my master's thesis research in 2019.

[9] During the last semester the students can choose between doing an internship in certain institutions (mainly law firms and NGOs) and participating in the Public Interest Law Clinic.

4. UBA'S FREE LEGAL AID SERVICE AND UP'S PUBLIC INTEREST LAW CLINIC

4.1. UBA'S FREE LEGAL AID SERVICE

UBA's Free Legal Aid Service has its origins in an experience run in 1919 by a group of students nucleated in the Student Bar Association. At the time, it was an extracurricular activity, but after a few years, in 1921, the university decided to make it official and mandatory for all law students. Since this beginning, it was said that the Free Legal Aid Service had a double purpose, which is reflected in the Board Minutes of the date on which it was made official. On the one hand, the need to revert "the lack of practical skills of law graduates" and, on the other hand, "the fact that the university should go out and get in touch with the people".[10] The Free Legal Aid Service began operating in 1924. At that time, it provided exclusively an advisory service (it only evacuated legal consultations). After some years it began to cover, as well, the legal representation of those who needed a lawyer before a judicial or administrative instance. This is how it functions today. In 1994, it incorporated into its services a small group of psychologists and social workers and, in 1998, a Mediation Service.

As has been explained, UBA's Free Legal Aid Service corresponds to the "Professional Practice" that law students must take to finish their degree. Each year around 2200 students have to start the Professional Practice.[11] They can decide between an offer of around 112 classes, coordinated by professors who work, at the same time, as private lawyers.[12] The classes are divided into thematic areas –private law, family law, criminal law, labor law and notarial law.

UBA's Free Legal Aid Service only works with cases that have occurred in the jurisdiction of Buenos Aires. For a person to access the service, it is only necessary to demonstrate a lack of adequate income to pay for a particular lawyer. Thus, the service takes all the cases that are received, without additional selection criteria rather than the socio-economic vulnerability. During the months elapsed during the research (February-July 2019), the service had already attended around 7000 clients.[13]

The fact that each class has a specific thematic area assigned reinforces the traditional division between the fields of law. If a teacher considers that the case does not correspond to her field, it may be referred to another class. In turn, if one same case presents two matters of different fields of law (such as criminal implications and tort ones), it can be worked by two classes simultaneously –but independently–, where each has the management of the aspect of their specialty. According to the Director of UBA's Professional Practice, this scheme has to do with the areas of specialization of the professors in charge of each class. However, this scheme presents several problems. At a pedagogical level, it prevents students from understanding the law holistically, reproducing the idea that each area of law is autonomous and independent. The transmission of the skills that allow students to analyze a case in all its dimensions, looking for integral alternatives that require thinking on more than one area, establishing a connection between the different traditional

[10] UBA Law School, Board Minutes Book 1922, Minute 830, 20/8/1921.
[11] Data provided by the Director of the Professional Practice and UBA's Free Legal Aid Service.
[12] In 2014, the total number of teachers working for UBA's Free Legal Aid Service was around 800. See Zoppi 2015, p. 29.
[13] Data provided by the Director of the Professional Practice and UBA's Free Legal Aid Service.

fields of law, breaking with its strong separation, and even taking law in its relationship and interdependence with other disciplines and variables, such as the social, economic or political ones is not stimulated with this approach. On the other hand, seen from the social function of the service, the division is not very efficient for the client and often makes the service very exhausting. It is necessary to keep in mind that these are people with low economic resources who, in many cases, must assume high costs to attend the meetings, such as losing the remuneration of a workday, having to pay for someone to take care of their children, the price of transport, etc. Having to go through different classes for one single case has economic costs and also emotional costs (having to tell the story several times before different people).

Since 2014, UBA Law School has been producing a series of journals aimed to describe the work done by the Free Legal Aid Service. So far, three journals have been published.[14] If we compare the data of 2015 with the one of 2016 and 2017, although the time between these years is not much, we can observe that the amount of cases that entered has increased. In 2015, 8219 cases entered, and during 2016 and 2017 (counted together), 21982. According to one of the authorities of UBA Law School, "currently there is a[n economic] crisis (...) [and] the demand of the Free Legal Aid Service increases. In moments of mayor bonanza, the demand decreases" (Interviewee 3).

In relation to the socio-demographic characteristics of the clients, the biggest percentage were women both in 2015 (65.30%) and in 2016–2017 (61%). These proportions vary according to the subject, being greater, for example, the proportion of female consultants in family classes. Although the percentages in relation to the age range are very similar, there was an increase in the clients younger than 30 (which represented 25.30% in 2015 and 33.01% in 2016–2017). This could be related to the economic crisis which tends to affect young people more strongly. It is also interesting to notice that, although the biggest percentage of clients were born in Argentina, the number of foreigners (residents or undocumented immigrants, mostly from Latin American countries) also increased during the last years: in 2015 Argentineans represented 71.41% of the clients while in 2016–2017 the 64.16%. The number of people without a job or working under precarious conditions increased as well: they were 42.60% in 2015 and 47.93% in 2016–2017. Most of the cases attended at UBA's Free Legal Aid Service are family cases and domestic violence cases (around 40% every year). During 2016–2017 the cases that increased the most were criminal cases (from 9.68% in 2015 to 11.31% in 2016–2017) and, especially, cases which involved issues related to economic and social rights, such as health and housing –which increased from 0.47% in 2015 to 4.17% in 2016–2017.

As can be seen from the data, the number of clients received at UBA's Free Legal Aid Service is immense. From the point of view of the right of access to justice, this is not minor, especially in countries like Argentina, where poverty rates are so high and there are many people who encounter important obstacles in the satisfaction of their rights.

In relation to the pedagogical aim, because of the large number of cases handled, one might think that students have access to a greater variety of cases, people, and problems, and

[14] Zoppi 2015, 2016, 2019. The first one corresponds to data of the year 2014, the second one to 2015 and the third one to the years 2016 and 2017 (the data of both years is presented together). http://www.derecho.uba.ar/publicaciones/libros/pub_libros_practica-profesional.php (last visited June 9, 2023). Newer issues had not yet been published.

therefore more diverse issues. However, the way the classes are organized –according to the traditional fields of law– makes this variety not so significant. The universe of clients may be large but the cases will have similarities. This can result in students thinking about their work as routine and even, seeing similar cases as identical, always proposing the same resolution alternatives. Moreover, the limited time they have to dedicate to each case can result in a non-exhaustive analysis of them, and their similarity an incentive to repeat pre-established procedures. Critical reflection and debate thus can become less frequent.

This is no more than a reflection of the legal culture in which law students are inserted, in which much of the professional practice ends up being conceived as bureaucratic. Practical education in these conditions does not break with the vision of law as an independent, impartial, and necessarily coherent field. On the contrary, it hinders thinking about the inconsistencies of law and the injustices of the system itself. In this sense, adding a commitment to the protection of the rights of the most vulnerable populations does not necessarily imply the adoption of a critical position on how rights are (or are not) exercised.

During the observations done in the research, many students pointed out that most of the cases are managed in the same way. In fact, one of them said: "Our opinion is not very important. Everything is pre-established. Depending on the jurisdictions the deadlines might be different but everything responds to the same order, the process is predetermined." In another case, when one group of students was asked about the work methodology the answer was: "It is basically always the same: we go to the tribunal to see the judicial file, we see what the next procedural step is and we talk with the professor to check what to do." What worries students the most is how to "start up the machinery".

Authorities and professors recognized that:

> When you receive a case and you make the legal framing then you mechanically know what the procedure is, which is the evidence that is effective, how it should be articulated; there are mechanic steps that are reiterated. Despite this, there is another instance that has to do with thinking, reasoning. It doesn't matter if it is a simple trial, you need to think about which are the differences between that specific situation and others, which are always a lot. (Interviewee 4)

This shows that probably the number of cases is one of the biggest inconveniences which hinder the reflection around each of them and not merely a lack of concern about the importance of reflection and deliberation by professors.

The last important thing to highlight is related to the space in which these courses take place (which is, not to lose sight of it, also the place where clients are received). UBA's Free Legal Service operates in the Palace of Justice.[15] The floor that is designated to it only has one entry and exit through which disabled persons cannot enter. People wait to be attended in a small hall and the classrooms are noisy, full of papers (which supposedly are judicial files), and have between two and three big tables around which the students sit in groups. Although professors tend to go through the tables to canalize doubts, each group works separately and there is not a lot of interaction between them; each group handles their cases and clients without having a special interest in what is happening in the contiguous table.

[15] Many courts are located in the Palace of Justice, including the Supreme Court.

Together with this situation, both professors and authorities reclaimed that the salaries of the teachers were extremely low. This, together with the high levels of responsibility and amount of work to do, is probably a reason why teachers are not able to reflect on their teaching methodologies or the methods that would be positive to incorporate (Bergoglio 2006, p. 119).

The situation of public interest law clinics in private universities is completely different, as will be seen below.

4.2. UP's Public Interest Law Clinic

The creation of the UP's Public Interest Law Clinic was promoted by a legal scholar who, at the time, as was commented, had completed his postgraduate studies in the United States, and done his doctoral thesis on legal education, Martín Böhmer. He had a special concern regarding the transmission of practical knowledge in law schools as well as a belief that the incorporation of public interest law clinics was necessary to change the conservative perspective of legal education in the context of consolidation of constitutional democracy (Böhmer 2003). In this research, many of those who were part of the development of the first years of the clinic were interviewed. Everyone agreed that Professor Böhmer's role was fundamental. His special charisma, according to some of the interviewees, made the work much more interesting and provocative.

During the first years, UP's legal clinic was made up of a small group of undergraduate students and a larger group of graduate students from the university's Master in Constitutional Law Program. According to many of the former master students interviewed, the clinic gave them something that no other previous educational instance had given to them. In the first place, the possibility of litigating very important public interest law cases, and, secondly, it was a space where they could freely debate with others over these cases, which were so complex that made the discussion very deep.

The first years of the UP's Public Interest Law Clinic coincide with the reform of the Argentine Constitution, and this is not something minor. The changes in the constitution enabled the discussion around class actions and strategic litigation. The practice of public interest law was still something new. One of the interviewees remembered: "The phrase that Böhmer always said to us was that 'we were building the ship while we were sailing'" (Interviewee 5). During this first period, the clinic's agenda was mainly centered on cases of structural discrimination and on cases related to the rights of consumers and users (which were incorporated with the constitutional reform). The selection was made in two ways. Some appeared through personal connections of the members of the clinic with NGOs, which referred cases. Others were simply problems detected by the students themselves as possible to be judicialized. The same former student recalled that in many opportunities, choosing a case meant dedicating a lot of meetings to discuss if it was worthy or not.

UP's legal clinic won several leading cases during this time. Among them, it is worth noting a case of gender discrimination, in which an important Argentine ice cream company ended up being condemned for not hiring female employees. It was a case that went against the major jurisprudence of that time that claimed that employers had the right to hire without restrictions. Apparently, from that moment on the company changed its hiring policies. The jurisprudence of that case is one of the most studied at law schools concerning labor

discrimination. Another important case won was about the refusal to accept LGBT people that wanted to donate blood. According to another former student, "it was the most debated case; there were very extreme and different positions; in the context of an AIDs epidemic, getting to where we arrived was the genuine product of the growth in the discussion" (Interviewee 6). Regarding cases of the rights of users and consumers, the clinic won a very relevant one in which it was demonstrated that the trains that connected the poorest areas of Buenos Aires provided a service substantially worse than those that connected the rich areas of the city. It was alleged that this was a case of discrimination based on social class. It was a very technically complex case, in which both the private service provider and the State (because it was a public service) were sued.

Despite the public impact of the cases run by UP's Public Interest Law Clinic, most of the interviewees did not recall having big obstacles in this sense. The clinic had the support of the authorities of the university and, during the first years, it was financed by the already mentioned project of the Ford Foundation. According to one of the former directors of the clinic,

> strategic litigation involves confronting large companies, with the State, with governments, and nobody wants to do that; neither in private universities nor in public universities there is a desire to fight with powerful people. Thus, it is remarkable that UP's clinic always maintained its autonomy, always remained protected, and put aside political pressures. (Interviewee 1)

Some former students of the clinic remembered that they faced difficulties when it came to treating clients. However, these experiences were, at the same time, evoked as educational:

> We were recognizing particular ethical conflicts of the legal professional practice. In the case 'Moneditas',[16] our representative, who was a consumer's association, wanted to set a monetary agreement to close the case before reaching a sentence of conviction. Those were dilemmatic moments because we wanted to construct a case of public interest law and we ended up tied to what our client wanted. (Interviewee 7)

Most of the people interviewed attributed the success of UP's Public Interest Law Clinic during the first years to three factors: first, to a context in which the type of litigation that was proposed was unusual and original; second, to the institutional support mentioned; and, thirdly (and perhaps the most highlighted aspect) to the people who were part of that project. According to one of them, "what allowed this to flourish is that certain people were occupying certain strategic positions in the institution. When those people left, you realize that the support is not such but is dependent on the people who are in the decision-making positions" (Interviewee 8).

Since the experience of the legal clinic worked very well during the first years –being mandatory for the master's students but not for the undergraduate ones– it was, then, incorporated into the curriculum of the undergraduate degree. This incorporation was also promoted by Martín Böhmer, who in 2000 became the dean of UP Law School and

[16] This case was a demand against a company of public telephones which retained a few cents of each call. This, as a hole, implied a great income for the company but, as it did not represent significant individual damages, it was not individually claimed.

decided to change the study program. The clinic started to be conceived for undergraduate students and master's students gradually began to disappear. A former coordinator of the clinic commented: "When we decided to make the clinic an experience exclusively for undergraduate students we had to change the methodology, the cases, the coordination role, etc., to make it pedagogically adequate. It was a major change" (Interviewee 2).

Since the full incorporation of undergraduate students to the legal clinic, it started to mutate quite a lot. One of UP's authorities commented that they once experimented with specializing the clinic in thematic areas but that this model did not work. They also tried to work with NGOs and to simulate a model of a law firm, where young graduate lawyers were reincorporated to work as "senior lawyers" and students were put in the role of "junior lawyers", but these experiences did not work as expected as well.

It is clear that different efforts were made to maintain the high spirit of the clinic. Still, both the context and the persons had changed, and new challenges that involved making the clinic a space 100% conformed by undergraduate students made its stability and success difficult.

Currently, UP's legal clinic course has approximately 15 students, which represents 30% of the students that are in their last semester and decide to take this course as the "Final Professional Practice".[17] Since the course lasts only one semester, each group of students only participates in 15 meetings. This is perhaps the most important difference (besides the skills that undergraduate students have compared to postgraduate ones) between the model that the UP has now and one of the first years. Although the last one was intended for postgraduate students, those who finished the master's program continued participating actively. In this sense, the coordinator of the legal clinic (in 2019) pointed out that:

> one of the biggest problems of the clinic is that it does not have stable members. To build a good case, particularly a structural case, of public interest, it is necessary to count on a continuous group of people for a long time (Interviewee 9).

This is the reason why UP's legal clinic is not carrying out any litigation anymore. It works mainly doing simple amicus curiae or reports on demand of NGOs to assist on certain legal procedures.

However, the litigation experience could be overrated. During the 90s, strategic litigation was something new and innovative and it was completely reasonable for legal clinics to focus on that. But a lot of time has passed and conceiving legal clinics that work not only with strategic cases could be a good option. First, because the legal professions are diverse and different skills are required for each of them. Second, because much of the confidence that was put on judicialization some years ago in Latin America has been lost. It would be interesting to think about other strategies of incidence. For example, a clinic could have in its agenda the development of legislative bills, working on public policies, empirical research on the effectiveness of rights, writing protocols and guidelines for citizens to exercise their rights, etc.

[17] Data provided by the Academic Secretary of UP Law School during the completion of my master's thesis research in 2019.

It is important to finish highlighting that the case of UP's Public Interest Law Clinic could be different from other experiences of public interest law clinics in the country and in the region. This is why further research should take into account other experiences of legal clinics.

5. CONCLUSIONS

This study had the aim of analyzing two models of practical education that were adopted in law schools of Argentina: the model of the *free legal aid services* and the model of the *public interest law clinics*.

As a first conclusion, we can affirm that each one has its specificities. In turn, each has positive and negative aspects. They are developed in different institutions that enable their practices and pose obstacles to the development of others. Secondly, taking the hypothesis raised at the beginning of this study, it could be now sustained that free legal aid services and public interest law clinics are designed to train two different kinds of legal professionals.

In Sections 2 the idea that free legal aid services are intended to train professionals capable of "starting up a machinery" came up. In Section 3, with the case study of the free legal aid service of UBA, it was confirmed. In Section 1 it was explained that in Latin America the big expansion of the state ended up in a stratified profession where many young lawyers became reduced to serve in bureaucratic duties and tasks. At the same time, the expansion of higher education and the growth of cities had as a consequence the increase in the number of law students and the diversification in terms of social backgrounds. Taking these two things into account, it is easy to imagine that the same students are the ones that are claiming for a practical method with which they can learn how to do those bureaucratic duties and tasks, which will probably be the ones they will need to get into the labor market.

The expansion of the state has another consequence: it makes it more difficult for citizens to exercise their rights. If we add this to an unstable economic situation, the problems of access to justice increase. More and more people require lawyers, not to solve big, complicated conflicts but to help them execute simple tasks too. The number of cases handled by university free legal aid services such as the one of UBA is definitely worthy. There is no doubt that this experience has a social aim that is accomplished. On the other hand, although there are efforts to balance the social aim with the pedagogical one, the practice shows that this turns out to be complicated.

In the case of the public interest law clinics, the idea of legal professionals that is present is different. This practical experience is oriented to training lawyers capable of dealing with public interest law cases, difficult cases that indicate structural deficiencies of the system. This shows a more interesting sense of law and the role of lawyers in society. The way of training students is through the practicing of debate and argumentation strategies.

Despite the differences, it is important to highlight that both models have something in common: they are focused on judicialization as the most relevant practice. New strategies of incidence in the social sphere should be incorporated into practical legal education. The diversification of the profession requires this. A more comprehensive model of practical

education should include the transmission of other skills. UP Legal Clinic is nowadays dealing with this, despite the problems that have been specified.

The research done shows that although there is a belief that teaching abstract norms and codes is no longer the best way of training lawyers, experiences that deviate from traditional ways of understanding legal education, presenting innovative methodologies, have faced obstacles. Despite this, having observed the way in which the two models of practical education have been put into practice in a country as Argentina, which has poverty rates that continuously grow as well as serious institutional problems, we can affirm that both models seek to address a reasonable problem of the reality of the country.

This study sought to look in-depth at different practices to understand the logic behind their successes and their failures. Moving forward to other case studies will allow a deeper approach to the object of study.

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