Legal Clinics in the Global North and South: Between Equality and Subordination An Essay

Daniel Bonilla[1]

Academic exchanges among legal clinics of the Global North and South[2] are becoming more common.[3] Students and professors from the Global North, particularly in the United States, are continuously developing various types of clinical projects in developing countries. These programs range from organizing a lecture series on the objectives and methodologies of clinical work at a university in the Global South, to advisory projects on how to start a clinic, to short-term projects on a specific issue or case such as drafting an *amicus curiae* or a shadow report.[4] The benefits generated by these exchanges are important and varied. In principle, these programs allow clinics in different regions to meet the objectives that have become common goals of the global

[1]Associate Professor and Codirector of the Public Interest Law Group, University of the Andes School of Law. This paper collects and develops the arguments presented in the talk "Public Interest Law Clinics in the Global North and South, Between Equal Work and Subordination" that I gave at the seminar organized by the Latin American Network of Legal Clinics, Bogotá, Colombia, November, 2009. I thank Paolo Galizzi, Sital Galantry, Jorge Esquirol, James Silk, Troy Elder, Colin Crawford, Alejandro Madrazo, Jorge Contesse, Manuel Iturralde, Natalia Ramirez, Juan Diego Alvarez, Laurel Fletcher, and Mariana Castrellon for their valuable comments to this essay. I would like to thank Jennifer Chang for the excellent work that she did as a research assistant.

[2] In this paper, I use the words Global South and Global North as less pejorative synonyms of the words developing countries and developed countries. In the context of the legal clinics, however, Global North refers more specifically to the United States, Canada and the United Kingdom. In continental Europe, the institution of the legal clinic has not yet been incorporated into the life of law schools or is just beginning to be so. *See generally* Richard J. Wilson, *Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education*, 10 GERMAN L.J. 823 (2009) [hereinafter Wilson, *Western Europe*].

[3] *See* Roy T. Stuckey, *Compilation of Clinical Law Teachers with International Experience Teaching or Consulting*, *available at* http://www.law.sc.edu/clinic/docs/internationalsurvey2005.pdf (last visited Feb. 18, 2012); Scott L. Cummings, *The Internationalization of Public Interest Law*, 57 DUKE L.J. 891, 967-68 (2008).

[4] Other examples of clinical projects include the drafting and filing of lawsuits in national or international courts or *fact finding missions*. *See* Frank S. Bloch, *Access to Justice and the Global Clinical Movement*, 28 J.L. & POL'Y 111, 128 (2008); s*ee also infra* Part II.A.1.

clinical movement.[5] On the one hand, clinics can contribute to building a more just society. These projects of cooperation generally seek to contribute to the defense of the traditional political values of liberal democracies, such as access to justice, equality and autonomy.[6] On the other hand, they allow students to develop the clinical skills that are essential to performing effectively in professional practice, such as drafting legal documents and interviewing witnesses. These joint projects allow students to develop these skills through experiential learning methodologies.[7] The students who participate in this type of projects learn by doing. They do not learn exclusively through the reading of documents and discussion with the professor.

Nevertheless, many of these exchanges are guided by norms, usually implicit, that do not promote equal relationships between clinics of the Global North and South. Rather, these norms create dynamics of domination and subordination that hinder the fulfillment of the purposes that both clinics are said to pursue. This essay seeks to explain and analyze the origins and characteristics of the tension between equality and subordination that characterizes much of the relationship between legal clinics in the countries of the Global South and North.

In particular, this essay presents and justifies the following three theses. First, I argue that the relationships between public interest law clinics in the Global North and

[5] Bloch, *supra* note 4, at 121.
[6] *See* Carrie Menkel-Meadow, *The Lawyer's Role(s) in Deliberative Democracy*, 5 NEV. L.J. 347, 354 (2004) (discussing liberal discourse theory and its emphasis on the "co-origination of private liberties and public autonomy" leading to as essential right in equality of participation).
[7] *See* James E. Moliterno, *Legal Education, Experiential Education, and Professional Responsibility*, 38 WM. & MARY L. REV. 71, 92 (1996) ("The clinical legal education movement represented a positive but largely disorganized move toward experiential learning models in legal education."); Wilson, *Western Europe*, *supra* note 2, at 825 (describing the clinical model as a "teaching and learning method that actually prepared students to practice law by exposing them to work in role, as an attorney representing clients, with all the attendant issues surrounding the skills, ethics and values of law as it is practiced throughout the world"); Stephen Wizner, *Beyond Skills Training*, 7 CLINICAL L. REV. 327, 338 (2001) ("From the beginning of the clinical legal education movement, experiential learning and skills-training were seen as the means for achieving the justice goal articulated by William Pincus, not as ends in themselves.").

South reproduce typically unequal relations between the center and the periphery of legal academia.[8] The exchange between clinics of the Global North and South reiterate, reinforce and project a number of issues relating to the spaces where legal knowledge is created and used in appropriate ways. These unequal relationships are particularly evident in the following three theoretical and practical matters: who has the ability to produce legal knowledge, how to legitimatize the knowledge produced and who can make effective use of it. On each of these three matters, the legal clinics of the Global North are privileged over the clinics of the Global South. The Clinics of the Global North are those who have the ability to build legal knowledge, those who have articulated and can legitimately use the criteria to characterize which academic products are of quality, and those who can effectively use this knowledge to transform society.[9]

Second, I argue that relations between the legal clinics of the Global North and South that reproduce the generally unequal relationship between legal academia in the North and South are consolidated and reinforced in the clinical setting for two main reasons: first, because the tension between educational and social justice objectives presented in most clinical projects is often resolved in favor of the former. Specifically, this tension is resolved when the educational objectives that clinics in the Global North pursue are prioritized, for example, when the cultural enrichment of their students is privileged through a visit to the developing country that does not benefit or only

[8] It is important to note the differences between international human rights clinics and clinics that work on local issues in the Global North. The former would seem to interact much more with clinics of the Global South. A fundamental part of their mission is to advance projects that include an international dimension. However, many of the clinics that work on local issues also interact with clinics in the South. An important number of their professors work as consultants or visiting professors in countries of Asia, Africa and Latin America. *See* Stuckey, *supra* note 3. The projects in which the members of each type of clinic work are usually different; yet, the structural dynamics that guide their interactions with the clinics of the South are the same.

[9] *See infra* Part I.B.

marginally benefits the rights of the local population.[10] Second, because the tension between the aims of professional development of clinical professors and social justice, also common in many of the exchange programs between the clinics of the North and South, is often resolved in favor of the former. For example, the only end product of a program of cooperation between clinical programs may be the publication of an article written by a professor from the legal clinic in the North that has minimal consequences, if any, for the vulnerable population on which the project was focused.

Third, I argue that it is quite desirable for the working relationship between the clinics in the South and North to continue, develop and expand. Although typically implicit, the norms of subordination that govern much of the work between these institutions do not diminish its normative and practical value. This type of work is desirable for reasons of principle and strategy. The work being done in the legal clinics is essential for reasons of principle in that the value of solidarity that guides (and should guide) the projects is manifested.[11] In the programs usually developed between the clinics of the Global North and South, two groups of professors and students belonging to different legal and political communities join forces to make use of their expertise in order to benefit a social justice objective generally involving a group that is vulnerable or historically subject to discrimination.[12] Such work is important for practical reasons as it makes efficient use of scarce resources to address the social injustices affecting the Global South. The political capital, economic resources and legal expertise brought by

[10] Or when a legal document is drafted and presented before an international human rights organization that allows students from the clinic in the North to consolidate their legal skills but does not reflect on the legal and political priorities of local partners.
[11] *See infra* Part III. *See also* Kathleen Kelly Janus & Dee Smythe, *Navigating Culture in the Field: Cultural Competency Training Lessons from the International Human Rights Clinic*, 56 N.Y.L. SCH. L. REV. 445, 469 (2012) (listing the aim of clinics to develop "mutually respectful partnerships with local organizations").
[12] *See infra* Part III.

each clinic increase the chances of contributing effectively to decreased levels of social injustice in the country where the project is developed.

However, for this type of clinical work to have the desired effects in social justice and educational matters, and to avoid reproducing the dynamics of subordination between the academic center and periphery, it should be guided by the following three principles: mutual recognition of the parties involved in the project; consensus to establish, interpret and apply the rules governing the clinical exchange; and prioritizing the social justice objectives pursued over the educational and professional development purposes that are also part of the programs of cooperation advanced by the clinics.

It is important to note that the theses defended in this essay do not refer to any specific exchange project between legal clinics in the Global North and South. The essay does not question either the intentions of clinical professors involved in Global North and South exchange projects. I have no doubt of the good intentions of those participating in this kind of projects. Most, if not all, clinical professors are firmly and honestly committed to the social justice and pedagogical aims that these projects usually try to achieve. Rather, this essay aims to examine the structural dynamics that guide many of the joint projects advanced by clinics in the Global South and North. In this essay, as a member of what might be called the global clinical movement,[13] I offer a narrative to describe what I believe to be the structural dynamics that govern the relationship between the clinics in both regions of the world. Of course, this narrative is not neutral. It is based in the experience that I have had for fifteen years as a law professor in a university of the Global South. My theses are therefore tentative. I am not claiming that these

[13] *See* Bloch, *supra* note 5, at 112 (arguing that an emerging "global clinical movement" can help to provide the necessary resources and leadership to increase access to justice worldwide).

theses describe all Global North- Global South clinical projects. I am not saying that there are no projects where the clinics in the North and the South work as equal partners. These ideas attempt to make explicit the theoretical and practical tensions that I have seen in many Global North-Global South clinical projects. They also aim to contribute to an open discussion of the problems that I have seen talked about informally by clinical professors both in the North and the South. In a very precise way, then, this is an essay. No doubt, we must conduct further empirical research on the dynamics governing clinical projects of North/South cooperation. However, this study does not attempt a quantitative review of the object of study. As an individual immersed in a practice, I construct an interpretation of the dynamics that characterize it and offer the causes that I think explain them. There are, of course, other interpretations of these dynamics. The plausibility of my narrative, thus, depends on how much it resonates with other members of the practice.

To justify these theses, I will divide the essay into three parts. In the first part, I will analyze the three primary dimensions of the clinical context that reproduce unequal relationships between the legal academia of the North and South. In order to illustrate these arguments, in this section, I will also present and examine three types of projects that are jointly advanced by clinics in the Global North and South. In the second part, I will examine the problematic ways in which clinics in the North and South usually balance the conflicting principles: social justice, the development of student skills and the professional development of professors. In the third part, I will present and justify the three normative criteria that should guide the relations between the clinics of the Global North and South.

I. The Center/Periphery Dynamic in Legal Academia and Legal Clinics

A. The Vertical Relationship of Clinics

The central feature of the relationships between clinics in the North and South is that they are vertical, meaning that clinics in the North make the critical decisions on joint projects and clinics in the South accept these decisions.[14] Thus, the central determinations about the project's legal or political strategies, the use of economic resources available and the type of relationships one wants to have with judges or the media, for example, are made by clinics in the North without -- or with marginal -- formal consideration for clinics in the South or their opinions. These vertical relationships are usually justified using arguments that describe without nuances the legal academia in the Global North and South. Similarly, these arguments obscure or ignore the characteristics and basic normative commitments of clinical legal education and are not generally made explicit between the parties advancing the project. The main reasons for this are as follows.

First, the academic communities to which the clinics in the North belong are more robust than the communities in which the clinics of the South are immersed. The quantity and quality of academic products[15] are much higher in law schools in the North than in the South.[16] Similarly, the levels of academic rigor and criticism are much higher in the former than in the latter region of the world. The number of books and specialized

[14] *See* Scott L. Cummings & Louise G. Trubek, *Globalizing Public Interest Law*, 13 UCLA J. INT'L L. & FOREIGN AFF. 1, 41-42 (2008) (describing the influence of the global North on public interest law systems of the global South as raising "crucial questions about outside domination and the imposition of legal fixes poorly suited to local context").

[15] This essay understands academic products as those created by non-clinical professors as well as those generated by legal clinics. There are remarkable differences between an article published in an academic journal and some of the typical products of the clinics, a law suit or report on human rights, for example. However, I simply want to note in this essay that both are products that are the result of intellectual work generated in a law school.

[16] *See* Wilson, *Western Europe*, *supra* note 2, at 826 (noting that there are "well over 800 in-house clinical programs operating in U.S. law schools, an average of 6 clinical subject-matters in each school.").

journals produced in the legal academia of the North, as well as their richness and complexity, is much greater than the number produced in the South, for example.[17] Similarly, while the dynamics and rhythms of production and publication have been established and standardized in the North, they are just beginning to be structured and disseminated in the South.[18] The number and type of products generated each academic year, the stability of specialized journals, and the quality control by institutions recognized by the academic community, among others, are issues that are just beginning to be discussed or internalized in many of the academic communities of the Global South.

Similarly, the strength of clinical legal education in the countries of the Global North where it was developed is evident.[19] In the United States, Canada and the United Kingdom, in particular, clinics have existed for decades and have emerged as an irrefutable part of the law schools.[20] The strength of legal clinics in these countries is demonstrated by the number of programs that exist, the quantity of cases worked on

[17] *See* Wilson, *Western Europe*, *supra* note 2, at 826-27 (noting the vast reach and variety of U.S. clinical academic products).

[18] *See, e.g.*, Richard J. Wilson, *Three Law School Clinics in Chile, 1970-2000: Innovation, Resistance and Conformity in the Global South*, 8 CLINICAL L. REV. 515, 567 (2002) [hereinafter Wilson, *Clinics in Chile*] ("The single most significant impediment to the development of an effective classroom component - indeed to the integrity of the teaching enterprise of clinical education - is a coherent body of material on theories of law practice, as well as skills training materials for students. Such literature, which developed in the United States contemporaneously with the development of the clinical movement, is quite abundant here but sporadic at best in any of these Chilean or other Latin American clinical programs. The absence of systematic and well-written materials for classroom use is endemic to legal education in general throughout Latin America, so clinical programs are no exception.").

[19] *See* Richard J. Wilson, *Training for Justice: The Global Reach of Clinical Legal Education*, 22 PENN ST. INT'L L. REV. 421, 427 (2004) [hereinafter Wilson, *Training for Justice*] ("In the developed world, there is little doubt that the most sophisticated and extensive clinical legal education programs, and the most highly developed literature on skills and theories of practice, are in the United States and Canada.").

[20] *See, e.g.*, Wilson, *Western Europe*, *supra* note 2, at 826, 828 (citing clinical legal education as a "mainstay" of legal education within the United States and noting that the "United Kingdom is exceptional among the Western European nations in its acceptance, albeit recent, of clinical legal education"); *see also* Lauren Carasik, *Justice in the Balance: An Evaluation of One Clinic's Ability to Harmonize Teaching Practical Skills, Ethics and Professionalism with a Social Justice Mission*, 16 REV. LAW & SOC. JUST. 23, 28 (2006) ("The value of clinical instructional methodology, through experiential education, has been firmly established as an integral component of legal education.").

successfully each year and the number of publications on the subject.[21] In sum, the academic capital available to clinics in the North is much greater than that available to clinics in the South. The argument, then, is that the clinics of the North should make all the key decisions in the cooperative projects.[22] These clinics and the academic communities in which they are immersed have the academic know-how to make the most important decisions with respect to projects carried out jointly.

Second, clinics in the North have far more access to scarce resources, money, researchers, academic networks and libraries than clinics in the South.[23] Those who control these resources should have the most decision-making power in joint projects. Those who provide more and better resources are entitled to direct the course of the programs. As happens in a corporation, the quantity and quality of the material contributions of the partners should generate differences in the power they wield in influencing the destinies of the legal organization of which they are a part.[24] Again, the

[21] In the United States, there are more than 800 legal clinics, and approximately 600 clinical professors attend the annual conference organized by the Association of American Law Schools. Journals such as the following address issues related to clinical legal education or include a significant number of articles on this topic: Clinical Law Review (United States); Journal of Law & Education (United States); Journal of Legal Education (United States); The Journal of Legal Studies Education (United States); Brigham Young University Education and Law Journal (United States); Thomas M. Cooley Journal of Practical and Clinical Law (United States); Education & Law Journal (Canada); Education and the Law (United Kingdom); International Journal of Clinical Legal Education (United Kingdom); Journal of Commonwealth Law and Legal Education (United Kingdom). One of the most comprehensive sources of information on legal clinics in the United States is the research conducted by the Center for the Study of Applied Legal Education at the law school at the University of Michigan. *See* Ctr. for the Study of Applied Legal Educ., *Report on the 2007 – 2008 Survey*, *available at* http://www.csale.org/files/CSALE.07-08.Survey.Report.pdf.

[22] *See, e.g.*, Karen Tokarz et al., *Conversations on "Community Lawyering": The Newest (Oldest) Wave in Clinical Legal Education*, 28 WASH. U. J.L. & POL'Y 359, 395-96 (2008) (discussing the tendency for law students in the North to "all too quickly become acculturated in law school to view themselves as having superior knowledge to 'lay persons' and to other professionals").

[23] *See* Cummings & Trubek, *supra* note 14, at 42 (recognizing the pivotal role of the United States in "exporting legal concepts and approaches through funding, technical assistance, and U.S.-based education").

[24] *See* Kimberly Kirkland, *Ethics in Large Law Firms: The Principle of Pragmatism*, 35 U. MEM. L. REV. 631, 666 (2005) ("Those partners at the top of the case hierarchies, who maintain relationships with the

clinicians involved in the North-South projects do not generally make explicit these norms. Nevertheless, they are the unstated norms that determine the basic structure of the relationships between clinics in the Global North and South.

However, clinical professors in the Global South often end up accepting these two norms without nuances. Many of these professors accept the vertical nature of their relationship with clinical faculty from the Global North as legitimate. The reasons for this are sometimes based on principle and sometimes based on strategy.[25] On occasion, clinical professors from the South believe as a matter of principle that the asymmetries of academic capital and scarce resources between clinics of the Global North and South signify that they must give their colleagues from the North a higher level of control over joint projects.[26]

In other cases, clinicians from the South accept the relationship of dominance and subordination as a means to strengthen or maintain ties with academic centers of power in the North or as an unavoidable cost of fulfilling the educational and justice social objectives to which they are committed.[27] It is understood that if clinical professors of the South question the implicit norms that guide the relationships between many of the clinics in the North and South, access to the academic networks that generate professional prestige in the local academic environment will be at risk. Ongoing relationships with universities and professors in the North are an important source of recognition and repute

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firms' most lucrative clients, have power in the growing bureaucracies that manage large law firms today.").

[25] *See infra* Part III.

[26] *See* Wilson, *Training for Justice*, *supra* note 19, at 424, 428-29 (noting how law schools in the South "seldom have the knowledge, experience or resources to start a program in clinical legal education" and how this dynamic can potentially lead to "legal imperialism" through the export of clinical legal education to developing countries).

[27] Acceptance of these dynamics is also seen in the attitudes of theorists from the North. *See, e.g.*, *id.* at 429 (noting that while the "allure of international funding" is a factor in the motivations for law schools in the South, efforts to bring clinical education to an international audience have been welcomed by the recipient).

in the law schools of the Global South. Similarly, maintaining contact with clinics in the North and, subsequently, with their financial and human resources, ensures that clinical faculty in the South will be able to move ahead with their projects or that these projects can be at least modestly efficacious.[28]

Finally, clinicians also accept as valid the vertical interactions between clinics in the Global North and South in as much as they have become naturalized. For many clinical professors, in the North and the South, these relationships of subordination/dominance have been normalized.[29] The two norms mentioned above constitute the web of significance from which clinical professors can interpret the relationships between legal academia in both regions of the world. The immense power that these norms have stems from this fact. In turn, these norms keep the efforts of professors from both regions of the world to question these relationships on the margins.

B. Particular Dynamics between Clinics in the Global North and South

The two general norms presented above generate the following three specific norms in turn. These norms determine the particular dynamics of the vertical interactions between the clinics in the Global North and South.

First, they generate what I would like to call the norm of the "Production Well," which argues that the legal academia in the North is the only context for the production of

[28] *See* Michael L. Perlin, *An Internet-Based Mental Disability Law Program: Implications for Social Change in Nations with Developing Economies*, 30 FORDHAM INT'L L.J. 435, 450-53 (2007) (discussing, in the context of a mental disability clinic in Nicaragua, how "[p]artnerships in this context can be particularly fruitful for the local advocacy organizations, who often are under-funded and in need of non-financial, as well as financial, resources").

[29] *See* James M. Cooper, *Competing Legal Cultures and Legal Reform: The Battle of Chile*, 29 MICH. J. INT'L L. 501, 505 (2008) ("The exporting of legal culture is part of the foreign policy and development assistance agendas of Europe and the United States, especially as the world becomes more interconnected economically, politically, and socially.").

knowledge. While legal academia from the North is seen as creating original academic products, legal academia from the South is considered solely a weak reproduction of the knowledge generated in the North – a form of diffusion or local application of the same. While the former opens up new descriptive, critical, and normative paths, the latter follows the routes already opened by the epistemological communities of the Global North.

It could not be otherwise, the argument goes. The academic production of law in the Global South is necessarily a reflection of the legal systems that exist in the region.[30] The majority of legal systems in the Global South are reproduced or derived from continental European or Anglo-American law.[31] Latin America is a weak member of the civil tradition, particularly French, German, Spanish and Italian law;[32] Africa, a young and naive participant in the Anglo-American or civil law tradition;[33] Eastern Europe, a mixture of obsolete socialist law and recent imports from Anglo-American or Western

[30] *See id.* at 506 ("A country's legal culture is comprised of the self-governing rules and operations of national and regional bar associations, the format of legal education, the structure of the legal and judicial profession, the role of the judiciary, jurisprudential style, and the reputation of the legal sector according to the general public."); *see also* Philip M. Genty, *Overcoming Cultural Blindness in International Clinical Collaboration: The Divide Between Civil and Common Law Cultures and Its Implications for Clinical Education*, 15 CLINICAL L. REV. 131, 149 (2008) ("Clinical teaching programs reflect specific goals about educating students for practice. As such, these programs are very much a product and reflection of their legal cultures.").

[31] *See* Mark van Hoecke & Mark Warrington, *Legal Cultures, Legal Paradigms and Legal Doctrine: Towards a New Model for Comparative Law*, 47 INT'L & COMP. L.Q. 495, 498-99 (1998) ("Although different forms of 'legal culture' were recognised in non-Western societies, it could easily be shown that most of them belong, at least to some extent, to one of the major Western legal families."); *see also* Ugo Mattei, *Three Patterns of Law: Taxonomy and Change in the World's Legal Systems*, 45 AM J. COMP. L. 5, 10-11 (1997) (arguing that current classifications within comparative law studies of legal families are largely "Euro-American centric" and need to change given the shifts in the world's legal systems); Boaventura de Sousa Santos, *Three Metaphors for a New Conception of Law: The Frontier, the Baroque, and the South*, 29 LAW & SOC'Y REV. 569, 579-82 (1995) (discussing the relationship of the Global North and the Global South and the necessary steps in critiquing imperial relations).

[32] *See* Wilson, *Clinics in Chile*, *supra* note 18, at 521 ("Chile, like most countries in Central and South America, applies the precepts of the civil or Roman law tradition used throughout Europe and much of the formerly colonial world of the global South."). *See generally* Jorge L. Esquirol, *Fictions of Latin American Law (Part 1)*, 1997 UTAH L. REV. 425 (1997); Jorge L. Esquirol, *Continuing Fictions of Latin American Law*, 55 FLA. L. REV. 41 (2003); Jorge L. Esquirol, *The Failed Law of Latin America*, 56 AM. J. COMP. L. 75 (2008).

[33] *See* Kwame Nkrumah, *Law in Africa*, 6 AFRICAN L.J. 103, 105 (1962).

European Law;[34] and Asia, largely a reproduction of the law of the colonial powers that dominated the region politically.[35] Certainly, this official law coexists in many cases with one or more "native" legal systems. Nevertheless, this law is subordinated to the official law of foreign origin or is of inferior quality.[36] At the same time, the level of effectiveness of the law in the Global South is generally very low.[37] The law is not a central instrument for social control in this region of the world. Rather, other types of norms, moral and social, for example, maintain order and social cohesion.[38]

It does not seem very useful, therefore, to study this weak academic production, which reflects on a set of norms that are merely rules on paper and sub-products of other legal traditions. Thus, interest in the law of the Global South extends only so far as its inefficiency and lack of orginality stand as a source of research for sociologists, anthropologists and law professors interested in issues of social justice and the reforms needed to achieve it.[39] These social scientists and legal academics and activists may find

[34] *See generally* RENÉ DAVID & J.E. BRIERLY, MAJOR LEGAL SYSTEMS IN THE WORLD TODAY (3d ed. 1985); KONRAD ZWEIGERT & HEIN KÖTZ, INTRODUCTION TO COMPARATIVE LAW (Tony Weir trans., 3d ed. 1998).

[35] This inherited or imported law from the colonial cities coexists with the religious legal traditions in many countries in the region, Islamic or Buddhist ones in particular. *See* Lama Abu-Odeh, *The Politics of (Mis)recognition: Islamic Law Pedagogy in American Academia*, 52 AM. J. COMP. L. 789, 806-08 (2004).

[36] *Cf.* Cooper, *supra* note 29, at 559 (emphasizing the need to ensure that institution building should take into account local knowledge and local participation because "[t]he wholesale adoption of foreign models can mean the abdication of responsibility by local stakeholders, lackluster support for reforms, and lack of ownership in, or even resistance to, institutional change").

[37] *See* Brian Z. Tamanaha, *The Primacy of Society and the Failures of Law and Development*, 44 CORNELL INT'L L. J. 209, 222 (2011) ("Because judicial institutions occupy a pivotal position in legal systems, corrupt or dysfunctional courts can debilitate the entire legal system. Lacking force of arms and unable to fund their own operations, courts usually are weak by comparison to other governmental institutions, particularly in developmental contexts."). *See also id.* at 223-24 (noting the corruption and ensuing ineffectiveness of the judiciary in multiple areas of the Global South including Latin America, Eastern Europe, East Asia, and Africa).

[38] *See id.* at 244 (noting that in many societies within the Global South, the "social life and understandings of the populace" play a large role, which often leads to clashes with the legal systems when these systems have largely been adopted from other societies).

[39] *See, e.g.*, Jorge L. Esquirol, *Writing the Law of Latin America*, 40 GEO. WASH. INT'L L. REV. 693, 706 (2009) [hereinafter Esquirol, *Writing the Law*] (arguing that Latin American law is often denigrated to merely standing for "the region's shared shortcomings measured against projected ideal types"). *See*

an interesting object of study in the social norms that effectively regulate the lives of those living in the region. Similarly, trying to explain and evaluate the weakness of the law in the countries of the Global South, as well as proposing and implementing reforms to solve the problems facing them, can be a fertile field of research and action for the academia of the Global North. However, I would like to reiterate that what is an attractive object of study for legal academia in the North is not the law of the Global South or the local academic production examining it. Rather, what is attractive is the failure of law in the region.[40]

Second, the two general norms presented above generate what I would like to call the norm of "Protected Geographical Indication." This states that all knowledge produced in the North is worthy of respect and recognition *per se* given the context from which it emerges. Even before it has been read or evaluated, the mere origin of the academic product generates its positive qualifications. As a wine from Burgundy is considered to be a good wine, an article written in English by an American professor and published in a legal journal at a university in North America is considered to be of good quality, even without it being read. Legal knowledge generated in the South is, therefore, only legitimate when academics from the North have given it their approval. Legal products from the South are marked (negatively) by their origin.[41] This seal can only be removed when the representatives from the production well of legitimate legal knowledge believe that it should be. The positive qualification of an academic product from the South on the part of Southern academics is, at best, a mere indication of its

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generally Tamanaha, *supra* note 37 (using the effects of the law and development movement on countries of the Global South as a means of evaluating the goals underlying the movement and discovering the steps needed to reach those goals).

[40] *See* Esquirol, *Writing the Law*, *supra* note 39, at 706.

[41] *See supra* notes 39-40 and accompanying text.

quality. Professors from the North must confirm this characterization, however. The norm of the Production Well is then analytically distinguishable from the argument of the Protected Geographical Indication. In practice, however, the two norms are intertwined.

Third, the two general norms outlined above produce what I would like to call the specific norm of the "Effective Operator." This norm indicates that academics from the North are much better trained to make effective and legitimate use of legal knowledge than academics from the South. The use of academic products has ethical consequences. To ignore or violate the rules guiding the use of legal knowledge questions the moral values that the academic community shares, may adversely affect third parties, and threatens the legitimacy of intellectual products. This issue is particularly thorny in the clinical setting.[42] Clinical projects have an explicit political role in that they usually involve and directly affect vulnerable groups.[43] Thus, the improper use of legal knowledge will have negative consequences for clients of the clinics as well as for the legitimacy of the projects advanced. Clinical professors in the North have the academic know-how[44] to make effective use of the academic products created.[45] Similarly, they have access to networks and spaces of power to make effective use of this knowledge.[46] The inexperience, lack of knowledge or ingenuity of clinical professors in the South with respect to the use of legal knowledge, the argument goes, can lead clinical projects to

[42] In clinical settings this is particularly serious: the untimely use of a legal product might negatively affect the case strategy; confidential information might be leaked generating obstacles for the case tactics; and the communities might have to face a legal and political backlash because of the inappropriate presentation before the media of the case and materials that support it.
[43] *See* Wilson, *Training for Justice*, *supra* note 19, at 423 (noting that "the clients served by [clinical programs] generally are not able to afford the cost of hiring private counsel, and they usually come from traditionally disadvantaged, underserved or marginal sectors of the community.").
[44] This academic know-how includes familiarity with and use of the ethical rules that should guide the use of legal knowledge.
[45] *See supra* notes 19-22 and accompanying text.
[46] *See supra* notes 23-24 and accompanying text.

ruin. Again, professors from the North must make the key decisions on the use of the knowledge that is created or relevant to the clinical projects.

C. The Reality Underneath a Homogenized Picture

The two general norms presented above describe and properly characterize one part of the reality of legal academic communities of the Global South and North. Seen as a whole, the differences between the legal academia in the two regions of the world are significant. However, these norms are questionable both from a descriptive point of view and from the normative standpoint. On one hand, these norms, along with the three specific norms they generate, homogenize a reality that is full of shades and hues. On the other hand, they articulate normative criteria that ignore the contributions that clinics in the Global South usually make to joint clinical projects and the social justice objectives they pursue. The three specific norms (Production Well, Protected Geographical Indication, and Effective Operator) clash strongly with some of the objectives that guide clinical work in both the Global South and North and ignore the actual dynamics developed in many clinical projects of North/South cooperation.

First, these general norms ignore the heterogeneity of legal academic communities. There is no doubt that the law schools of the Global North, in North America particularly, have overall built stronger academic communities than those in the Global South.[47] Nevertheless, there are internal weaknesses in both contexts, as well as nuances and exceptions to the rules noted in each. Legal academia in the North offers a wide range of schools, with varying levels of quality. For example, a law school located at the top of the various rankings that exist in the United States, Canada or United Kingdom is not the same thing as a school in the middle of such rankings, or one at the

[47] *See supra* notes 15-18 and accompanying text.

bottom.[48] The differences are even more important when comparing the strengths and weaknesses of schools in the top tier with those in the second and third tiers of the hierarchy in the United States.[49] The contrasts in the quality of the academic products generated, as well as the financial resources available, are notable in many cases. The strength of journals published, the wealth of libraries, the number and quality of exchanges with academics from other parts of the world, and the conferences and seminars offered vary markedly between these schools.[50]

Equally important are the differences between the specialized programs that exist within the schools of law. In the United States, for example, the clinical program at the University of Maryland law school was ranked as sixth in the country in 2011, but the

[48] The two best-known publications in which law schools in the United States are classified are U.S. News and Lawschool100. *See Best Law Schools*, U.S. NEWS, http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/law-rankings (last visited Mar. 11, 2012); *The Law School 100: The Best Law Schools in the United States*, LAWSCHOOL100, http://www.lawschool100.com (last visited Mar. 11, 2012). Two well-known journals where Canadian law schools are classified are Top Law Schools and Maclean's. *See* Matthew G. Scott, *Canadian Law School Rankings*, TOPLAWSCHOOLS, http://www.top-law-schools.com/canadian-law-school-rankings.html (last visited Mar. 11, 2012); Ranking Canada's Law Schools, Macleans.ca, http://www2.macleans.ca/2011/09/15/ranking-canada%E2%80%99s-law-schools-2/ (last visited Mar. 11, 2012). Ratings of law schools in the United Kingdom can be seen through The Guardian and LawSchool.com. *See University Guide 2011: Law*, THE GUARDIAN, http://www.guardian.co.uk/education/table/2010/jun/04/university-guide-law (last visited Mar. 11, 2012); *UK Law Schools*, LAWSCHOOL.COM, http://www.lawschool.com/uklawschools.htm (last visited Mar. 11, 2012). Law schools have criticized these classifications from various perspectives. Law school administrators and professors argue, for example, that the criteria used by U.S. News to rank law schools are vague, irrelevant, or incomplete. I agree with these critiques. However, for the purposes of this essay they are useful for showing the overall differences within legal academia in the United States. I would say that many in the U.S. legal community agree that there are notable differences between the first 15 law schools and the last 15 law schools of the first tier or between first tier law schools and third tier law schools. Yet, even these broad differences are obscured by the norms of the Production Well, Protected Geographical Indication, and Effective Operator.

[49] The top tier of law schools in the U.S. ranking system consist of schools with ranks 1-50; the second tier includes schools ranked 51-100; and the third tier includes schools not included in the top 100.

[50] *See, e.g.*, Robert Morse & Sam Flanigan, *Law School Rankings Methodology*, U.S. NEWS, http://www.usnews.com/education/best-graduate-schools/articles/2011/03/14/law-school-rankings-methodology-2012 (last visited Mar. 11, 2012) (describing the 12 measures by which law schools in the United States are ranked, including faculty resources, library resources, placement success).

school was ranked forty-second overall in this year;[51] the law school at CUNY-Queens is part of the second tier according to the U.S. News hierarchy, but its clinical program is third in the country;[52] and Harvard Law School has been ranked as the best or second best law school in the country for many years yet its clinical program is twentieth in the United States.[53] Finally, the norms of Production Well, Protected Geographical Indicator, and Effective Operator obscure the fact that in good law schools, there are professors who are not academically strong, or that the quality of the academic products written by a professor varies, sometimes significantly.

In sum, the norms of the Production Well, Protected Geographical Indicator, and Effective Operator ignore the differences in the quality of law schools. These norms invalidate this diversity and identify "professor" and "quality academic product" with the law schools of the global North, and particularly with schools in the United States.

Similarly, it is important to note that these norms eliminate *a priori* differences within the academic communities of the Global South. A "garage"[54] school from the

[51] *Compare Clinical Training: Best Law Schools*, U.S. NEWS, http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/clinical-training-rankings (last visited Mar. 11, 2012), *with Best Law Schools*, U.S. NEWS, http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/law-rankings (last visited Mar. 11, 2012).

[52] *Compare Clinical Training: Best Law Schools*, U.S. NEWS, http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/clinical-training-rankings (last visited Mar. 11, 2012), *with Best Law Schools*, U.S. NEWS, http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/law-rankings (last visited Mar. 11, 2012).

[53] *Compare Clinical Training: Best Law Schools*, U.S. NEWS, http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/clinical-training-rankings (last visited Mar. 11, 2012), *with Best Law Schools*, U.S. NEWS, http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/law-rankings (last visited Mar. 11, 2012).

[54] Garage universities are those whose primary goal is the profit of their founders and whose standards of quality are very low. Generally, their infrastructure is very poor. *See, e.g.*, *Kenya: PhDs rare in African universities*, UNIVERSITY WORLD NEWS (July 13, 2008), http://www.universityworldnews.com/article.php?story=20080711103527889 ("But the situation is worse in 'garage universities' where students are taught by lecturers and instructors without postgraduate training.

Global South is not the same thing as the law school at the University of the Witwatersrand, the law school of the National University of Taiwan, and the National Law School at the University of India, Bangalore. There are salient differences in the quality of professors and academic products as well as the economic resources at their disposal.[55] Similarly, although a significant part of Latin American,[56] African,[57] Asian,[58] and Eastern Europe legal academia is still dominated by various forms of legal formalism, there are spaces in these regions where academic production is rich and complex.

It is true that the role still given to the legal academic in many parts of the Global South is the systematization of the legal order and that the production generated by this

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Most of these are regional centres and partnerships with commercial colleges and other institutions whose core business is not to produce highly skilled graduates or to conduct applied and basic research.").

[55] Garage law schools are weak for profit institutions. The main aim pursued by these law schools is to enrich their owners. Therefore, they have very few full-time professors, poor libraries, and low levels of academic production. *See* PHILIP G. ALTBACH & DANIEL C. LEVY, PRIVATE HIGHER EDUCATION: A GLOBAL REVOLUTION 7 (2005) (noting that garage universities often operate with scant resources and offer inadequate education).

[56] *See* Luis Fernando Pérez Hurtado, *Content, Structure, and Growth of Mexican Legal Education*, 59 J. LEGAL EDUC. 567, 581 (2010) (noting that the lack of opportunities for change in the Mexican legal education system contributes to the "curricular homogeneity" found in the educational institutions); Héctor Fix Fierro and Sergio Lopez, La educación jurídica en México: Un panorama general, Estudios jurídicos en homenaje a Marta Morineau, México, D.F.: Instituto de Investigaciones Jurídicas de la Universidad Nacional Autónoma de México (2006) [*Legal education in Mexico: An overview*, Legal Studies in Honor of Marta Morineau, Mexico City: Institute for Legal Research at the Autonomous National University of Mexico]; Juny Montoya Vargas, *La Educación legal y la garantía de los derechos en América Latina*, 38 REVISTA EL OTRO DERECHO 1, Instituto Latinoamericano de Servicios Legales Alternativos (2009) [*Legal Education and the Guarantee of Rights in Latin America*, 38 The Other Law Journal 1, Latin American Institute for Alterative Legal Services]; Juny Montoya Vargas, *Educación Jurídica en Latinoamérica: Dificultades curriculares para promover los temas de interés público y justicia social* [*Legal Education in Latin America: Curricular Difficulties for Promoting Issues of Public Interest and Social Justice*], Latin American Congress on Justice and Society (CLACSO) (2005); *see also Los desafíos para la educación legal en Latinoamérica – Documentos de trabajo del encuentro educación legal en América Latina: nuevos desafíos para América Latina*, Universidad Diego Portales, 2004 [*Challenges for Legal Education in Latin America – Working Papers from the legal education meeting in Latin America: New Challenges for Latin America*, Diego Portales University].

[57] *See generally* MARTIN CHANOCK, THE MAKING OF SOUTH AFRICAN LEGAL CULTURE 1902-1936: FEAR, FAVOUR AND PREJUDICE (2001); Samuel C. Nolutshungu, *Constitutionalism in Africa: Some Conclusions*, *in* CONSTITUTIONALISM AND DEMOCRACY: TRANSITIONS IN THE CONTEMPORARY WORLD (Douglas Gerenberg et al. eds., 1993).

[58] *See generally* TOM GINSBURG, JUDICIAL REVIEW IN NEW DEMOCRACIES: CONSTITUTIONAL COURTS IN ASIAN CASES 42 (2003); ADMINISTRATIVE LAW AND GOVERNANCE IN ASIA: COMPARATIVE PERSPECTIVES (Tom Ginsburg & Albert H.Y. Chen eds., 2009).

objective often leaves much to be desired.[59] However, within the law schools of the Global South are nodes that meet high academic standards and that distance themselves radically from the various formalist traditions found in the countries where they are located. In Latin America for example, the law schools of the Fundação Getulio Vargas and University of São Paulo in Brazil, the University of the Andes and the National University in Colombia, ITAM and the Autonomous University of Mexico, and the University of Chile and Diego Portales University in Chile. In Africa, nodes in the law schools at the University of Cape Town and University of the Witwatersrand in South Africa, American University-Cairo in Egypt and the University of Nairobi in Kenya. In Asia, the law schools at the National University of Taiwan, the National University of Seoul and the University of Delhi. In Eastern Europe, the law schools of the University of Eastern Europe and Warsaw University. Similarly, there are professors, individual cases, whose production is of high quality. Consider, for example, Carlos Santiago Nino, Boaventura de Sousa Santos and Upendra Baxi. These examples, purely declarative, simply illustrate the general argument. They are not meant to weigh and evaluate the totality of legal academia in the Global North and South. They are only intended to demonstrate the weakness of the argument that homogenizes legal academia in the Global South at a low level and the academia of the Global North at a higher one.

[59]A portion of legal academia in Latin America, Africa, Asia and Eastern Europe, therefore, continues to believe that the work of an academic should be to define the content of the principles and rules that comprise the legal system, as well as how to resolve their inconsistencies. Hence, in many of these law schools the treatise is considered to be the product *par excellence* of law professors. In the best of cases, the basic units of the national legal systems of the Global South are judiciously systematized in this type of academic product. Nevertheless, in most cases these academic products are nothing more than glosses to the law. In these texts, the professor of law repeats the content of legal norms in different wording and makes comments that are more or less marginal to guiding professional practice or morally evaluating the contents of the law.

Similarly, the products of legal clinics in Latin America, Africa, Asia or Eastern Europe sometimes reproduce the type of legal formalism that is dominant in many of the countries of the Global South or clinics often apply low standards of quality to control academic practices.[60] For example, some of the law suits generated by the clinics that represent low-income individuals reproduce formats created years ago without updating them or evaluating their effectiveness.[61] At other times, the strategic litigation projects result in the reproduction of existing legal knowledge, of limited quality, and the justification of the arguments defended leaves much to be desired.[62] In yet others, reports on human rights violations present weaknesses in the research that sustains them or presents flaws in their structure, justification or theory.[63] Similarly, in the Global South, the levels of academic production by clinical faculty are low.[64] There are no consolidated journals providing systematic reflection on clinical work, and the number of articles published that describe, criticize, or set normative standards relating to clinical work is quite small.

However, the reality of clinics in the Global South is more complex. Some of them are doing solid research on each of their projects, generating publications of good quality and having a significant impact on the political communities in which they work. The legal clinics at the University of Buenos Aires in Argentina, the University of Natal in South Africa and the National University of India in Bangalore have a long standing

[60] *See supra* notes 54-60 and accompanying text.
[61] *See* Wilson, *Western Europe*, *supra* note 2, at 835 (noting that because "[i]n developing countries, clinical programs are often offered as an alternative to traditional government-funded legal aid, with students filling the gap of legal services for the poor that is not made up by the private bar," the level of effectiveness of legal services may often be lower).
[62] *Id.*
[63] *Id.*
[64] *See supra* notes 15-18 and accompanying text.

reputation with regard to the quality and impact of their projects.[65] Cases like that of "*las moneditas*" [the coins] in Argentina,[66] the Ramnagaram Project in India,[67] and the role played during the 90's by many South African University clinics on the protection of the right to access to justice[68] are some examples that illustrate the quality work that is being done in several of the clinics in the Global South.

Second, the five norms (general and specific) presented above obscure the fact that North/South clinical work is done with the objective of helping to improve the levels of social justice in the countries of the Global South and that the contributions of local

[65] *See, e.g.*, Mónica Pinto & Alejandro Gomez, *A Comment on Argentina's University of Buenos Aires Law School (Facultad de Derecho de la Universidad de Buenos Aires)*, 19 PENN ST. L. REV. 105, 109 (2010) ("We offer almost 150 different forms of legal assistance, with general and specialized approaches, in association with other institutions. Last year, 12,300 people sought advice from Legal Services; 46% of them solved their legal problems without any litigation, and the other 64% were transferred to a clinic or litigation course where a law student and a law professor sponsored their claims in justice.").

[66] *See Caso Moneditas*, PALERMO.EDU, http://www.palermo.edu/derecho/clinicas_juridicas/caso_moneditas.html (last visited Mar. 11, 2012) (describing the *Moneditas* case brought by the clinic at the University of Palermo). For examples of other clinical work done by the Palermo Clinic in Latin America, see *Acceso a la Información*, Palermo.edu, http://www.palermo.edu/cele/acceso-a-la-informacion/index.html (last visited Mar. 11, 2012) for a discussion of the clinic's work on Access to information. Other examples of clinical work in Latin America include the case of the legal recognition of same-sex couples brought by the Public Interest Law Group at University of the Andes, Colombia Diversa. *See* Mauricio Albarracín Caballero, *Social Movements and the Constitutional Court: Legal Recognition of the Rights of Same-Sex Couples in Colombia*, SUR JOURNAL, http://www.surjournal.org/eng/conteudos/getArtigo14.php?artigo=14,artigo_01.htm (last visited Mar. 11, 2012); *see also Discriminación por orientación sexual: Caso Atala*, CENTRO DERECHOS HUMANOS, http://www.derechoshumanos.udp.cl/discriminacion-por-opcion-sexual-caso-atala/ (last visited Mar. 11, 2012) (describing the Atala case brought by the public interest law clinic at Diego Portales University); Derechos Humanos de las Mujeres, *available at* http://www.derechoshumanos.udp.cl/wp-content/uploads/2009/07/derechos_muj.pdf (last visited Mar. 11, 2012) (describing the morning-after pill case that the public interest law clinic at Diego Portales University participated in); *Observatorio de Discriminacion Racial (ODR)*, JUSTICIA GLOBAL, http://www.justiciaglobal.info/index.php?option=com_content&task=view&Itemid=3&id=49 (last visited Mar. 11, 2012) (describing the work of the Observatory on Racial Discrimination organized by the Global Justice clinic at the University of the Andes in conjunction with other organizations Colombia).

[67] *See* Kenneth S. Gallant, *Learning from Communities: Lessons from India on Clinical Method and Liberal Education, in* EDUCATING FOR JUSTICE AROUND THE WORLD: LEGAL EDUCATION, LEGAL PRACTICE AND THE COMMUNITY (Louise G. Trubek & Jeremy Cooper eds., 1999).

[68] Willem De Klerk, *University Law Clinics in South Africa*, 122 S. AFRICAN L.J. 929, 940 (2005) (describing how by the early 1990s, law clinics seen as "vehicles for the provision of access to justice").

clinics are central in achieving this goal.[69] These contributions are of two types. On the one hand, the clinics in the South have a resource that is vital to the success of these projects: knowledge of the object of study and action.[70] The clinics of the South play the local role in these endeavors. They are familiar with the different variables of the problem to be attacked, as well as its origins and the political, social or economic obstacles that should be addressed in order to overcome such a problem. Members of the clinics from the North are not familiar or are only vaguely familiar with the contexts that affect the social justice issues they seek to resolve. Nor do they have a detailed understanding of the problem and its parameters. On the other hand, clinical projects of South/North cooperation inevitably rely on knowledge produced by local academics or activists.[71] The interpretations they make in their articles, books and reports are the sources for the understanding, evaluation and construction of the work done by the project participants.

Finally, these five norms overshadow the fact that the effects of joint clinical work are experienced directly by the people in the region where it is performed: the citizens benefiting from the program as well as the local students, professors and activists that assist in its development. Certainly, the effects of North/South projects are felt by

[69] *See* Carasik, *supra* note 20, at 25 ("Law school clinics are ideally situated to serve at the vanguard of this social justice mission."); Peggy Maisel, *The Role of U.S. Law Faculty in Developing Countries: Striving for Effective Cross-Cultural Collaboration*, 14 CLINICAL L. REV. 465, 504 (2008) ("And, as is true in other spheres, while practitioners and academics from the developed world such as the U.S. are often in the role of imparting rather than receiving expertise, such exchanges will not be successful unless a mutuality of respect and understanding is achieved.").

[70] *See* Maisel, *supra* note 70, at 497 ("[I]n order to fully reach the goals for a particular collaboration and obtain the positive reforms desired, U.S. consultants have to be willing to adapt the curriculum, teaching methodologies, and materials they normally use to fit the local context. It is clear that it is virtually impossible to successfully do this without working closely with colleagues from the host institution.").

[71] *See* Johanna Bond, *Public Interest Law: Improving Access to Justice: The Global Classroom: International Human Rights Fact-Finding as Clinical Method*, 28 WM. MITCHELL L. REV. 317, 337 (2001) ("The collaboration . . . was critical to the success of the project - not only in ensuring the completion of the reports, but also in ensuring that they would be useful to local activists long after the clinic students had returned home.").

members of the clinics in the North. The success or failure of a project may have, for example, notable professional effects for the professors and students involved. Nevertheless, the people living in the country of the Global South where the project is carried out experience the direct political, social or economic impact.

II. The Clinical Setting and the (Im)balance of Objectives

To illustrate these arguments and those I will present in the second part of the article, I describe three examples of the types of clinical projects commonly advanced by the Global North and South. These examples are intended to collect the central characteristics of these types of projects. Therefore, they are models that have a high degree of generality and do not have the capacity to demonstrate all the ways in which such programs materialize.

A. Three Types of Clinical Projects

1. Fact-finding Missions

The first are the so-called fact-finding missions.[72] Usually, this type of project works in the following way: a group composed of about five students and one professor from a clinic of the Global North establishes the general objective of drafting a human rights report on, for example, the violation of the rights of indigenous communities in a country of the South. The project is chosen as a result of the professors' interest in the issue of indigenous communities in the country where the project will be carried out, the local contacts the professors already have (and that ensure the success of the project), or the request of an organization or person working with the communities around which the mission revolves. The specific objective of the report will be to enrich and add depth to the information available to an institution (an international organization or national

[72] For examples of such missions, see *id.* at 320-24.

government, for example) that has the obligation to protect the rights of indigenous peoples. This institution will evaluate the situation of the rights of indigenous peoples in the country of the Global South where the project will be carried out. The report will draw the attention of this institution to the violation of the human rights of indigenous communities in the country visited.

The students and professors stay in the country of the South for a week and interview members of social organizations, government officials, activists and academics working on issues related to the rights of indigenous communities. Before, during, and after the visit, the group of professors and students from the clinic of the North reads and analyzes the local academic production on the subject of the report. The members of the local clinic offer support with logistics and infrastructure, and develop rich academic exchanges with members of the mission.[73] After returning home, members of the clinic in the North draft a document in English summarizing the research, send it to the institution initially identified as the target, and publish and distribute it among individuals and organizations interested in the subject.[74] Finally, the clinic in the North pursues specific and short-term advocacy tasks to ensure that the document is read and has implications for the indigenous communities in the country where the project is carried out.[75]

[73] Members of both clinics organize debates, conferences and informal conversations, for example. *See id.* at 326 (describing the work of the Clinic once in Poland as a close collaboration with representatives of Minnesota Advocates and the Polish NGOs to arrange interviews with the relevant parties).

[74] *See, e.g., id.* at 326 (stating that the ultimate goal of the semester long human rights fact finding mission was "to produce one human rights report documenting domestic violence, and another documenting employment discrimination and sexual harassment").

[75] It is not common to pursue systematic lobbying or long-term efforts aimed at the international organization. It is common for clinics in the North to just send the text to the international organization and conduct short-term lobbying to ensure that it is read. *See, e.g., id.* at 327 ("The Clinic also organized a public education event at Georgetown designed to raise awareness within the law school and local communities about women's human rights in Poland.").

Fact-finding missions, in the abstract, are worthwhile projects. They allow students, particularly those from the clinics of the Global North, to develop or strengthen the skills needed to become competent professionals[76] and to be enriched through exchanges with the cultures they visit.[77] Similarly, they increase the likelihood that an issue affecting the interests or rights of a vulnerable group in the Global South will acquire visibility and be examined by national or international authorities.[78] Finally, they contribute to linking clinical practitioners from the South to formal and informal clinical academic networks in the Global North.[79] Belonging to these networks results in a certain degree of professional recognition and opens the possibility for advancing new programs of North/South cooperation.[80]

However, these projects also have serious structural issues. First, the idea that you can understand and evaluate a complex social, political, cultural or economic situation after a few days of fieldwork is questionable. Usually the reports of fact-finding missions include not only descriptive sections but also critical and normative ones. I wonder what the reaction of Canadian law schools would be if a group of law professors and students from Argentina or South Africa published a report on the situation of indigenous people in Canada that was the result of a one- or two-week visit to the

[76] This includes, for example, the skills of interviewing clients and drafting legal documents. *See id.* at 327 ("Fact-finding as a clinical teaching method accomplishes many of the pedagogical goals normally associated with clinics, including coverage of social justice education, systemic legal problems, empathic lawyering, issues of difference and privilege, sound legal judgment, collaboration, and inter-disciplinary approaches to legal problems.").
[77] *See* Bond, *supra* note 72, at 327 ("It can be a transformative experience for students to work with their clients to navigate through a legal system that differs greatly from their own . . . .").
[78] *See supra* note 75 and accompanying text.
[79] *See supra* note 73 and accompanying text; *see also* Bond, *supra* note 72, at 344 ("Such collaboration might lead to a permanent partnership between NGOs and the law school . . . .").
[80] *See* Maisel, *supra* note 70 at ("[C]ollaborating . . . helps to build an important connection between practitioners from both countries that is likely to enhance everyone's future work. Just as importantly, such collaboration helps to secure the sustainability of the reforms by providing needed professional development that builds the capacity of local academics to use the new curriculum, materials or teaching methodology when the consultant is no longer there.").

country. Most Canadian professors and students would likely ignore the text or criticize it harshly. As you can see, these types of clinical projects are sustained by a questionable attitude rooted in the beliefs that the legal academia of the Global North is so solid that it can produce knowledge after a tangential direct contact with the reality being studied and that a week or two is enough time within which to determine what the problems are, how to evaluate them and how to fix them.

Second, the relationship that such projects establish with the local academic knowledge is problematic. Although the reports resulting from fact-finding missions are based largely on the information generated by professors and activists from the country visited, they are rarely presented as a synthesis of this knowledge or as heavily dependent on it. Rather, these documents are usually presented as a description of a set of facts that is articulated after direct contact with the reality of the country under study. The very name of the project indicates this: "*fact-finding mission*." Something very similar happens with the critical and normative sections that these reports typically include. Although these texts are also usually dependent on local knowledge, they are offered as a standalone product. Obviously, I do not wish to say that these reports do not explicitly refer to the local academic products on which they are based. They usually have numerous footnotes. I want to say only that the typical forms that give structure to these types of projects tend to marginalize the local academic products that support them. The report is delivered by its authors, and generally received by the international organization or government institution, as an original product that describes and evaluates the reality of the country visited. However, given one or two weeks of fieldwork, it is obvious that this will be mainly a synthesis of preexisting local knowledge.

In addition, this document becomes a standard text for understanding the reality of the country of the Global South. Paradoxically, the success of the reports helps to reinforce the negative effects on local legal knowledge. The document is positioned as an unavoidable reference for understanding the problem being examined, simply because it was written in English by a group of professors and students from the Global North. Consequently, the norm of the Production Well comes into operation.[81] The context that actually creates legal knowledge is that of the Global North. The academic products of the Global South are, at best, input for the creation of sound and judicious legal knowledge. Nonetheless, I am not arguing that this problem typically results from a conscious decision by the clinical professors of the North. I am not arguing either that clinical professors of the North are trying to achieve valuable aims. It is clear to me that clinical professors of the North are strongly committed to social justice and experiential education. They are honestly trying to contribute to the transformation of social reality in the Global South. Rather, it is generally the effect of the implicit structural dynamics that dominate the relationship between the clinics of the Global South and North, which are, in turn, determined by the relations of power and legal knowledge between the two regions.[82] However, the clinical professors of the North do not do much to counteract these dynamics and their negative effects. It is possible to imagine joint clinical projects that have positive outcomes for the cause but make more efficient use of available financial resources and recognize the value of local knowledge. Consider, for example, the design and implementation of joint advocacy strategies that use as their source academic products already produced by clinics or activists from the South, aimed at the

[81] *See supra* notes 30-40 and accompanying text.
[82] *See supra* Part I.A.

international organizations responsible for monitoring the topics examined in these documents.[83] Clinical professors of the South do not do much to counteract these dynamics either. Clinical professors in the South act passively towards these dynamics because they have internalized the five general and specific norms presented above and, thus, find them acceptable; do not want to put in peril the international academic networks to which they belong and give them prestige; or because they do not have the tools to criticize these dynamics actively given the low quality of the academic context to which they belong.

The example of fact-finding missions also provides evidence of the way the norms of Protected Designation of Origin and Effective Operator function. First, the report produced by the clinic in the North becomes the necessary reference for understanding the reality of the country of the Global South under study. The fact that it was written in English and that its authors come from the Global North, particularly the United States, guarantees its positive reception, *a priori*.[84] Politicians, activists, academics and officials from international organizations in both the North and the South tend to rate these products positively.[85] In contrast, the typical reaction to a similar report produced exclusively by a clinic in the South is one of distrust; its quality is in doubt.[86] Similarly, the academic products from the South on which these reports are usually based are literally and figuratively relegated to the footnotes on the page. Paradoxically, citing these products in a report by a Global North clinic simultaneously legitimizes and

[83] This is just an example in order to illustrate the argument. I do not mean to argue that this is the best or only way to solve the problem. My point is that it is possible and reasonable to be more creative in developing more equal ways to work together that make effective use of the scarce resources available.
[84] *See supra* note 41 and accompanying text.
[85] *Id.*
[86] *Id.*

reinforces their marginalization. It is no longer necessary to read them; their contributions can be understood through the arguments reproduced in the documents generated by the clinic in the North.

Second, those who make effective use of the product of the clinical work, the factual report, are academics or activists in the North. It is argued that they have the contacts and familiarity with the international organization in order to do so.[87] They are familiar with and can properly apply the ethical rules that control this type of work. Without their intervention, the document would probably be used ineffectively or even improperly by the clinics in the South who are the partners in the project. In the case of reports that are the result of fact-finding missions, for example, this ineffective use of the legal products means that the international body does not read them -- or if it does, it does not make the decisions that the clinics believe it should.[88]

2. Consultancies

The second example that illustrates the way the five norms listed above function is that of consultancies to create or strengthen legal clinics in the Global South. In these types of projects, a professor at a university in the North is hired as a consultant to a group of universities in a country in the Global South. The project is financed by a

[87] *See supra* notes 42-46 and accompanying text.

[88] One could argue that legal clinics have certain features that explain the problems of projects such as the *fact-finding missions*. Thus, it can be said that various issues limit what can be done with each project such as the duration of clinical courses being a semester, the continuous rotation of students, the need to change the themes addressed in order to attract new students and be more attractive to external funders, and the scarcity of financial resources. *See* Bond, *supra* note 72, at 340-343. However, these non-structural limits seem relatively easy to address, by having students make a commitment to the clinic of at least a year, by taking on projects that will last for a year at least, by reducing the number of projects worked on, and thinking creatively about ways to make efficient use of the scarce resources available, for example.

government institution in the country of origin of the professor[89] or by a prestigious and financially powerful private foundation that has a presence in the region where the project will be carried out. The consultancy has previously been arranged with the dean of the school and the rector of the university. They have in turn informed all the professors at the school about the consultancy and have sought their support for its development. Consequently, one or two professors are interested in the project. The contract requires that the consultant spend three weeks in the host country. During this period, the professor gives a series of lectures on the theoretical and practical challenges involved in creating or developing a legal clinic, as well as the strategies to overcome such obstacles. Similarly, during these weeks, the professor meets with interested professors to elaborate on and discuss the various dimensions of clinical work, formally and informally. Both the conferences and the conversations are based on the experience the professor has had in his or her clinical work and on the literature produced on the subject in his academic community. Prior to the trip, the consultant reads texts provided by the entity financing the endeavor, in order to understand the legal system of the country he or she will soon visit. The professor is not familiar with the country where the consultancy will be developed or has visited only briefly. After the visit, and for a short period of time, the professor maintains contact with the colleagues interested in creating or consolidating legal clinics.

Such projects, in the abstract, have great value. They allow for the exchange of information and experiences needed to create or develop legal clinics or to enhance the projects that have already taken root in the Global South. Clinical professors in the North

[89] In these cases, the consultancy responds to a policy of the consultant's country of origin. The consultancy is therefore a strategy to protect its interests and to realize its political agenda with respect to the country on the receiving end of the project.

have a set of assets that law schools of the South, in principle, have an interest in receiving. These consultancies can therefore be interpreted as a form through which the principle of solidarity is materialized. Similarly, the work proves helpful for the consultant. He or she is enriched by the visit and academic exchange with foreign counterparts and the attractiveness of his or her resume is enhanced.

In practice, however, the structural dynamics of many of these consulting projects are problematic in that they are characterized by their vertical nature. The professors consulting and the institutions financing make the central decisions about the features of the projects and the routes they should follow.[90] Certainly, professors in the South are sometimes invited to present their views. Yet, they are not always incorporated into the project and if they are incorporated at all, only in the margins. After all, the argument goes, the professors from the South do not have the knowledge or experience needed to weigh in on the matter of clinical education.[91] The objective of the consultancy, it is said, is precisely to fill this gap. The vertical dynamics that drive these projects, similarly, give form to two specific norms mentioned above: the Production Well and the Protected Geographical Indication.

The norm of the Production Well takes the following form in these projects: relevant and valuable clinical knowledge is created by the clinics in the North. This knowledge should be transplanted to the law schools in the South because it does not

[90] The Ford and Soros Foundations and the American Bar Association, as well as USAID, have funded a significant number of projects for the exportation of clinical legal knowledge. *See Clinical Legal Education: Forming the Next Generation of Lawyers*, *in* PURSUING THE PUBLIC INTEREST: A HANDBOOK FOR LEGAL PROFESSIONALS AND ACTIVISTS 257 (Edwin Rekosh et al. eds., 2001); Aubrey McCutcheon, *University Legal Aid Clinics: A Growing International Presence with Manifold Benefits*, *in* MANY ROADS TO JUSTICE: THE LAW RELATED WORK OF FORD FOUNDATION GRANTEES AROUND THE WORLD 267 (Mary McClymont & Stephen Golub eds., 2000); *Rule of Law*, USAID, http://www.usaid.gov/our_work/democracy_and_governance/technical_areas/rule_of_law/ (last visited Mar. 11, 2012).

[91] *See supra* notes 42-46 and accompanying text.

exist in the South or is of insufficient quality to be discussed and replicated. Thus, consultants simply ignore the clinical experiences that already exist in the country or region where the consultancy will be carried out. For example, if the consultancy were to be carried out in Cordoba, Argentina, it would seem useful to include the experiences that a few universities in Buenos Aires have had with clinical programs. Similarly, it would seem relevant to include in the consultancy the experiences of universities in Chile, Peru and Colombia with respect to clinical legal education. The similarities in legal cultures and legal education in the region would allow for the understanding that many of the processes experienced by South American colleagues are relevant to clarifying the challenges and opportunities presented when creating or consolidating legal clinics.

I do not wish to imply that legal knowledge created in the North can never be exported. Cultural differences are not always an impediment to importing/exporting institutions, rules and legal practices.[92] When done properly, moreover, these processes recognize the differences between legal systems and cultures involved, as well as the importance of adaptation and reinterpretation of the institutions or norms imported.[93] What I do mean to say is that these consulting projects ignore local or regional legal knowledge. These projects rarely include a professor from the country or the region where they will be implemented. Very rarely do they include materials written by local professors. Some countries in the South have already had long and successful experiences in clinical education. Typically, however, these consulting projects are structured so that professors from the South are merely passive recipients of legal knowledge.

[92] ALAN WATSON, SOCIETY AND LEGAL CHANGE (2d ed., 2001).
[93] Alan Watson, *Legal Transplants and European Private Law*, 4.4 ELECTRONIC J. COMP. L. (2000), *available at* http://www.ejcl.org/ejcl/44/44-2.html.

Similarly, the norm of the Production Well, hand in hand with the norm of Protected Geographical Origin, ensures that contextual differences are not taken into account in designing consulting projects. The consultant gives the same lectures on clinical legal education whether it is given in South Africa, India and Colombia. He or she assumes that the "base" knowledge is the same everywhere in the world. However, these norms lose sight of contextual variables that are important in thinking about the features that clinical projects should have in a country of the South, such as the particular obstacles they face or the resources that would facilitate their implementation. It would seem relevant, for example, that the consultancy take into account the nature of legal education in the country, the typical profile of a professor of law, the resources available to finance the high costs of clinical education, the needs of vulnerable populations, and the successful or unsuccessful experiences clinics have had in the past. The readings that funders provide to the consultant are not sufficient to convey the knowledge needed to put his or her professional experience into dialogue with the legal context of the country visited. The regular duties of the professor also make it difficult for things to be otherwise. The demands on their time and energy are too high to devote several weeks to reading about the legal culture of a country to be visited for three weeks.

Likewise, the law schools or the professors responsible for consultancies often seem irrelevant. It appears that the only thing relevant for the private or public entities that fund the projects -- as well as the law schools in the South that receive them -- is that the professors are affiliated with universities in the North. Of course, this has nothing to do with the intentions of consultants. No doubt most, if not all, are truly interested in contributing to achieve the valuable aims that academic consultancies usually try to

achieve. The norm of the Protected Geographical Indication thus makes another appearance. The professor's academic output, the quality of his or her teaching, the impact he or she has had on the community or the academic level of the school to which she belongs do not matter. The only thing that is relevant is the professor's origin and that she has an interest in participating in the project.[94] The heterogeneity of legal academia in the North is obscured yet again.[95] Receiving a series of lectures by a professor with several years' experience, who has produced important articles on clinical issues, and is part of a clinical program widely recognized by his peers, is not the same thing as working with a professor just starting his academic career that belongs to a school with moderate experience in clinical work.

Without a doubt, there are clinical professors in the North that recognize these problems and try to address them. The literature evaluating exchanges between clinical faculty of the North and South is growing and the creation of normative horizons to guide them in a more horizontal way is beginning to flourish.[96] However, these articles

[94] *See supra* note 40 and accompanying text.
[95] *See supra* notes 47-50 and accompanying text.
[96] *See, e.g.*, Jane E. Schukoske, *Meaningful Exchange: Collaboration Among Clinicians and Law Teachers in India and the United States, in* EDUCATING FOR JUSTICE AROUND THE WORLD: LEGAL EDUCATION, LEGAL PRACTICE AND THE COMMUNITY (Louise G. Trubek & Jeremy Cooper eds., 1999); Frank S. Bloch & Iqbal S. Ishar, *Legal Aid, Public Service and Clinical Legal Education: Future Directions from India and the United States*, 12 MICH. J. INT'L L. 92 (1990); John M. Burman, *The Role of Clinical Legal Education in Development the Rule of Law in Russia*, 2 WYO. L. REV. 89 (2002); Stuart R. Cohn, *Teaching in a Developing Country: Mistakes Made and Lessons Learned in Uganda*, 48 J. LEGAL EDUC. 101 (1998); Michael W. Dowdle, *Preserving Indigenous Paradigms in an Age of Globalization: Pragmatic Strategies for the Development of Clinical Aid in China*, 24 FORDHAM INT'L L.J. S56 (2000); Lawrence M. Grosberg, *Clinical Education in Russian: "Da" and "Nyet"*, 7 CLINICAL L. REV. 469 (2001); Haider Ala Hamoudi, *Toward a Rule of Law Society in Iraq: Introducing Clinical Legal Education Into Iraqi Law Schools*, 23 BERKELEY J. INT'L L. 112 (2005); Grady Jessup, *Symbiotic Relations: Clinical Methodology - Fostering New Paradigms in African Legal Education*, 8 CLINICAL L. REV. 377 (2002); Benjamin L. Liebman, *Legal Aid and Public Interest Law in China*, 34 TEX. INT'L L.J. 211 (1999); Pamela N. Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law and Mission of Social Justice*, 8 YALE HUM. RTS. & DEV. L.J. 117 (2005); Edwin Rekosh, *Constructing Public Interest Law: Transnational Collaboration and Exchange in Central and Eastern Europe*, 13 UCLA J. INT'L L. & FOREIGN AFF. 55 (2008); Lee Dexter Schnasi, *Globalizing: Clinical Legal Education: Successful Under-Developed Country Experiences*, 6 T.M. COOLEY J. PRAC. & CLINICAL L. 129 (2003); Matthew C. Stephenson, *Trojan Horse Behind Chinese*

generally support the idea that most of these projects do have a vertical character.[97] Several demonstrate the similarities between the programs that import institutions, rules and clinical legal practices that have been developed in the last decade and those advanced by professors committed to the law and development movement of the 60s and 70s.[98] On one hand, the exporters of legal knowledge generally demonstrate ethnocentric attitudes, are unfamiliar with the contexts in which legal knowledge is exported, and give priority to the agendas of the entities financing the projects.[99] On the other hand, many new exporters of legal knowledge recognize the mistakes of the past, are committed to creating long-term horizontal relationships with colleagues in the countries receiving knowledge, and recognize the importance of familiarity with the details of the legal community visited.[100] In this way, some of the projects discussed in these articles successfully move away from traditional practices of exporting legal knowledge. However, many of these projects remain tainted by such practices. In fact, most of the

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Walls: Problems and Prospects of U.S. Sponsored 'Rule of Law' Reform Projects in the People's Republic of China, 18 UCLA PAC. BASIN L.J. 64 (2000); Wilson, *Clinics in Chile*, *supra* note 18.

[97] *See, e.g.*, Rodney J. Uphoff, *Why In-House Live Clients Clinics Won't Work in Romania: Confessions of a Clinician Educator*, 6 CLINICAL L. REV. 315, 315-16 (1999) (noting how many legal educators in Romania are "being pressured and cajoled by some American consultants and outside funding entities to add in-house live client clinics to their curriculum" but how this path is not currently feasible within the Romanian education system right now); *see also* Kandis Scott, *Commentary: Additional Thoughts on Romanian Clinical Education: A Comment on Uphoff's "Confessions of a Clinician Educator"*, 6 CLINICAL L. REV. 531 (2000).

[98] *See* Maisel, *supra* note 70, at 467 ("The recent wave of teaching and consulting echoes back between forty to fifty years when a large number of law professors and lawyers from the United States traveled to what were then called 'third world' countries with the goal of helping them development their economies mainly by 'reforming' their legal institutions and legal education."); Leah Wortham, *Aiding Clinical Education Abroad: What Can Be Gained and the Learning Curve on How to Do So Effectively*, 12 CLINICAL L. REV. 615, 616-17 (2006) (noting the goals of the Law and Development Movement (LDM) of the 1950s and 60s and how the discourse about current clinical education abroad centers around the failings and accomplishments of the LDM).

[99] For the strongest criticism of the law and development movement of the 60s and 70s see JAMES GARDNER, LEGAL IMPERIALISM: AMERICAN LAWYERS AND FOREIGN AID IN LATIN AMERICA (1980); and David Trubek & Marc Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, 1974 WIS. L. REV. 1062, 1063-64 (1974).

[100] David Trubek & Alvaro Santos, *Introduction: The Third Movement in Law and Development Theory and the Emergence of a New Critical Practice, in* THE NEW LAW AND ECONOMIC DEVELOPMENT (David Trubek & Alvaro Santos eds., 2006).

texts that reflect on this subject have the central aim of offering normative criteria for creating programs for the exchange of clinical knowledge that are horizontal and beneficial for all parties involved.

3. Conferences

The third example that illustrates the five norms mentioned above is the organization of conferences on topics of interest to clinics in the Global North and South. One of the forms this type of project takes is as follows: a clinic in the North and one in the South have been doing separate work on a particular topic, for example, the legal defense of economic and social rights in the country where the latter is located. The clinic in the North proposes the organization of a conference on the subject to the clinic in the South. The event will be held at the university to which the clinic in the South belongs. Similarly, the clinic in the South is committed to contributing to the infrastructure and logistical issues necessary for the proper development of the seminar. The clinic in the North is committed to covering costs associated with the transportation and accommodation of the panelists invited. The clinic in the North submits a draft agenda that includes the objectives of the conference as well as the potential invitees. The clinic in the South submits its comments and proposes substantial changes in the objectives for the event as well as the invitees. As a result of the counterproposal, the organizers of the event have a series of conversations. The final agenda includes one of the objectives proposed by the clinic in the South and one or two of the panelists it had suggested.[101]

[101] The three examples that I have presented serve to illustrate the problem. However, there are many other legal products created that follow the same guidelines, such as legal actions and *amicus curiae*.

This example illustrates the other general and specific norms that guide the vertical relationships that develop between clinics in the Global North and South. In particular, these projects give rise to the "imbalance of economic resources" norm and the norm of the Effective Operator. The financial contributions from the clinic in the North, essential for the event, determine the vertical nature of the relationship.[102] Without them its organization would be impossible. Therefore, whoever controls these resources is presented as the one who should make the key decisions for the event.[103] This idea is reinforced by the premise that the clinic in the North knows which panelists are worth inviting and has the contacts that would facilitate their acceptance of the invitation.[104] Similarly, the clinic in the North has the knowledge needed to determine the structure of the conference and the panelists. Its professors and students can put this information into effective operation to ensure the event's success. Ultimately, the clinic in the South acts as a sort of event management agency tasked with ordering food, reserving space, and ensuring that guests feel as comfortable as possible.[105]

It is necessary to repeat that these norms are not usually made explicit.[106] Nevertheless, these assumptions are present in the organization and development of the event. They are not generally imposed by the clinics of the North in and of themselves. The clinics in the South accept them peacefully after a quick and questionable cost-benefit analysis.[107] The possibility of not holding the conference or adversely affecting

[102] *See supra* note 14 and accompanying text.
[103] *See supra* notes 19-24 and accompanying text.
[104] *See supra* notes 45-46 and accompanying text.
[105] *See, e.g., supra* note 74 and accompanying text.
[106] The clinic in the North does not usually say anything to the effect of, "Since I'm paying and know who is worth inviting, I decide."
[107] *See supra* notes 25-28 and accompanying text.

their relations with legal academia in the North leads them to accepting the rules implicit in these academic interactions.

B. The (Im)balance Between Social Justice, Professional Development and Educational Objectives

The three examples presented above vary in their importance and relative value with respect to the aims pursued by the legal clinics. The impact of organizing a conference is not the same as that of presenting a human rights report following a fact-finding mission or a consultancy on strategies to create or consolidate legal clinics. Nevertheless, the three relate directly or indirectly to the two general purposes that clinics pursue: using law as an instrument of social justice[108] and helping students develop or reinforce legal skills.[109] Alongside these two institutional purposes appears another that should be secondary: clinical professors want their work to be recognized in order to advance their career or maintain their reputation, rightfully so. In all clinical projects these three goals are intertwined. In each of these programs, professors try to achieve an appropriate balance. This effort, which is made in the legal clinics on a daily basis, is of great importance. Weighing these purposes inappropriately can lead one or another to appear truncated.

[108] Richard J. Wilson, *Training for Justice: The Global Reach of Clinical Legal Education*, 22 Penn. St. Int'l
L. Rev. 421 (2004); EDUCATING FOR JUSTICE AROUND THE WORLD: LEGAL EDUCATION, LEGAL PRACTICE AND THE COMMUNITY (Louise G. Trubek & Jeremy Cooper eds., 1999).
[109] Towards a Comprehensive Approach to Clinical Education: A Response to the New Reality. Terence J Anderson, Robert S Catz Wash. ULQ 59, 727, 1981; Training Advocates for the Future: The Clinic as the Capstone. Jerry P Black, Richard S Wirtz Tenn. L. Rev. 64, 1011, 1996; Robert Condlin, *Learning from Colleagues: A Case Study in the Relationship Between "Academic" and "Ecological" Clinical Legal Education*, 3 Clin. L. Rev. 337 (1997).

The three examples analyzed above, then, demonstrate a second group of reasons for the vertical relationships that exist between clinics in the Global North and South.[110] They also show how an inadequate balance of the three purposes they serve leads clinics in the North to instrumentalize clinics in the South or the populations they serve. This form of subordination is directly related to the way social justice objectives are overshadowed by the educational purposes and professional success that the clinics pursue.[111] Ideally, every clinical project would be designed in a way that the first two objectives could be realized.[112] The third, professional recognition, should be a consequence of the successful completion of the other two. Nevertheless, in the models discussed above, clinicians unduly subordinate the social justice objectives to the educational objectives or the professional success sought by the clinics.[113]

The type of project where this imbalance is most evident is the fact-finding mission. In these projects, the vulnerable population supposedly served and the partnering local clinics are often quickly relegated to the margins. In reality, the work becomes a means of ensuring that the members of the clinic in the North are enriched by the cultural experience and that its students develop the legal skills required to become

[110] Note that they do not only make explicit the ways in which many of the clinical projects reproduce and embody problematic arguments about the relations between the center and the periphery of legal academia. *See supra* note 109 and accompanying text.

[111] *See* Bond, *supra* note 72, at 342 ("There may be some tension between the pedagogical goals of the faculty and the advocacy goals of the NGO. Representatives of the NGOs, for example, may be primarily concerned with simply getting the work done. Their faculty counterparts may be primarily concerned with getting the job done in a way that maximizes learning for the students.").

[112] *See* Wortham, *supra* note 100, at 657 ("A competent clinic must provide professional skills training. The clinic must be sure that students have the skills they need to provide client service. But professional skills training should not be regarded as the definition of clinical education or the sole or first-stated objective. Professional skills training should be combined with consideration of the ends for which those skills are being used . . . .").

[113] *See* Wilson, *supra* note 2, at 836 (stating that the main purpose of clinics is "the training of law students for the competent practice of law with a limited but closely scrutinized and reviewed caseload").

competent professionals.[114] Students of the clinic in the North generally return to their countries having accumulated personal and professional experiences that enhance their academic and cultural capital.[115] In addition to gaining familiarity with a different culture and developing their professional skills, the visit makes them more attractive candidates for future employers. Their international experience makes them more competitive in the labor market.

Similarly, these missions become an instrument for ensuring that members of the clinic in the North achieve greater professional visibility.[116] Professors are personally enriched and accumulate a series of achievements that enhance or maintain their reputation within the academic community. The publication of reports contributes to making them more visible. The reports end up serving as the basis for academic articles published in journals in the Global North and thus expanding their resumes. However, the impact these projects have in solving the problems they examine is usually low.[117] As I have indicated above, these reports are mainly a synthesis of existing local knowledge.[118] They do not include facts not already known in the country where the project is developed or by specialists working on the issue. Similarly, because it is rare to follow the issue or advocacy efforts carried out long-term,[119] the project soon passes into oblivion. The publication of the report and sometimes the performance of short-term

[114] *See supra* notes 77-79 and accompanying text.
[115] *See supra* note 77 and accompanying text.
[116] *See supra* note 81 and accompanying text.
[117] *See supra* Part II.A.1.
[118] *Id.*
[119] The fact that clinics work in cycles of four months (what an academic semester actually lasts) and clinical students rotate notably create serious obstacles for committing to long term projects. *See* Maisel, *supra* note 70, at 503 ("On the other hand, some short-term consultations by U.S. academics have been criticized by the host countries for reasons such as the lack of sustainability of the consultations, and the lack of understanding of the country situation by the consultant.").

advocacy work mark the completion of the project.[120] The document becomes another achievement that the clinic in the North can show its funders and colleagues. The institutional structures within which clinics usually work make it very difficult to do things differently.

The funds invested in these projects do not have much of an impact on matters of social justice.[121] Certainly, the existence of the report has the potential to expose the problem examined, to enrich the public debate about it or even to cause a government or international entity to address the issue. However, the money, time and energy used in articulating and carrying out the mission could have a greater impact on the population or subject addressed if used in a different way. In many countries of the Global South, the money spent on travel and accommodation for eight people coming from a country such as the United States could easily be used to hire a full-time staff person for a year to coordinate the work of clinics in the North and South in defense of the interests and rights of the vulnerable population that the mission intends to serve, for example.[122]

The examples of consultancies and seminars also illustrate how the objective of social justice is subordinated to the educational purposes or professional advancement pursued by the clinics. In the case of consultancies,[123] I understand the social justice objective more broadly. In these projects, there is no specific vulnerable population to be

[120] *See supra* note 76 and accompanying text.
[121] *See* Maisel, *supra* note 70, at 387-88 ("Underlying all of the obstacles to the growth and sustainability of clinical legal education in South Africa and elsewhere in developing countries is a lack of sufficient stable funding. The reality is that virtually all clinics rely to some degree on short-term grants. As a result, their staff must constantly engage in time-consuming fundraising, they suffer from rapid turnover as grants come and go, their case priorities are often set by the funders rather than community needs, and they have insufficient faculty to provide high quality education for their students.").
[122] Again, this is just one possible strategy for solving the problem. For many people this might be a questionable method of dealing with the issue in as much as it does not take into account the pedagogical aims that clinical projects try to achieve. The fundamental point I really want to make is that we can and must be more creative in finding ways to make efficient use of scarce resources.
[123] *See supra* Part II.A.2.

served directly. The consultant seeks to contribute to the creation or development of legal clinics so that they can serve vulnerable individuals or groups in turn. The consultancy can touch upon diverse topics such as experiential teaching methods, the infrastructure and human resources needed to develop clinical projects properly, the theoretical frameworks that justify and make sense of clinical teaching, and the various strategies that exist to meet the objectives pursued. All of these issues are undoubtedly relevant in using the law as an instrument of social change in the schools on the receiving end of the consulting project.

However, social justice objectives cannot be properly addressed when this type of project privileges the agenda of private or public funding entities; is carried out in a very short period of time and without any follow-up; reproduces ethnocentric attitudes that assume the superiority of the legal systems of the Global North; assumes that legal knowledge is *a priori* exportable everywhere in the world; is developed without a proper understanding of the legal communities and cultures visited; or does not agree with the stakeholders involved (the professors) but with the administrative directives from the university or school. When projects are carried out in this way, the consulting projects are doomed to fail.

I do not wish to suggest that clinical professors participate in these consultancies for the wrong reasons. To be sure, consultants genuinely want to contribute to the law in the countries they visit as a tool for achieving greater social justice. Nor do I wish to suggest that there is a kind of perverse "planning board" that meets regularly to develop consulting projects in ways that privilege objectives other than social justice. I do mean to say that the premises from which these consultancies depart, as well as the academic

programs and practices they generate, will not probably achieve the objectives they seek to achieve: contributing to the creation or consolidation of stable and effective legal clinics within the law schools they visit. This does not mean, however, that consultants do not have agency or that they therefore have no responsibility for how these projects are designed or developed. Indeed, they could opt not to participate in this type of consulting project, or to design and implement it differently.

Finally, the example of the conferences[124] serves to illustrate other aspects of the way social justice is subordinated to the other purposes pursued in clinical projects of North/South cooperation. This is useful for showing the questionable means for achieving the educational and professional development objectives pursued by clinics in the North: the instrumentalization of the clinics in the South. The seminars are not spaces designed to protect the interests of a vulnerable population directly, nor are these academic events generally spaces where legal knowledge is created. Rather, they are academic activities that seek to disseminate existing knowledge, visualize problems, and position the institutions and people that organize them. Ideally, however, those involved in such projects would be considered partners with equal rights and basic obligations. These events should not serve to allow one of the parties to convert the other parties into a tool for achieving greater visibility, or to allow students to strengthen their legal and administrative skills in the process of participating in the organization of the substantive issues of the conference or by serving as panelists.

It is obvious that the impact of this kind of clinical project is much smaller than that of the fact-finding missions or the consultancies. However, these projects are useful in demonstrating the different levels and forms through which the center-periphery

[124] *See supra* Part II.A.3.

dynamics of legal academia in the North and South are reproduced. Similarly, it is useful to make the imbalance of the objectives pursued by clinics in these projects explicit, as well as the questionable means used to turn them into reality.

III. Three Normative Criteria

North/South clinical projects are immensely valuable. There is no doubt that these exchanges should continue and, to the extent that is possible, become more frequent and tight-knit.[125] Their existence is justified for reasons of principle and strategy. The reasons of principle are directly related to the principle of solidarity. In these projects, two academic institutions get together to address a problem that affects the interests and rights of a vulnerable population. These two groups of students and professors put their knowledge at the service of a community that would otherwise not have access to quality legal services.[126] Likewise, the partners in this project make efficient use of the scarce resources at their disposal.[127] Each contributes money, time and energy to achieve a goal related to social justice. Using these resources separately would likely have less impact. However, these exchanges should be designed so as to not reproduce the vertical relationships between the legal center and periphery, and they should achieve an appropriate balance between the purposes they legitimately pursue.

[125] *See* Cummings & Trubek, *supra* note 14, at 43 ("Yet the delicacy of this cross-border engagement should not impede efforts by lawyers from the North and South to collaboratively advocate for social justice. Going forward, it is therefore crucial that lawyers across the North-South divide continue to frankly confront the history and current reality of U.S. power, while also attempting to move beyond distrust in order to open up the possibility for transformative alliances across borders.").
[126] *See* Wilson, *Training for Justice*, *supra* note 19, at 424 ("In developing and transitional countries throughout the world, the tension between service and education is much more acute, and law school clinics often operate as the exclusive source of legal services for poor and marginal communities.").
[127] *See* Sue Bryant, *Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession*, 17 VT. L. REV. 459, 460 (1993) ("Collaboration is a process that involves shared decision making by fellow collaborators; shared decision making allows for the development of ideas that then leads to emergent knowledge rather than to a simple summation of ideas. Collaboration is also a process that makes maximum use of the experiences and knowledge that each collaborator brings to the joint work.").

To achieve these objectives, the relationships between clinics in the Global North and South should be guided by the following three principles: mutual recognition;[128] consensus in establishing, interpreting and transforming the rules that guide the project;[129] and prioritizing the social justice objective over purposes of professional development and educational growth.[130] As will be seen, these principles are very simple. Likewise, they are relatively easy to describe and justify given that they fit well with the values to which those linked to clinical work in law schools are committed theoretically. Nevertheless, putting them into practice does not seem to be as easy. The vertical relationships between legal academia in the Global North and South are based on assumptions and implement dynamics that are already part of the structure of our political and legal imagination.[131] Questioning and transforming them is not a simple task. Similarly, there is a high risk of obscuring social justice objectives via efforts to privilege the legitimate personal or educational interests of clinic members.[132] Self-interest is a powerful force for motivating individual actions. Just because the task is arduous, however, does not mean that it is not worth undertaking.

The principle of mutual recognition indicates that the parties involved in a North/South clinical project must understand themselves to be equals. In this way, the project must be understood as a joint venture in which partners have equal rights and

[128] James Tully defends these principles as normative criteria to guide intercultural relations in a given country. These criteria are inferred from the relationship between indigenous nations and the English Crown during the conquest and colonization of what is now North America. *See* JAMES TULLY, STRANGE MULTIPLICITY: CONSTITUTIONALISM IN AN AGE OF DIVERSITY 70-82, 85-96 (1997).
[129] *Id.*
[130] *See* Carasik, *supra* note 20, at 33 ("The recent consolidation of clinical emphasis has been reflected in the development of a body of distinctly clinical scholarship, which encourages clinicians to revive the social justice mission of law schools through clinical programming.").
[131] *See supra* notes 14, 29 and accompanying text.
[132] *See supra* notes 118-19 and accompanying text.

basic obligations.[133] This does not mean that differences between clinics in the North and South should be ignored. The characteristics and contributions that each brings to the project are usually quite different: clinics vary in available financial resources, experience in legal matters, levels of familiarity with the problem and the context in which the project will be developed, possibilities for working directly with the community, and the capacity and ease in advancing logistical tasks. Nevertheless, each of these variables is important for the success of the project.[134] This principle does not imply that the weaknesses of clinics in the South should be ignored or that one cannot make a firm or constructive critique of the work the project partners are doing. This does not connote any form of paternalism. However, this principle does imply a ban on the forced or consensual subordination of one clinic over another.[135] As I have said before, many clinics in the South easily accept the vertical relationships that are common among many clinics of the Global North and South.[136] The principle has the central objective of promoting horizontal relationships between partners in North/South clinical programs.[137]

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[133] *See* Bloch, *supra* note 3, at 124 ("It is clear, therefore, that the clinical base of a global clinical movement cannot be limited to the understanding and experience of clinicians from any one country or region.").

[134] *See, e.g.*, Bond, *supra* note 72, at 337-38 ("One of the advantages of clinical fact-finding is that each of the partners - local NGOs, U.S.-based NGO, and clinic students and faculty - makes a substantial contribution to the common enterprise."); *see also id.* at 336 ("Each of the partners in this fact-finding exercise brought something unique to the table. The Polish NGOs offered expertise in the local legal system. Minnesota Advocates offered expertise in human rights fact-finding within Central and Eastern Europe. The clinic students brought enthusiasm, knowledge of international human rights obligations, interviewing skills and human resource power that enabled the team to conduct many more interviews than would have been otherwise possible. The faculty offered a combination of human rights fact-finding experience and teaching experience that contributed to the overall success of the mission and the students' educational development.").

[135] *See* Maisel, *supra* note 70, at 490 ("The experiences described above and the opinions expressed all indicate that the chances of successful international cross-cultural collaboration increase if U.S. scholars consulting overseas follow the lead of their hosts in establishing or modifying the goals and agenda for the project.").

[136] *See supra* notes 25-26 and accompanying text.

[137] *See, e.g.*, Karen Tokarz et al., *New Directions in Clinical Legal Education: Conversations on "Community Lawyering": The Newest (Oldest) Wave in Clinical Legal Education*, 28 WASH. U. J.L. & POL'Y 359, 374 (2008) (describing the relationship between clinical staff from the North and clinical staff

The principle of "consent" indicates that all the basic ground rules that will guide the project should be accepted voluntarily by the clinics involved. Similarly, it indicates that the interpretation or transformation of these rules must be the result of an agreement between the parties. This principle does not require that all decisions made in a North/South clinical project be made jointly. Many of these projects require decisions to be made immediately, without all involved parties being present. Sometimes it is also the case that each clinic is responsible for different dimensions of the project, and each therefore makes decisions independently. Nevertheless, the norm does imply that the general rules that guide these particular decisions should be articulated jointly. Similarly, it implies that the decisions about the structural characteristics and course of the project must be the result of a collective decision. Finally, it also requires that the ways structural norms are interpreted be agreed upon the parties. Of course, it is not always desirable or possible for all rules of the game and ways to interpret them to be agreed upon from the beginning. The dynamics of each project and its complexity should determine how to carry out the process of defining and enforcing the rules that govern it.

The principle of prioritizing the social justice objective indicates that in case of conflict, the educational or professional advancement aims that North/South clinical projects pursue should be subordinated.[138] The majority of these projects should be able to achieve these three objectives although the extent to which each one is realized should vary depending on the characteristics of the project.[139] However, the interests of the

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from the South as one in which "[t]he legal team brings skills to the table, but [ ]does not drive the process, which is highly political, sophisticated, structural, and community-led").

[138] *See supra* notes 114-17 and accompanying text.

[139] *See* Carasik, *supra* note 20, at 24 ("The tension between the important social justice considerations and the premium on practical skills and professionalism training is intensified by resource limitations that confront many law schools. Because no clinic can incorporate every worthy and compelling clinical goal,

individuals or groups defended by the program should take precedence over the interests of the students or professors involved. Legal clinics serve vulnerable populations that rely on them for the defense of their interests and basic rights.[140] The impact that a poorly developed clinical project can have in these communities is immense. Without a doubt, the interests of students should be taken into account. After all, the legal clinics are part of a law school and are intended to contribute to the training of competent professionals.[141] However, there are notable differences in the kinds of effects on the interests of each group, as well as their intensity. The interests of the weaker groups should take priority over those of the stronger ones. Those of us who are clinical professors from the South should again adopt a self-critical attitude. We must refuse to selfishly accept or promote the subordination of social justice objectives by means of a passive attitude, and we must help to challenge the arguments that supposedly justify this subordination, as well as its naturalization.[142]

In conclusion, the structural dynamics that govern many of the spaces of interaction between clinics in the Global North and South are vertical. These dynamics are frequently justified by the superiority of legal academia in the North and the greater quantity of resources they control. These arguments, which are problematic in that they are presented without nuance, generate three specific norms in turn that guide the relationships between clinics in North and South: Production Well, Protected Geographical Indication, and Effective Operator. These norms indicate that knowledge is

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each clinician must strive to identify and balance multiple objectives and values in a thoughtful, deliberate way.").

[140] *See supra* note 133 and accompanying text.

[141] *See supra* notes 115-17 and accompanying text.

[142] *See* Cummings & Trubek, *supra* note 14, at 43 ("[L]awyers from developing and transitional countries must continue to assert the autonomy and integrity of local decision making." (at 43).

created only in the legal academia of the North, that knowledge that comes from the North is valuable *per se* and that only professors from this region of the world can make effective use of the knowledge created. These ideas, however, homogenize legal academia in the North and South, ignore the contributions of clinics of the South to joint projects, and promote an imbalance of the objectives that legal clinics pursue. Creating horizontal relationships between clinics in the North and South is not a simple task. Nevertheless, it is an essential one. Clinical projects of North/South cooperation are of paramount importance. I hope that the three normative principles presented in this text can contribute to this collective effort.