

## **Developing Legal Clinics in Brazil: Remarks on the FGV DIREITO RIO's Experience**

By:  
Marcelo Lennertz  
FGV DIREITO RIO , Brazil

### **Abstract**

This short paper is intended to share FGV DIREITO RIO's recent experience on developing a Clinical Program in the Brazilian legal education scenario. It also presents the main challenges an institution committed to innovation in legal education has to face in order to establish a new model of teaching Law through legal practice in Brazil.

### **1. Introduction**

It has become a common place to say that Brazilian legal education faces a crisis. Actually, since the 1950s<sup>1</sup> Brazilian legal scholars have been pointing problems in the country's legal education model and talking about a crisis scenario. According to them, the education of Brazilian Law students was too much focused on abstract theories about the concept of law and dissociated from the country's reality.

Fundação Getulio Vargas Law School at Rio de Janeiro ("Escola de Direito do Rio de Janeiro da Fundação Getulio Vargas - FGV DIREITO RIO") was created in 2002 aiming to introduce a new model of legal education in Brazil. FGV DIREITO RIO's educational project proposes a teaching methodology based on pedagogical facts that engage the students in the subjects they are learning. The goal is to educate them to become autonomous individuals, capable of learning by themselves and engaging in reflexive and critical analyses of the major legal issues in Brazil.

An important step in achieving this goal is to offer the students the opportunity of working effectively in real cases. Learning through practical legal training gives them the chance to intervene in the reality and apply the theoretical tools they have learned in classes to solve actual problems in the legal field.

The Clinical Program, in this sense, was designed to play an important role in the implementation of FGV DIREITO RIO's educational project. The Clinics were intended to build the link between theory and practice, in order to enable FGV's Law students to deal with crucial problems in the Brazilian society.

### **2. Practical Legal Training in Brazil and FGV DIREITO RIO'S Clinical Program**

The Brazilian BAR Association ("Ordem dos Advogados do Brasil") requires that Law Students take at least 300 hours of practical legal training activities in the last two of the five years of Law School. Part of these practical hours may be met through simulated activities, but part of them must be devoted to actual legal practice. The way this "real practice" requirement has been traditionally met in almost all Law Schools in Brazil is through individual *pro bono* legal assistance, to low income "clients", in low complexity legal cases.

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<sup>1</sup> DANTAS, F.de C. de San Tiago. *A Educação Jurídica e a Crise Brasileira: Aula Inaugural dos Cursos da Faculdade Nacional de Direito, em 1955*. In: Revista Forense, n. 159, 1955.

Although this type of legal assistance is extremely relevant to society, it does not tackle the roots of most problems that constitute the object of its activities. In addition to that, the low level of complexity presented in these cases may frustrate the students' expectations of engaging in a thoughtful and exciting activity. In other words, although this model of practical legal training is important to help individually the low income clients, its impact is very limited to change the reality and attack effectively, from a structural perspective, the underlying social problems it aims to fight.

That is the reason why FGV DIREITO RIO decided to adopt a different model of practical legal training. FGV DIREITO RIO's Clinical Program was created to offer *pro bono* legal assistance in high complexity legal cases involving collective interests.

It is important to notice the shift on the "social justice" aspect of the clinical work promoted by FGV DIREITO RIO's project. Instead of focusing individually on low income clients, it made an option to work together with institutions devoted to the promotion of collective interests, such as NGO's, Private Associations, Public Prosecutors Office etc. The main activity developed by the clinics is assisting their partners-institutions to elaborate the legal structure of the position they defend in a given case.<sup>2</sup>

Despite its recent creation (2007), FGV DIREITO RIO's Clinical Program has already achieved significant results in important cases before the Brazilian Supreme Court ("Supremo Tribunal Federal – STF") and the Inter-American Court of Human Rights. Two experiences are worth mentioning. The first one is the Clinical Program's participation before the STF in the constitutional action that in 2009 declared the Press Act, enacted by the authoritarian regime in 1967, unconstitutional. The clinic was responsible for elaborating the *amicus curiae* brief on behalf of the Brazilian Press Association ("Associação Brasileira de Imprensa – ABI"), claiming the unconstitutionality of the Press Act of 1967. The second is the Program's participation in the case *Escher and others v. Brazil*, before the Inter-American Court of Human Rights – IACHR. In 2010, the Court condemned the Brazilian Government for illegal wiretapping and, in its decision, mentioned the *amicus curiae* brief elaborated by FGV Law students in the Human Rights Clinic.

This record of success, however, does not mean that the Program is already well established and operating smoothly. There are still important challenges to be faced in order to meet the expectations that inspired the creation of the Clinical Program.

### 3. Challenges

There are two fundamental challenges FGV DIREITO RIO's Clinical Program has been facing since its creation in 2007. One is internal and the other external to the Program.

The internal challenge is that "Clinical Teaching" is not a well established field of Brazilian legal education. Moreover, most professors do not think that this kind of activity plays a relevant role to Law students' professional development.

As a result, it is hard to find professors specialized in practical legal training. In fact, most Law professors in Brazil tend to reinforce the dichotomy between theory and practice and to believe that practical legal training is something one should obtain through internships, along the final years of Law School.

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<sup>2</sup> But sometimes the clinics' work is focused on the previous step of legally constituting the partner-institution, so it can perform its activities.

And that is directly connected to the external challenge the Clinical Program has to face. Differently from other countries, in Brazil Law students may work in Law firms as interns during Law School. There is no legal requirement of minimal experience or a minimum number of courses students must have to take to be admitted in Law firms' internships. In the end, these boundaries are defined by the Law firms market and/or by the Law Schools.

In FGV DIREITO RIO, students cannot work as interns – except in summer jobs – until their fourth year of Law School. The idea is to make them study full time during the first three years. In the last two years, they will have the opportunity to have practical legal training in clinics and internships.

The problem is that this model tends to create the perception among the students that the clinics are “only one more course they have to take” to graduate in Law School, while the internships are seen as their “real job”. There are at least three reasons that contribute to this perception. One is the fact that students are relatively well paid in their internships, whilst they do not earn any money for performing their activities in the clinics. The second reason is that internships require them at least 30 hours of work per week, while clinics demand only 6 hours. The third reason is that they tend to see their internships as opportunities for assuring their placement in the legal job market after graduation.

As a result, they are less committed to the clinics activities than they are to their internships, even knowing that most of the times the kind of legal work they will have to do in the clinics is much more challenging and valuable in terms of intellectual development than the work they will do in a Law firm as interns.

## **Conclusion**

FGV DIREITO RIO's Clinical Program intends to establish a new model of practical legal training in Brazil. The main feature of this model is its focus on high complexity legal cases involving collective interests.

In spite of this effort to create practical legal training activities that can be meaningful and exciting to the students and the significant results already achieved by the Program, there are still some difficulties preventing it to explore its full potential to the development of the students. Two of the main challenges in this sense are that (i) clinical teaching is not a developed field of legal education in Brazil, so it is not easy to find and train good Clinical Professors; and (ii) the lack of commitment of the students with respect to the clinics activities because of their internships' obligations.