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### Finding the Pearls When the World Is Your Oyster: Case and Project Selection in Clinic Design

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**FINDING THE PEARLS  
WHEN THE WORLD IS YOUR OYSTER:  
CASE AND PROJECT SELECTION IN CLINIC DESIGN**

*Sarah H. Paoletti*

ABSTRACT

Clinical legal education is distinguishable from the rest of the law school curriculum and the extracurricular activities available to law students because it places students directly into the role of a lawyer engaged in real-world practice. Clinical programs are often defined by the cases and projects—the pearls at the heart of the experiential learning experience—that comprise their dockets. Finding the right cases and projects that meet a range of goals remains a perennial challenge in clinic design. In the context of international human rights clinics, the world is your oyster, and that challenge is magnified. This Article identifies a set of core lawyering competencies—skills and values—essential to successful practice in a globalized world, and argues that those competencies should drive the pedagogical goals that serve as the criteria against which to assess the value of the clinical teaching pearls. Building on prior scholarship by international human rights clinical law faculty, and analyzing case studies from the Transnational Legal Clinic at the University of Pennsylvania Law School, this Article then examines the benefits and challenges for students engaged in a range of individual and project-based human rights representations. This Article concludes with the provocative and important question: How can we prevent the risk of harm to the often unfamiliar and fragile ecosystems into which we dive in search of our teaching pearls?

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\* Practice Associate Professor at the University of Pennsylvania Law School, where she founded and directs the Transnational Legal Clinic. I am greatly indebted to the community of international human rights clinicians whose support has been invaluable and whose contributions during our annual International Human Rights Clinicians' Conference have expanded and deepened my thinking on the issues discussed herein.

## INTRODUCTION

In Professor Deena Hurwitz's seminal article, *Lawyering for Justice and the Inevitability of International Human Rights Clinics*, she began with the question: "Globalization may be taken for granted, but is the U.S. legal profession prepared?"<sup>1</sup> She went on to ask "[h]ow will law schools prepare students to participate in the 'new' global society in a meaningful way," and posited "[t]he answer is not simply offering more courses, or even making those already offered mandatory. . . . [T]he better answer lies in a particular pedagogical approach—an approach that requires students to grasp and digest the inherently transnational dimension of legal practice."<sup>2</sup> Professor Hurwitz concludes that human rights clinics are the inevitable and preferred response, arguing that clinical methodology in the human rights context is uniquely situated to train students for practice in a global world.<sup>3</sup>

This Article begins where Professor Hurwitz's article of more than a decade ago concludes: with the premise that international human rights clinical programs provide a pedagogical approach particularly well-suited to preparing students for practice in a global society. The contributions of clinical methodology and pedagogy in legal education,<sup>4</sup> and the role of human rights clinics specifically as an inevitable component of training students as lawyers in a globalized world, have been the subject of numerous conferences and articles.<sup>5</sup>

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1. Deena R. Hurwitz, *Lawyering for Justice and the Inevitability of International Human Rights Clinics*, 28 YALE J. INT'L L. 505, 505 (2003) (addressing the impact of globalization on legal practice and the need for the legal academy to respond).

2. *Id.* at 506.

3. *Id.* at 548.

4. See William M. Sullivan et al., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 120-21 (The Carnegie Foundation for the Advancement of Teaching, 2007) ("The potential of clinical-legal education for bringing together the multiple aspects of legal knowledge, skill, and purpose has long been noted. . . . [T]he student comes to understand that the cognitive and the practical are two complementary dimensions of meaningful professional activity that gets its point and intensity from its moral meaning."); AM. BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM 54 (1992) ("Both the law schools and the organized bar during the 1960s and 1970s greatly increased the profession's commitment to providing civil legal services to the poor. A significant element in this increased commitment was the promotion at the law schools of clinical legal education with its focus on translating the needs of society for the profession's services and skills into their educational equivalents."); Claudio Grossman, *Building the World Community: Challenges to Legal Education and the WCL Experience*, 17 AM. U. INT'L L. REV. 815, 827 (2002) ("Inasmuch as individual states can no longer isolate themselves from the international community, legal training should no longer be enveloped within the four walls of a law school.")

5. See, e.g., Hurwitz, *supra* note 1, at 505-07; Arturo J. Carrillo, *Bringing International Law Home: The Innovative Role of Human Rights Clinics in the Transnational Legal Process*, 35 COLUM.

But to date, there has not been significant critical evaluation into the heart of clinic design: the selection of cases and projects, that when threaded together with other teaching pedagogies, form the foundation from which learning takes place. This Article seeks to address that question: when designing a human rights clinic, how to select cases and projects from which to train students for the diverse range of professional roles they will fill throughout their career.

Building on the preceding scholarship of international human rights clinicians that outlines different human rights clinic models and discusses their contributions to the training of students and to social justice,<sup>6</sup> this Article addresses the challenge of identifying the cases and projects – the pearls that are central to clinic design. While the challenge of finding the right cases and projects for students is not unique to international human rights clinics, it is multiplied exponentially in the vast human rights context—a context without clearly delineated geographical boundaries, client population(s), or subject matters that could be addressed. When the world is your oyster and you are presented with innumerable and diverse options, how do you identify the teaching pearls? And, recognizing it is the rare pearl that alone can provide a complete design, how do you identify which string of pearls—when threaded together with lessons taught in seminar, case rounds, and supervision sessions—will form the complete training experience for students? Finally, how can we protect against the inadvertent negative impact on the com-

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HUM. RTS. L. REV. 527, 584 (2004) (discussing emergence of international human rights clinic at the intersection of international law and clinical legal education); Johanna Bond, *The Global Classroom: International Human Rights Fact-Finding as Clinical Method*, 28 WM. MITCHELL L. REV. 317, 327-39 (2001) (describing the pedagogical benefits that accrue through international human rights fact-finding missions); 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, 454-65 (2011-2012) (describing the Stanford Law School International Human Rights Clinic's South Africa site as using a hybrid between human rights advocacy research and training as well as direct client interaction); Jocelyn Getgen Kestenbaum et al., *Catalysts for Change: A Proposed Framework for Human Rights Clinical Teaching and Advocacy*, 18 CLINICAL L. REV. 459, 474-95 (2012) (detailing the Cornell International Human Rights Clinic's employment of multiple tools for human rights advocacy, including litigation, fact-finding missions, reports, and both national and international advocacy).

6. See, e.g., Janus & Smythe, *supra* note 5, at 450-54; Kestenbaum et al., *supra* note 5, at 466-68, 474-75; see also CORNELL INT'L HUMAN RIGHTS CLINIC & JINDAL GOOD RURAL GOVERNANCE & CITIZEN PARTICIPATION CLINIC, PROMOTING CLINICAL LEGAL EDUCATION IN INDIA: A CASE STUDY OF THE CITIZEN PARTICIPATION CLINIC 4-6 (2012), available at <http://www.lawschool.cornell.edu/academics/clinicalprogram/int-human-rights/upload/Cornell-Jindal-Report.pdf>; Sarah H. Paoletti, *Transnational Responses to Transnational Exploitation: A Proposal for Bi-National Migrant Rights Clinics*, 30 U. PA. J. INT'L L. 1171, 1179-85 (2009).

munities and environment into which we are diving in search of those pearls?

The intent of this Article is not to provide a singular template or exclusive design. Instead, this Article seeks to highlight and provide a reflective analysis on the choices presented in designing a clinic – particularly an international human rights clinic – while recognizing the many varieties and qualities of pearls, and calling attention to the criteria employed in valuing those pearls and the learning extracted from each.

Part I begins by situating the international human rights clinic within the wealth of curricular and extracurricular offerings now available to students as law schools respond to the changing demands of the profession brought about by globalization. In doing so, it first addresses the underlying definitional issues presented by a discussion of the internationalization of legal education, including a working definition of the international human rights clinic. By identifying where international human rights clinics fit within clinical legal education, the academy, and the human rights advocacy movement, it provides context for the subsequent discussion on clinic design. Part II examines the pedagogical goals that guide the search for, and selection of, cases and projects that are the pearls from which significant training and learning are extracted. It outlines a comprehensive set of skills and professional and ethical values central to successful lawyering, grounded in an understanding of the varied ways in which lawyers operate within and across systems directly and indirectly impacted by globalization. And it articulates ways in which international human rights clinics are particularly suited to the development and training of those competencies. Part III draws upon the experiences of the author in creating the Transnational Legal Clinic at the University of Pennsylvania Law School to critically evaluate choices against the pedagogical goals of clinical legal education, as a means to inform future decisions on case and project selection. This Article concludes with recommendations for entering into uncharted waters, in search of pearls and adventure, in a way that protects against the inadvertent negative impact on the communities into which we dive amid the shifting sands of the global legal marketplace.

I. SITUATING THE INTERNATIONAL HUMAN RIGHTS CLINIC IN  
THE LEGAL ACADEMY, THE CLINICAL LEGAL EDUCATION  
COMMUNITY, AND THE WORLD

Dean Claudio Grossman argues that in order to ensure law students are prepared for the realities of globalization, with its increased economic and political links among diverse actors and new forms of communication and technology, “law schools must connect themselves with the outside world and reconstruct their academic agendas to work with actors in the international community, such as NGOs, multinational corporations, governments, and legal systems of other countries.”<sup>7</sup> He goes on to argue, “while the study of case law continues to provide an indispensable vehicle for legal training, we now know the importance of expanding legal training beyond this one-dimensional approach.”<sup>8</sup> Law schools across the country have recognized this need and have actively sought to provide their students with a diverse range of international experiential opportunities, including an ever-growing number of exchange and dual degree programs, international and comparative moot court competitions, and internships and externships outside the United States in both the public and private sectors.<sup>9</sup>

The international human rights clinic has emerged at the convergence of the internationalization of legal education and expansion of experiential learning.<sup>10</sup> But in that area of convergence, there is significant variation in both the structural and substantive design of human rights clinics that reflects the profound and diverse impact of globalization on the legal profession and the multitude of roles lawyers play. Before elaborating upon core features of the international human rights clinic, it is helpful to identify and define the underlying terminology so as to ensure a common set of understandings from which the rest of the Article builds. By placing those definitions in context, we can identify the synergies that exist between in-

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7. Grossman, *supra* note 4, at 827.

8. *Id.*

9. See, e.g., Phillip C. Jessup *International Law Moot Court Competition*, INT’L L. STUDENTS ASS’N, <http://www.ilsa.org/jessuphome> (last visited Mar. 27, 2013); Academy on Human Rights and Humanitarian Law, *Inter-American Moot Court Competition*, AM. U. WASH. C. L., [http://www.wcl.american.edu/hracademy/mcourt/index\\_en.cfm](http://www.wcl.american.edu/hracademy/mcourt/index_en.cfm) (last visited Mar. 27, 2013); see also, *International*, U. PA. L. SCH., <https://www.law.upenn.edu/international> (last visited Mar. 27, 2012).

10. See, e.g., Hurwitz, *supra* note 1, at 532; Carrillo, *supra* note 5, at 530–35 (discussing the emergence of the international human rights clinic at the intersection of international law and clinical legal education).

ternational human rights clinical education and legal education—specifically, clinical legal education. It also important to situate the clinic within the broader human rights advocacy movement as we work to provide our students with universal and transferable skills they can use across disciplines, practice areas, and practice settings.

*A. Definitional Issues Within the Law, Legal Practice, and the Academy*

Terminology within legal education and practice is often undefined, open to interpretation, and used interchangeably. The predicate term for what follows is the word “globalization,” which alongside “internationalization,” has taken on a life of its own. For purposes of this Article, globalization refers to facile, regular, and frequent interactions across borders between and among people, commodities, and ideas, resulting in an increased integration of economies and culture.<sup>11</sup> As people, things, and thoughts increasingly cross literal and figurative borders, lawyers no longer operate exclusively in a single legal system within a singular socioeconomic and political reality.<sup>12</sup> Consequently, the legal profession is adapting

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11. Globalization has been defined as: “Economic, financial, trade, and communications integration moving worldwide.” See *What is GLOBALIZATION?*, THE LAW DICTIONARY, <http://thelawdictionary.org/globalization/> (last visited March 17, 2013); see generally Dr. Nayef R.F. Al-Rodhan & Amb. Gerard Stoudmann, *Definitions of Globalization: A Comprehensive Overview and a Proposed Definition*, GENEVA CENTER SECURITY POL’Y 3 (June 2006).

Globalization is not a single concept that can be defined and encompassed within a set time frame, nor is it a process that can be defined clearly with a beginning and an end. Furthermore, it cannot be expounded upon with certainty and be applicable to all people and in all situations. Globalization involves economic integration; the transfer of policies across borders; the transmission of knowledge; cultural stability; the reproduction, relations, and discourses of power; it is a global process, a concept, a revolution, and “an establishment of the global market free from sociopolitical control.

*Id.* at 3 (citations omitted).

12. Adelle Blackett, *Globalization and Its Ambiguities: Implications for Law School Curricular Reform*, 37 COLUM. J. TRANSNAT’L L. 57, 62–64 (1998) (distinguishing between internationalization and globalization). Professor Blackett notes:

Globalizing proclivities vary in form and importance between diverse domains of the economies of specific parts of the world, as well as in politics, culture and religion. If all of this can be called globalization, yet the concept is to retain some meaning, then it must at least be acknowledged that it encompasses multifaceted, multi-layered and often disjunctive processes. Indeed, some dimensions may never be realized, or may shift course along the way.

*Id.* at 64–65 (citations omitted).

as legal systems designed to facilitate and regulate all aspects of cross-border activity evolve.<sup>13</sup>

This evolution of legal systems and lawyering across legal systems has given rise to increased reference to and study of international, comparative, foreign, and transnational law by academics and practitioners, as well as a diversification of law school offerings designed to prepare students to engage in the globalized world.<sup>14</sup> Both the legal academy and the profession increasingly recognize globalization's reach into domestic law and practice. The study of international, foreign, and transnational law and procedure is no longer for just a small cadre of academics.<sup>15</sup> The increased ease with which people travel and move, changes in population demographics, the increased movement of commodities and the companies that produce them, and changes in the labor marketplace and cross-border operations of businesses of all sizes, have changed all areas of legal practice—from locally-oriented private practice, to multinational corporate law, to international dispute resolution, and to human rights advocacy.<sup>16</sup> A family law lawyer, for example, may have a client who is pursuing an international adoption<sup>17</sup> or another who is embroiled in a custody battle where one parent has moved or wants to move outside the United States.<sup>18</sup> A community-based transactional lawyer may have to draft contracts for a client seeking to purchase goods or materials from outside the United States.<sup>19</sup> A labor lawyer may be called upon to assist her client in obtaining workers on temporary visas from outside the United States, while another labor lawyer may look to international human rights mechanisms to build transnational labor solidarity as labor competition

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13. *Id.* at 60–66.

14. *Id.* at 66–74.

15. *Id.* at 64–65.

16. See Laurel S. Terry, *The Legal World Is Flat: Globalization and Its Effect on Lawyers Practicing in Non-Global Law Firms*, 28 NW J. INT'L L. & BUS. 527, 528 (2008); Carole Silver et al., *Between Diffusion and Distinctiveness in Globalization: U.S. Law Firms Go Glocal*, 22 GEO. J. LEGAL ETHICS 1431, 1445 (2009); David J. McLean, *Toward a New International Dispute Resolution Paradigm: Assessing the Congruent Evolution of Globalization and International Arbitration*, 30 U. PA. J. INT'L L. 1087, 1089–93 (2009); Scott L. Cummings & Louise G. Trubek, *Globalizing Public Interest Law*, 13 UCLA J. INT'L L. & FOREIGN AFF. 1, 12 (2008).

17. See Margaret Liu, *International Adoptions: An Overview*, 8 TEMP. INT'L & COMP. L.J. 187, 190 (1994).

18. See Barbara Stark, *Introduction: Practical Applications and Critical Perspectives in International Family Law*, 38 FAM. L.Q. 475, 476 (2004).

19. See Filip De Ly, *Law and Practice of Drafting International Contracts*, 2002 INT'L BUS. L.J. 461, 465 (2002).



goes global.<sup>20</sup> Lawyers increasingly have to navigate multiple legal systems, languages, and cultures in both the public and private sectors. And lawyers in all practice areas must develop cross-cultural and cross-linguistic capacities in communities that are no longer homogeneous. Law schools have begun to adapt their curriculum and create experiential learning opportunities that will better train their students to engage in the dynamic legal marketplace.<sup>21</sup>

Globalization's impact on law schools and legal practice is facially demonstrated by the increased use of "international," "comparative," and "transnational" as modifiers to "law," "legal systems," and "programs." Each word has a distinct meaning and is used in this Article to refer to different and distinct systems of law and study. While "international" is often used to define anything operating either outside the United States or before international tribunals, the term encompasses treaties and recognized norms and mechanisms that govern the behavior of States in their interactions with other States, as well as with private parties.<sup>22</sup> Until recently, international law was an area in which few lawyers engaged, and only a small subset of the legal profession—typically those engaged in international human rights or international criminal law, and those contracted by countries to resolve border disputes, or by private parties to resolve trade disputes—ever had need to study and understand international law.<sup>23</sup> But as commodities, capital, people, innovations, and services traverse borders with greater ease and frequency, facilitated by rapid changes in communications systems, they cross into international space, through international legal systems, and through a complex web of state immigration, labor, bank-

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20. See Donald C. Dowling, Jr., *The Practice of International Labor & Employment Law: Escort Your Labor/Employment Clients into the Global Millennium*, 17 LAB. LAW. 1, 3-5 (2001).

21. See Margaret Y. K. Woo, *Reflections on International Legal Education and Exchanges*, 51 J. LEGAL EDUC. 449, 454-55 (2001); see also Claudio Grossman, *Building the World Community Through Legal Education*, in THE INTERNATIONALIZATION OF LAW AND LEGAL EDUCATION 21, 29-30 (Jan Klabbbers & Mortimer Sellers eds., 2008).

22. See John A. Barrett, Jr., *International Legal Education in the United States: Being Educated for Domestic Practice While Living in a Global Society*, 12 AM. U. INT'L L. REV. 975, 977-79 (1997); see also, *International Law*, LEGAL INFO. INST. (Aug. 19, 2010, 5:18 PM), [http://www.law.cornell.edu/wex/international\\_law](http://www.law.cornell.edu/wex/international_law).

23. See, e.g., Grossman, *supra* note 4, at 824-26 (highlighting the absence of international law in law school curricula); Barrett, *supra* note 22, at 983 (identifying immigration lawyers and certain corporate lawyers and government attorneys as those who have traditionally engaged in international law).

ing, and other regulations blurring the traditionally clean distinctions between public international law and private law.<sup>24</sup>

Foreign law, often subsumed within the all-encompassing use of the term “international,” is the domestic law of other States, while comparative law involves the study of the different domestic and foreign laws and legal systems.<sup>25</sup> Foreign and comparative law – which had also been largely academic endeavors – are similarly gaining increased relevance in today’s globalized world.<sup>26</sup> As highlighted above, with the increased migration of goods, capital, services, and people across borders, where companies of all sizes are competing in a global marketplace, it is important to know and understand how foreign legal systems operate, their impact, and the advantages or disadvantages the laws of another country provide.<sup>27</sup>

The term “transnational law” is used here to encompass international, domestic or foreign law, and law that regulates activities that cross national borders. Professor Harold Koh, in defining transnational law as a “hybrid” of domestic and international law, quotes Judge Philip Jessup, who first defined transnational law as “all law which regulates actions or events that transcend national frontiers . . . [including] [b]oth public and private international law . . . [plus] other rules which do not fit wholly into such standard categories.”<sup>28</sup> Transnational law often implicates not just the substantive law but also procedure, such as choice of law, conflict of law, and other issues that arise when parties are operating across national boundaries.<sup>29</sup> These issues arise, for example, in international adoptions, marriages (or their dissolutions), cross-border custody disputes, labor and employment rights for migrant workers at different stages of migration, and trade agreements for goods or services that cross borders, as identified above.<sup>30</sup>

24. Cf. Duncan Kennedy, *The Stages of the Decline of the Public/Private Distinction*, 130 U. PA. L. REV. 1349 (1982) (discussing the end of the distinction between public and private spheres).

25. See, e.g., Esin Örüçü, *Developing Comparative Law*, in *COMPARATIVE LAW: A HANDBOOK* 43, 43–47 (Esin Örüçü & David Nelken, eds., 2007).

26. See Barrett, *supra* note 22, at 981 (“Changes in the modern world, however, have significantly affected the value and the usefulness of the skills and knowledge that studying international law provide.”).

27. See *id.*

28. Harold Hongju Koh, *Why Transnational Law Matters*, 24 PENN ST. INT’L L. REV. 745, 745 (2006) (alteration in original) (quoting PHILIP C. JESSUP, *TRANSNATIONAL LAW* 2 (1956)).

29. See *id.* at 751 (noting, for example, Yale Law School’s incorporation of transnational procedure into first-year coursework).

30. See *id.* at 746 (explaining that transnational law implicates such law school courses as Immigration and Refugee Law, International Trade Law, and Foreign Relations Law, among others).

The work of the Transnational Legal Clinic (TLC) at the University of Pennsylvania Law School illustrates the scope of the term “transnational.” While the work in the clinic focuses on international human rights and immigration practice, the term “transnational” is inclusive, rather than exclusive. It recognizes the use of foreign and domestic law, as well as international law, while also recognizing the transnational nature of issues addressed. The TLC represents individuals who have crossed borders, both voluntarily and involuntarily. In those representations, foreign and domestic laws and regulations are often employed, as is international human rights law. The human rights advocacy undertaken often examines systemic issues brought about by the transnational movement of people, and it always examines the domestic application of international human rights law—whether in the United States or beyond. The term “transnational” also allows for recognition of the range of transferable skills that comes with engaging in human rights and immigration practice—skills that reach beyond those particular practice areas, into the private sector and across practice groups, as is discussed in greater detail below.

*B. Clinical Legal Education and the Emergence of the International Human Rights Clinic*

Before undertaking a critical examination of the international human rights clinic as the site for developing students’ lawyering competencies, this section seeks to place the human rights clinic in the broader context of clinical legal education.

*1. Clinical legal education: Objectives and methodology*

Law schools are seeking to expand and deepen their students’ legal training by preparing them to make the transition from student to lawyer through increased clinical legal education offerings, as well as other experiential learning opportunities such as externships, internships, simulations, moot court experiences, and pro bono projects. While each training model has its merits, and in many ways can be seen as a building block in the overall training of law students, what distinguishes the in-house, live-client clinical program is that students are vested with primary responsibility for carrying out all aspects of client representation in the unfiltered and uncontrolled environment of the real world. That responsibility often begins at the moment of determining whether to represent a par-

ticular client or partner with a particular organization, and continues throughout the engagement with that client or partner organization. It includes defining the parameters of the relationship, determining the desired outcome of the representation and advocacy, developing a strategic plan for achieving that outcome, and executing that plan while making needed adjustments and adaptations, in working towards the ultimate goal. Students gain first-hand experience in the role of a lawyer, where the consequences of the representation have both direct and indirect real-life impact on clients and the communities in which they operate. Students work under close supervision and mentorship by faculty with significant practice-experience who monitor students' progress and provide critical inputs that advance the representation and ensure student learning through guided critical reflection and self-evaluation. That intensive student-faculty working relationship, in the context of real-world lawyering, provides a multidimensional approach to teaching substantive and procedural law, lawyering skills, and professional ethics. It also provides a practice-based platform from which students develop their own critical reflection and self-evaluation skills by extrapolating lessons they can then put into practice, which then in turn contributes to their ongoing learning and growth as they move through their professional lives.

Components of the in-house clinical program include: the course seminar, through which core lawyering skills and professional responsibility are taught, often alongside substantive and procedural law; simulations, during which students practice core lawyering skills such as interviewing and counseling in a controlled and safe environment; and case rounds, during which students come together to share the trials and tribulations associated with their cases and projects, to solicit feedback, and to learn from each other as they work to advance their respective cases and projects.<sup>31</sup> None of these components is exclusive, and each method serves multiple and reinforcing purposes. Throughout each of these components, the role of law, the lawyer, and legal practice are critically examined. At the heart of any clinical course are what this Article identifies as the pearls—the actual cases and projects on which the students work throughout their tenure in a clinic. Those pearls can be individual client representations, organizational representations, impact litigation, cause-driven advocacy projects, and every variation thereof.

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31. See Sue Bryant & Elliott S. Milstein, *Rounds: "A Signature Pedagogy" for Clinical Education?*, 14 CLINICAL L. REV. 195, 200-03 (2007).

## 2. *Defining the international human rights clinic*

The international human rights clinic provides new platforms from which to dive into vast oceans that cover the globe in search of those pearls and both expand and amplify the opportunities of learning in a context that is simultaneously international, foreign, domestic, and transnational. Professor Carrillo has called the human rights clinic

the fortunate fusion of pedagogy and practice in international law; as such, they draw constantly from one to improve the function of the other. . . . [human rights clinics] benefit from a unique blend of characteristics that ensure their relevance in contemporary law school curricula and guarantee the injection of positive new elements into the transnational legal process.<sup>32</sup>

Reflective of the diversity and breadth of human rights advocacy, there is no singular template that all international human rights clinical programs follow, though several distinguishing features help define an international human rights clinic.<sup>33</sup> At the most simplistic level, human rights clinical programs may be categorized into three different design models: a direct client representation model, a human rights advocacy cause-driven model, and a hybrid model. The direct client representation model most closely aligns with traditional clinical pedagogy—grounded in the one-on-one lawyer-client relationship through which lessons of client-centeredness are primary and students engage in a relationship with a client on whose be-

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32. Carrillo, *supra* note 5, at 586.

33. Professor Carrillo has defined the international human rights clinic as a law school-based, credit-bearing course or program that combines clinical methodology around skills and values training with live case-project work, all or most of which takes place in the human rights context. Under this definition, any law school program with a clinical component will be covered only to the extent that the students receive some degree of in-house skills and values training in addition to faculty supervision and feedback on live case-project work.

Carrillo, *supra* note 5, at 533–34 (footnotes omitted). Not all clinical programs engaging in client representation and advocacy outside the United States or employing human rights advocacy methods and tools choose to define themselves as human rights clinics, per se, but instead define themselves by substantive practice area, client population, or skills-oriented practice group. For example, the University of Michigan has an International Transactions Clinic. See *International Transactions Clinic*, U. MICH. L. SCH., <http://www.law.umich.edu/clinical/internationaltransactionclinic/Pages/default.aspx> (last visited Feb. 15, 2013). Lewis and Clark Law School has an international clinic that focuses on environmental law. *International Environmental Law Project*, LEWIS & CLARK L. SCH., [http://law.lclark.edu/clinics/international\\_environmental\\_law\\_project/](http://law.lclark.edu/clinics/international_environmental_law_project/) (last visited Feb. 28, 2013).

half and in whose name the advocacy is undertaken. While asylum cases are classic individual client cases within the human rights clinic, students may also undertake litigation on behalf of an individual or a group of individuals before domestic or international tribunals.<sup>34</sup> The second – and more prevalent human rights clinical model – centers on the pursuit of fundamental human rights norms that drive the advocacy.<sup>35</sup> This model more closely resembles that of traditional international human rights organizations, which often engage in advocacy in their own name, without clearly identifiable clients.<sup>36</sup> A third model of human rights clinical legal education is a hybrid model of direct client representation combined with systemic human rights advocacy initiatives.<sup>37</sup> It is worth recognizing that international human rights advocacy is not confined exclusively to those clinics labeled as such. Clinicians that have historically focused domestically are increasingly using international human rights norms, mechanisms, and strategies, and are engaging in partnerships beyond the United States as they seek to advance their clients' goals, while exposing students to the breadth of social justice lawyering.<sup>38</sup>

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34. See Carrillo, *supra* note 5, at 531–32.

35. See Hurwitz, *supra* note 1, at 546.

36. *But see* Carrillo, *supra* note 5, at 540–44 (noting that human rights clinics are often represented as conventional NGOs but arguing that human rights clinics are distinguishable from NGOs).

37. See Hurwitz, *supra* note 1, at 545–46; Arturo J. Carrillo & Nicolás Espejo Yaksic, *Reimagining the Human Rights Law Clinic*, 26 MD. J. INT'L L. 80, 81–83 (2011); Jayashri Srikantiah & Jennifer Lee Koh, *Teaching Individual Representation Alongside Institutional Advocacy: Pedagogical Implications of a Combined Advocacy Clinic*, 16 CLINICAL L. REV. 451, 453–55 (2010) (describing the merits of having students engaged in both small-case lawyering and larger advocacy projects and outlining the ways in which clinical pedagogy must adapt).

38. For example, law students in the Immigration Clinic have partnered with students in the Human Rights Clinic at the University of Miami School of Law in an advocacy campaign to support their direct client services aimed at stopping the deportation of Haitians after Haiti was devastated by the 2010 earthquake and subsequent cholera outbreak. These efforts have included advocacy before the Inter-American Commission on Human Rights. *Stop Deportations to Haiti*, U. MIAMI SCH. L., <http://www.law.miami.edu/clinics/immigration/stop-haiti-deportations.php?op=7> (last visited Mar. 27, 2013). Similarly, the Immigration Clinic and Pro Bono Program at the University of Texas School of Law have advocated on issues pertaining to U.S. immigrant detention policies and practices, particularly detention of families and children, before the Inter-American Human Rights Commission. *Immigration Clinic*, U. TEX. AUSTIN SCH. L., <http://www.utexas.edu/law/clinics/immigration> (last visited Feb. 27, 2013).

### 3. *Questions and tensions intrinsic to human rights practice and clinical legal education*

Several questions and tensions inherent in human rights advocacy emerge in reviewing the different models of human rights clinical programs. One persistent set of questions revolves around the role of the client. Is there a client or just a cause? If there is a client, who is that client? Is it an individual, a non-governmental organization, or a community-based group? What is the role of the client—is it more akin to that of a partner or co-counsel than the traditional conception of client?<sup>39</sup> These questions are not unique to human rights practice. Lawyers regularly represent organizations and entities, private and public. As in-house counsel, lawyers may have a seat at the table alongside non-lawyers during strategy sessions, planning discussions, and decision-making meetings. To the degree they have an identifiable client, that client may be their employer. Lawyers within the government, state or federal, also have their employer as their client, while at the same time these lawyers are members of the constituency on whose behalf they are acting. Questions as to who is the client may not have clear answers. Determining what the client wants can be even more complex when the client is an entity, a large

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39. Hurwitz, *supra* note 1, at 533. In distinguishing human rights clinics from traditional clinical programs, Professor Hurwitz posits:

international human rights clinics are not a client-centered program. They support, instead, a norm-centered pedagogy. With human rights advocacy, the object may be the articulation or clarification of a norm or set of standards, as much as, if not more often than, representation of an aggrieved individual or group. The subject may be a variety of legal and non-legal strategies. “Clients” are rarely individuals, and they are often physically distant from the clinic itself. Indeed, although projects generally are organized through non-governmental organizations, it is more accurate to refer to these as partner organizations than as clients.

*Id.* This is not true across human rights clinics, however. Prof. Dina Haynes has argued that a client-based approach to international human rights advocacy, particularly in the context of law school clinical programs, can be used to respond to critiques levied against the international human rights movement charging the movement with imperialism, essentialism, and victimization of the advocacy subject. Dina Francesca Haynes, *Client-Centered Human Rights Advocacy*, 13 CLINICAL L. REV. 379 (2006); *see also* Carrillo & Yaksic, *supra* note 37, at 106–07 (arguing that clinics should, in learning from the models in Latin America, undertake more client-based legal advocacy contrary to popular practice among U.S. human rights clinical programs, and claiming “pursuit of legal redress for victims of human rights abuses at the local, national, and international levels is an integral part of what human rights *lawyers* in most countries outside of the United States do on a regular basis; a fact which is often downplayed by U.S. human rights clinicians . . . . [W]e view the [public international human rights] experience as a call for putting the practice of law back at the heart of the definition of ‘human rights lawyering,’ rather than making the term synonymous and co-extensive with all human rights advocacy, regardless of who carries it out”).

group, a coalition, or, for example, “the Government,” or “the People,” (e.g., as the prosecuting attorney in immigration court, or in state or federal criminal court). Increasingly, clinical legal education is beginning to grapple with how to teach client-centered counseling and lawyering when there is not one single, identifiable person as the client—a challenging inquiry human rights clinicians have long confronted.<sup>40</sup>

Another tension that persists in human rights clinic design is the perceived dichotomy between legal and non-legal work.<sup>41</sup> Further examination, however, reveals this perception is often based on a narrow definition of what is “legal” that ignores significant components of advocacy that happen in tandem with the exercise of litigation and transactional skills.<sup>42</sup> Engaging with the media and the court of public opinion, coalition building, and policy advocacy are not new to the practice of law. Just as clinics now engage students in a diverse set of lawyer roles that extend beyond the representation of individual clients, litigation practice is no longer held out as the exclusive means for achieving justice. Clinical programs, reflective of practice, are engaged in a range of systemic advocacy, including impact litigation, legislative advocacy, and other forms of advocacy wherein the clinic either works alongside community organizers or on behalf of or in partnership with organizational clients or partners, and often as part of a coalition. Clinics are training students to be lawyers in a world where interdisciplinarity is valued, economic and political systems are intricately linked to legal practice, and globalization’s impact is felt not just on those working beyond the territorial boundaries of the United States, but also in domestic and very localized legal practice. The engagement in legal, factual, and strategic pluralism—common to human rights clinical programs—provides students with exposure to and training in fundamental and transferable lawyering skills that are not narrowly confined within a single legal system or a monolithic culture, but relevant in all areas of practice.

Henry J. Steiner has argued:

clinical projects in human rights should generally range more broadly than client representation in the courts and should shed their traditional court-centric character. The

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40. See Caroline Bettinger-Lopez et al., *Redefining Human Rights Lawyering Through the Lens of Critical Theory: Lessons for Pedagogy and Practice*, 18 *GEO. J. POVERTY L. & POL’Y* 337, 378–79.

41. See Hurwitz, *supra* note 1, at 512–16, 540.

42. See, e.g., *id.* at 513, 533.



task is to engage students with non-governmental organizations acting within a more complex, less structured, and sometimes quite raw political process.<sup>43</sup>

Human rights advocacy is most often undertaken because the domestic legal regimes have failed to provide for the rights sought and new strategies are needed. Even the more litigation-like complaint processes before international tribunals take different forms, and different modalities for evidence gathering, proof, and presentation of the claim are employed.<sup>44</sup> Furthermore, given the nature of the enforceability of international human rights law, and of decisions and recommendations issued by the different human rights mechanisms, obtaining a “decision” is rarely a sufficient advocacy strategy. Community organizing, coalition building, media engagement, and other strategies must also be employed in working to achieve the advocacy objective.<sup>45</sup>

The ongoing inquiry for human rights clinics is how to responsibly engage in a multidimensional, multifaceted, multicultural world that can be literally and figuratively remote. Through a deeper exploration of the synergies that exist between the international human rights clinic and other clinics and a critical examination of the differences and the value added by diverse methodologies, as clinicians and educators, we can better assess and adapt to ensure clinical experiences impart on our students core competencies needed to successfully transition into the professional world. Identification of those competencies, which are then translated into pedagogical goals, will drive all aspects of clinic design, and specifically, the nature of cases and projects undertaken.<sup>46</sup>

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43. Henry J. Steiner, *The University's Critical Role in the Human Rights Movement*, 15 HARV. HUM. RTS. J. 317, 326 (2002).

44. See generally Fionnuala Ni Aolain, *The Emergence of Diversity: Differences in Human Rights Jurisprudence*, 19 FORDHAM INT'L L.J. 101 (1995) (focusing on the conceptual and practical differences between the various international courts and tribunals that adjudicate human rights violations).

45. *Id.* at 128–29 (discussing the Inter-American Court's “multi-layered approach” of linking together different rights to compound protection for citizens).

46. Deena Hurwitz suggests the following in trying to define what makes a “good” project for international human rights clinics:

Generally, students should have a clinical experience that reflects the range of activities that constitute human rights lawyering, and that allows them to develop key practical skills. Projects should raise concrete ethical issues and dilemmas. Above all, clinical projects must have pedagogical value and real world application; they should provide a connection to partner organizations in a way that allows students to feel an association with the larger human rights movement and its objectives. Projects should also be concrete and discrete enough to be accomplished in a timely fashion

## II. IDENTIFYING THE CORE COMPETENCIES CENTRAL TO PREPARING STUDENTS FOR THE DYNAMIC AND DIVERSE ROLES OF THE LAWYER IN A GLOBALIZED WORLD

The international human rights clinic provides new platforms from which to dive into vast oceans that cover the globe in search of teaching pearls, and both expand and amplify the opportunities for learning in a context that is simultaneously international, foreign, domestic, and transnational. When literally presented with the world from which to select those cases, the opportunities are limitless and the challenge becomes making choices that will accentuate the design in a way that provides sufficient depth to students' learning and reflects the multifaceted breadth of lawyering skills and values. And while creating that design, clinical legal educators must be mindful of the range of resource constraints—from managing the actual financial costs associated with the case and project representation to managing the time of students and faculty. When faced with so many choices, and yet limited time, how does one decide on a docket of cases and projects? The use of backward design—which calls upon educators to first identify the goals and desired outputs against which the “what” and the “how” are then developed, assessed, altered, and reassessed—provides a helpful methodology for developing educational curriculum,<sup>47</sup> and provides a framework for assessing case and project selection when designing a clinic. Over the years, a tension has persisted in international human rights clinical legal education as to whether the desired output is grounded primarily in the service of human rights or the service of the legal profession. Does the impact we can have by engaging in particular cases and projects drive the pedagogy or does the pedagogy associated with training future lawyers drive the case and project selection? If we agree that pedagogy trumps potential human rights impact, the question remains: Are we seeking to train students as competent, ethical, and skilled human rights advocates? Or, are we training them as lawyers, recognizing that the majority of law students will not go straight into a career in human rights advocacy, if

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(one semester if possible) so that students can have some sense of fulfillment, however small.

28 YALE J. INT'L L. at 547.

47. See GRANT WIGGINS & JAY MCTIGHE, UNDERSTANDING BY DESIGN (2d ed. 2005); Grant Wiggins, Address at Second Georgetown Summer Institute on Clinical Teaching (June 22–25 2009) (PowerPoint presentation on file with author).

ever, but instead will practice law in a variety of other legal and non-legal settings.<sup>48</sup>

An assessment of the skills and values that one would prioritize in the full range of lawyering settings and the underlying competencies clinical professors prioritize reveals a tension that may arise out of semantic differences rather than actual differences. The ultimate job of clinical law faculty—no matter the area of specialization—is to train competent, ethical, and empathic practitioners. At the same time, globalization’s impact on law and the legal profession requires all legal educators to assess and reassess the tools our students will employ, the needed skills with which to handle those tools, and an understanding of the dynamic environment in which those tools will be employed. This provides an opportunity to examine anew the synergies between human rights advocacy and what might be deemed more traditional lawyering. Recognizing that international human rights clinicians have a world of choices in case and project selection—the primary means through which these skills are taught—this Part seeks to identify core objectives to consider when making those choices.

In working to train students as successful lawyers—with “success” being broadly defined, and recognizing the multitude of roles lawyers play in the dynamic global world—the first question must be: What lawyering competencies do we want to instill in our students upon which they can build their professional careers and identities? In response to that inquiry, this Part begins with a review of the impact globalization has had on the practice of law and how that impact gets translated into the legal academy as it adapts to the changing demands of the profession while taking advantage of the increased opportunities created by globalization.

#### *A. Lawyering Competencies Central to Practice in a Globalized World*

As globalization has opened up channels for people, commodities, capital, and services to cross borders with greater frequency and in greater numbers,<sup>49</sup> it has also contributed to increased complexity

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48. See, e.g., Hurwitz, *supra* note 1, at 540 (“For example, clinics must decide whether they are educating human rights lawyers or educating lawyers about human rights.”).

49. See Harold Hongju Koh, *Transnational Public Law Litigation*, 100 YALE L.J. 2347, 2347–49 (1991); see also Peer Zumbansen, *Defining the Space of Transnational Law: Legal Theory, Global Governance, and Legal Pluralism*, 21 TRANSNAT’L L. & CONTEMP. PROBS. 305, 306 (2012) (discussing the evolving relationship between legal practice and globalization and arguing that the

and ambiguity in the law and legal practice.<sup>50</sup> Globalization has brought about both increased engagement beyond our borders, as well as increased engagement of outside forces on the domestic work lawyers do within the nation's borders.<sup>51</sup> In addition to eroding the geographical boundaries within which lawyers operate, it has also resulted in an erosion of the figurative boundaries between public and private law, and the modalities of practice.<sup>52</sup> Lawyers traverse once clearly demarcated and well-defended boundaries on a regular basis, and legal training needs to ensure they are prepared to operate in a multidimensional and multifaceted world. While lawyers continue to identify by practice area and client population, and may or may not explicitly recognize direct engagement in international or transnational practice versus domestic practice, there are several commonalities in lawyering that give rise to an identification of a core set of transferable competencies, outlined in the following section.

### 1. Traditional lawyering competencies in a global world

Core skills associated with lawyering include: interviewing, counseling, fact investigation, case theory development, negotiation, trial skills, legal research, analysis and writing, communication of law and fact, and problem solving.<sup>53</sup> Rounding out these important skills

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"advent of globalization" requires a new understanding of legal practice as a transnational endeavor); Yishai Blank, *The City and the World*, 44 COLUM. J. TRANSNAT'L L. 875, 877 (2006) ("[I]n many jurisdictions around the world, transnational entities, [international organizations], and international norms slowly begin to impact and reshape local government law."); Barrett, Jr., *supra* note 22, at 983 (arguing for increased training in international law to prepare lawyers for practice in a global world); Grossman, *supra* note 4, at 828 (noting lawyers are operating in an "ever more intertwined global-oriented system").

50. See Blackett, *supra* note 12, at 66-67.

51. See Grossman, *supra* note 4, at 828.

52. See Zumbansen, *supra* note 49, at 319 ("[The] transformation [of legal systems in a globalized world] is perceived foremost as one of eroding boundaries . . . between public and private . . ."); see also Blank, *supra* note 49, at 935 (discussing the ever-narrowing line between public and private legal entities as a result of globalization); Ralf Michaels & Nils Jansen, *Private Law Beyond the State? Europeanization, Globalization, Privatization*, 54 AM. J. COMP. L. 843, 864-73 (2006) (examining the effects of globalization on private law through pressure exerted by new global organizations, treaties, and global competition, as well as the shift of power globally from public to private spheres).

53. See AM. BAR ASS'N, *supra* note 4, at 138-41; see also David A. Binder et al., *Lawyers as Counselors: A Client-Centered Approach* 2, 2-5 (1991) (noting "[Y]our principle role as lawyer will almost always be the same—to help clients achieve effective solutions to their problems."); Katherine R. Kruse, *Biting Off What They Can Chew: Strategies for Involving Students in Problem-Solving Beyond Individual Client Representation*, 8 CLINICAL L. REV. 405, 406 (2002).

are professional ethics and empathy.<sup>54</sup> These competencies are often taught alongside the value of client-centeredness.<sup>55</sup>

The training of students in these lawyering skills and values, including the training of students as problem-solvers, is enhanced when students are placed in real world contexts where the complexity is not constructed; indeterminacies outnumber settled facts and established rules; and multiple, or competing, perspectives are at play.<sup>56</sup> That complexity is further enhanced when that real world setting includes diversity of culture, language, history, legal systems, and expectations. As communities become more diverse and inter-connected, lawyers interact with clients from different countries, with different cultural and linguistic backgrounds, and different experiences with and understandings of legal systems, making increasingly necessary the development of cross-cultural competencies.<sup>57</sup> Lawyering across languages becomes not just a skill, but also a means to explicitly address lawyering across difference.<sup>58</sup>

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54. See Philip M. Genty, *Clients Don't Take Sabbaticals: The Indispensable In-House Clinic and the Teaching of Empathy*, 7 CLINICAL L. REV. 273, 275 (2000) (describing the importance of empathy as a lawyering skill that is the foundation of building other skills). As core components of empathy, Genty identifies:

gaining the client's trust and confidence and attaining an understanding of the client's substantive goals and aspirations. By connecting the lawyer to her or his client in this way, empathy provides the means of access to all of the other skills that the lawyer must employ in representing the client.

*Id.*; see also Hurwitz, *supra* note 1, at 522 ("Human rights lawyering, like all social justice advocacy, also requires empathy. Typically, this involves being able to view the legal system through the client's eyes, which can mean crossing a wide metaphorical, cultural, and geographical chasm.")

55. See DAVID BINDER & SUSAN PRICE, LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH 147 (1977); Robert Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501, 504-05 (1990).

56. See Elena Kagan, *Harvard Law School Revisited*, 11 GREEN BAG 2D 475, 477-78 (2008), available at [http://www.greenbag.org/v11n4/v11n4\\_Kagan.pdf](http://www.greenbag.org/v11n4/v11n4_Kagan.pdf).

Our goal, then, has been to keep the strengths of Langdell's curriculum while also introducing reforms that will better equip graduates to be proactive and creative problem solvers, able to operate effectively in a context where statutes and regulations (not just cases) play an increasingly important role and to work with a global perspective whether the particular problem involves a local contract dispute or an international treaty.

*Id.* Justice Kagan goes on to note the value of clinical legal education as part of the curriculum, stating: "Confronting real legal problems is one of the best ways to foster the sort of 'legal imagination' that our graduates will need if they are to become the very best lawyers, problem-solvers, and leaders that they can be . . ." *Id.* at 480.

57. Adelle Blackett has noted, ". . . teaching law students to be effective actors in a 'globalized' environment may have at least as much to do with cross-cultural sensitivity and a knowledge of the world as with the way that 'the law' is taught." Blackett, *supra* note 12, at 74-75. Several clinical professors have addressed in their scholarship different techniques and

## 2. *Added dimensions for effective transnational lawyering*

Transnational lawyering encompasses and requires facility with all of the above identified traditional lawyering competencies, but does so in settings that are multi-faceted, and legally, factually, and culturally, as well as tactically, pluralistic. By putting students in diverse lawyering settings that require crossing physical, cultural, ideological, and linguistic borders, human rights clinics provide complex real world settings that challenge and train students for practice in a global world.

### a. Legal pluralism

The need for lawyers to be able to operate across legal systems is prevalent in almost every area of practice.<sup>59</sup> Lawyers regularly have to navigate state law, federal law, administrative law, statutory versus common law, rules of procedure and practice, and their application to the facts at issue in seeking to achieve the ultimate goal sought. One area of practice where lawyers must navigate multiple legal systems, and where law and practice often diverge, is immigration law. Here, statutes, regulations, administrative jurisprudence, federal and sometimes state court jurisprudence, are all in play, as are complex and ever-changing regulations and rules of procedure and practice.<sup>60</sup> In the context of refugees and asylum seekers, international law also becomes relevant, as the domestic relief available is based on criteria established under obligations set forth in the Refugee Convention.<sup>61</sup> The work undertaken in international human rights clinics makes explicit the need not only to be able to research different legal systems, but also to understand how

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modalities for developing cross-cultural competencies within future lawyers. See, e.g., Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 35 (2001).

58. See Muneer I. Ahmad, *Interpreting Communities: Lawyering Across Language Difference*, 54 UCLA L. REV. 999, 1002 (2007) (addressing the challenges of language barriers and differences between lawyers and clients); Angela McCaffrey, *Don't Get Lost in Translation: Teaching Law Students to Work with Language Interpreters*, 6 CLINICAL L. REV. 347, 348 (2000) (addressing challenges with translation assistance and interpretation).

59. See e.g., SHIMON SHETREET, *Global Law Practice – Globalization from Below: National and Regional Perspectives*, in THE INTERNATIONALIZATION OF THE PRACTICE OF LAW 109 (Jens Drolshammer & Michael Pfeifer eds., 2001) (“The international practice of law in the era of globalization is dominated by significant dimensions of cross national and multinational-aspects, requiring the preoccupation with legal issues in numerous fields.”).

60. Cf. Blackett, *supra* note 12, at 72 (noting that immigration law questions should not be analyzed in an isolated way as domestic matters are).

61. See Refugee Convention, *infra* note 94.

those systems operate alongside each other, in tandem, or in conflict with each other.<sup>62</sup> This leads to further inquiry and understanding as to how law is constructed and communicated, the role of the lawyer, and the impact of law and lawyering on varied and diverse communities. As Sally Engle Merry has written:

viewing situations as legally plural leads to an examination of the cultural or ideological nature of law and systems of normative ordering. Rather than focusing on the particular rules applied in situations of dispute, this perspective examines the ways social groups conceive of ordering, of social relationships, and of ways of determining truth and justice.<sup>63</sup>

The ability to operate across legal boundaries therefore requires a deep understanding of law in context, the role culture has played and continues to play in developing the legal system, and how and why people interact with the legal system in different ways. By engaging in international human rights work, operating outside of their comfort zone, and operating outside of predominant legal systems, law students gain training in operating across the multitude of legal systems and advocacy models.

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62. See Blackett, *supra* note 12, at 67 (“Studying transnational law introduces students to questions of legal pluralism . . . and emerging transnational legal practices, such as *lex mercatoria* or informal sector labor and migration.”). Blackett goes on to note:

Other dimensions of the legal and pre-law education may begin the process of preparing students to adapt to a layered legal landscape. One basic dimension is language . . . . As translation into meaningful legal concepts becomes critical, so too does the need to understand foreign law concepts to avoid unintended consequences. Understanding another language, and in particular another legal language, . . . is central to a vision of globalization that is sensitive to cultural difference.

*Id.* at 75–76. See also, Kestenbaum et al., *supra* note 5, at 489.

Like other forms of legal strategy development, human rights legal strategy development is a process that involves identifying the legal problem(s), pinpointing and analyzing strategies to solve the problem(s), and weighing the pros and cons of each human rights litigation or advocacy strategy. To conduct this analysis, [international human rights clinics] must understand not only domestic law and the domestic legal system, but also regional and international human rights treaties and systems. They must also understand the interaction of these systems with regard to the human rights issue on which the Clinic is working. All international human rights law and advocacy must begin—and ideally is implemented—at the local levels through an exhaustion of domestic remedies.

*Id.*

63. Sally Engle Merry, *Legal Pluralism*, 22 LAW & SOC’Y REV. 869, 889 (1988).

## b. Culture

As argued above, lawyers need to be trained in cross-cultural competencies, whether they are explicitly engaged in a transnational practice or engaged in a domestic legal setting. Shifting demographics and the growing diversity in communities across the country and globe nearly guarantee that lawyers will have to interact with clients or other parties from backgrounds different from their own. But culture has implications that reach beyond communication, and cross-cultural competency is more than an added dimension to the lawyering skills discussed above. In transnational lawyering, culture becomes an element in and of itself that must be understood, as it provides its own dimension to the ways in which law is constructed, defined, and understood.<sup>64</sup> Lawyers who fail to understand the role of culture may fail in their ability to engage in the critical skills of communication and problem solving.

Placing students in a transnational lawyering environment forces them to grapple with identifying culture, understanding how that culture is defined and understood by the different players, and recognizing the ways in which culture interacts with and constructs law and people's perception of law.<sup>65</sup>

In making the argument for engaging students in work outside the United States, Professor Johanna Bond argues:

It may be easier to engage students in a discussion of difference in the global fact-finding context than in the traditional direct services clinical model. In the fact-finding model, it can be so fundamentally disorienting to students to be transplanted to a foreign legal system that important differences are immediately apparent. In the traditional direct-services model, students may think that because they have some familiarity with the legal system, or the particular court within which they are practicing, they know everything there is to know about the legal system, their client, and their client's experience within that system.<sup>66</sup>

While she acknowledges that “[a] good clinical educator can challenge those assumptions in any clinical setting,” she posits that

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64. See, e.g., Janus & Smythe, *supra* note 5, at 452.

65. See, e.g., Grossman, *supra* note 4, at 838 (“Lawyers practicing in today’s interconnected world must have an understanding of how culture affects the actions of individuals and their relationship with a legal system.”); Janus & Smythe, *supra* note 5, at 447–50.

66. Bond, *supra* note 5, at 334–35.



“global human rights work is particularly well suited for an inquiry based on difference and privilege.”<sup>67</sup> But she also warns, “[b]ecause cultural and other differences are often immediately apparent, however, students may embrace an ‘us/them’ paradigm and become blind to more subtle points of privilege.”<sup>68</sup> It therefore becomes imperative for students to be trained to recognize the multiplicities of culture and culture’s multi-dimensionality when assessing the myriad of ways in which culture manifests itself and the impact that culture has on law and people’s understanding of law.

### c. Multiple modalities of advocacy

Law school clinical programs have expanded the varied modalities of advocacy they teach while preparing students for the full range of roles lawyers may assume. This is readily apparent in the move beyond the direct legal services litigation-based model and the increase in clinics engaging in transactional lawyering, legislative advocacy, alternative dispute resolution, interdisciplinary partnerships, and advocacy before international tribunals.<sup>69</sup> This diversity in clinical offerings recognizes the reality that lawyers assume roles and responsibilities that go beyond litigation and extend to counseling clients in a range of matters where litigation is not even contemplated, and the goal is to guard against future litigation. And in the litigation context, lawyers implement a multitude of advocacy practices outside of the courtroom that are aimed at achieving particular goals.

As Professor Scott Cummings has explained, lawyering in the international and transnational setting, particularly in the context of public interest advocacy, is “notable for its tactical pluralism, embracing a broad range of nontraditional techniques such as lobbying, reporting, and organizing; its polycentrism, evident in the movement by lawyers into advocacy venues outside of the U.S.; and its connection to transnational alliances that operate to mobilize law

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67. *Id.* at 335.

68. *Id.*

69. The clinics at the University of Pennsylvania Law School, for example, include: the more traditional Civil Practice Clinic, engaged in direct client, litigation-based legal services work; the Entrepreneurship Legal Clinic, engaged exclusively in transactional work; a mediation clinic; an inter-disciplinary Child Advocacy Clinic; a Supreme Court Clinic; as well as the Transnational Legal Clinic; and a newly created Intellectual Property Clinic. See *Gittis Center for Clinical Legal Studies*, U. PA. L. SCH., <https://www.law.upenn.edu/clinic/> (last visited Feb. 25, 2013).

across borders.”<sup>70</sup> This is nowhere more apparent than in the context of international human rights advocacy, where the fora in which rights are advanced include: judicial tribunals; administrative agencies; legislative bodies; international, multinational adjudicative, and quasi-adjudicative bodies; and perhaps, most importantly, the court of public opinion, requiring lawyers to engage in community organizing, media advocacy, and a range of other advocacy techniques.<sup>71</sup>

*B. From Teaching Skills and Values to Training the Complete Professional*

Rounding out the skills identified above are core interpersonal skills and values that not only facilitate students’ transition to becoming professionals, but also contribute to ongoing professional development throughout their careers in a dynamic world. Among those skills and values are collaboration and team-building, which are critical to successful human rights advocacy.<sup>72</sup> Human rights advocacy most often happens as part of a team.<sup>73</sup> That team may include an organization based in the community on whose behalf the advocacy is undertaken, a coalition of individuals and organizations engaged in advocacy on the same set of issues, or a single client or single partner with whom the advocates are collaborating.<sup>74</sup> In the context of advocacy before U.N. treaty bodies or other international fora, for example, lawyers may be working alongside a host of other

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70. Scott Cummings, *The Internationalization of Public Interest Law*, 57 DUKE L.J. 891, 897 (2008).

71. As Deena Hurwitz has noted:

The ways in which human rights lawyering is conducted obviously shape a clinic’s curriculum, and those who teach clinical human rights have a range of pedagogical choices. Human rights advocacy has expanded significantly from its early days when the primary mode of practice was shaming governments into change through detailed investigative reports with first-hand testimony of human rights violations. The type of work human rights clinics may choose to do now falls into four general categories of practice: litigation, legislative policy, fact-finding missions, and the catch-all category of general advocacy.

Hurwitz, *supra* note 1, at 533–34.

72. Kestenbaum et al., *supra* note 5, at 472–73.

73. *Id.* at 503 (“[S]tudents working in collaborative cross-cultural partnership gain first-hand knowledge . . . . This knowledge subsequently informs clinical faculty, staff, and students on how best to address the ‘complex legal and sociological needs’ of international clients.”) (quoting Bond, *supra* note 5, at 338).

74. *See id.*

organizations and individuals vying for limited airtime to promote their causes, concerns, and recommendations.<sup>75</sup> Collaboration, coordination, and the building of a network of advocates engaged in the shared enterprise of advancing human rights—even if each of those advocates represents a particular and distinct set of rights—becomes the means through which to achieve shared and inter-related goals, educate a broader community, and advance the advocacy agenda.

Responding to, and learning to exploit, indeterminacies in fact, law, and process is another set of skills that will serve students throughout their legal careers. International human rights involves a mix of established legal norms operating alongside evolving interpretations and applications of law to fact and established procedures and rules for participation that operate alongside an array of modalities for advocacy hindered only by the creativity of the advocate. The challenge for students—as it is for advocates—is to identify where the law and rules are settled, where they are indeterminate, and how to take advantage of both in a manner that will most effectively serve the ultimate advocacy goals. For these skills and values to effectively serve students as they transition from student to professional, and later as they transition to different roles throughout their professional career, they need the ability to engage in critical reflection.<sup>76</sup> Exercised properly, this ability will contribute

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75. See *United Nations Civil Society Participation (iCSO)*, UNITED NATIONS DEPARTMENT OF ECON. & SOC. AFF., <http://esango.un.org/civilsociety/login.do> (last visited Feb. 25, 2013) (providing a searchable database of over 24,000 civil society organizations associated with the U.N. alone).

76. Arturo J. Carrillo has noted the role of critical reflection in clinical legal education as one of the features that sets HRCs apart from NGOs.

Clinical legal methodology guarantees that human rights clinics are permanently engaged in the critical evaluation of the human rights issues addressed as well as the clinics' own role in advocating them. With respect to the latter, *internal* opportunities for reflection are paramount. The purpose of clinical education, as we have seen, is to train competent and ethical practitioners through the simulated and supervised practice of law by students. Accordingly, HRCs, like all law clinics, are structured to provide their members with constant opportunities to evaluate their work in progress, process feedback, and engage in constructive critical reflection. As a consequence, clinical instructors and their students are continuously evaluating their collective performance and success in promoting their clients' interests. This process tends to produce highly effective advocacy, since the reflection of clinic participants usually results in refinements to the clinics' strategy and practice, which can be implemented prospectively with positive consequences. While this dynamic is built into the HRC paradigm, it tends to be less characteristic of non-clinical models of university-based advocacy or conventional NGOs.

Carrillo, *supra* note 5, at 581.

to students' learning and professional development throughout their careers.<sup>77</sup>

Students in human rights clinics are also challenged to critically assess the law and lawyering and to imbue their own lawyering, client interactions, and advocacy with human rights principles and values. The international human rights clinic directly confronts the question debated within the halls of law schools and in clinical scholarship about the role of law schools in teaching social justice. Professor Stephen Wizner wrote:

The practice of law is as much about power as it is about legal knowledge. Law schools have a responsibility to teach students about their social and professional responsibilities in exercising the power of law. Law students need to be reminded that "justice" is not something that emerges *ipso facto* from the existing legal system.<sup>78</sup>

Professor Hurwitz borrows this notion for discussing the role of human rights clinics in engaging students in social justice. She comments, "International human rights practice can facilitate an understanding of the ways in which law and legal power are distributed and exercised, to what ends, and in whose interests."<sup>79</sup> But the question of social justice is complex, and addressing what role it should have in clinical legal education requires unpacking how social justice is defined, the underlying assumptions made in defining social justice, and the role law students and law schools should play. Clinical professors have an important role to play in challenging students to question those assumptions and to critically evaluate the work in which they engage.<sup>80</sup>

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77. Adelle Blackett argues: "These lawyers should be able to develop the skills not only to learn the law, but to recognize that they can influence and are influencing its constant—and according to the discourse on globalization, rapid, but certainly not linear—development." Blackett, *supra* note 12, at 69.

78. Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 *FORDHAM L. REV.* 1929, 1936 (2002).

79. Hurwitz, *supra* note 1, at 529. Hurwitz further relies on the notion that "by design, law school clinics are a part of legal reform and social change. . . . The question for clinical legal education is not whether students should be taught that lawyers ought to use law for social good, but how that lesson can be most effectively taught." *Id.* at 530 (citing Stephen Wizner, *Beyond Skills Training*, 7 *CLINICAL L. REV.* 327, 330 (2001)).

80. Peter Rosenblum, *Teaching Human Rights: Ambivalent Activism, Multiple Discourses, and Lingering Dilemmas*, 15 *HARV. HUM. RTS. J.* 301, 304–05 (2002).

*C. Applying Critical Theory to Human Rights Clinical Legal Education*

Being embedded in the legal academy, law school clinical programs have both the luxury and the responsibility to engage students in a critical inquiry into how law is constructed, how it is applied, and the role both the clinical program and students play in that process. In the context of international human rights advocacy, where the clients may be distant and the goals ambitious and slow to be realized, law students confront the vagaries and limitations of the law, while also persisting in seeking recognition of rights under the law.<sup>81</sup> Responding to critiques of human rights advocacy and the arguments pertaining to the role of human rights advocates in perpetuating client victimization and essentialization while purporting to do good, Professor Dina Haynes set forth an argument for client-centered human rights advocacy, particularly within the clinical setting.<sup>82</sup> She argues:

Human rights clinics and centers should consider how centering the work of their students in a lawyer-client relationship not only adds to the learning potential of future lawyers and human rights advocates, but additionally allows students to carefully consider the admonishments put forward by human rights critics. Adding a clinical component in which students grapple with client-lawyer relationship issues in the context of human rights cases delivers an entirely different dimension and infinite possibilities for teaching how, precisely, a human rights advocate can and must confront questions of imperialism, essentialism, reduction of a person or group to a state of Victim Subject, and the unreflective advocate's potential role in essentializing the very persons she is purporting to help.<sup>83</sup>

Engaging students in critical theory, while building on the value of client-centered lawyering that predominates in clinical legal education, provides students with valuable opportunities to struggle with conceptions of justice, morality, and their own assumptions as they develop their professional identity. Clinical professors engaged

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81. See Steiner, *supra* note 43, at 328.

82. Haynes, *supra* note 39, at 416.

83. *Id.*

in domestic poverty law, as well as clinical professors working both in and out of the United States in the area of international human rights and immigration advocacy, have collaborated to address what can be learned from each other that can then be applied to the training of students on the cusp of their professional lives.<sup>84</sup> One group of clinical scholars engaged in international human rights and domestic poverty law concluded that human rights clinicians must

carefully select cases and projects considering the unique positioning of the clinic; situate human rights work within a broader grassroots social movement; identify the distinct roles of different players in a human rights advocacy strategy; broaden a litigation strategy with non-litigation endeavors; include a focus on economic, social and cultural rights; adopt a client-centered approach that uncovers and embraces authentic client narrative; develop a framework for ethics in human rights practice; build transnational alliances and consider transnational dimensions of work; teach socio-historic determinants to highlight advocacy opportunities; engage students in routine practice of self-reflective lawyering, particularly encouraging explorations of power differentials, strategically attempt to map the goals and benchmarks of a human rights campaign; and, anticipate any unintended consequences of human rights work.<sup>85</sup>

The following Part looks at choices to be made in case and project selection and specifically examines choices made in designing the Transnational Legal Clinic ("TLC"), as assessed against the pedagogical goals set forth above.

### III. FINDING THE PEARLS: EXAMPLES OF CASE AND PROJECT SELECTION IN CLINIC DESIGN

Having identified a multitude of pedagogical goals that should shape clinic design, the question remains: when confronted with a world of options, how do we identify the pearls that will serve as the catalyst for developing the multiple essential lawyering competencies outlined above? Just as there are many different pearls, each shaped by the environment in which it took shape, there are many different designs for experiential learning programs, in-house clini-

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84. Bettinger-Lopez et al., *supra* note 40, at 338–39.

85. *Id.* at 398.

cal programs, and even for international human rights clinical programs. While there is no single template for clinic design, particularly in the human rights context, the process of engaging students in real-world practice is the one constant that drives the value of the clinic. In engaging the decision-making process and in evaluating the selections made, it is important to first identify the different criteria that give value and enhance the pedagogical goals to be served.<sup>86</sup>

The following criteria are used to assess the value of pearls: their shape or structure; their surface quality, which is an indicator of durability; their nacre—the layers that develop over time; their luster, shine, or brilliance that makes one pearl stand out to the untrained eye more than another; and, finally, their match with the other pearls with which they are strung together.<sup>87</sup> While the value of each single pearl is important, each is viewed in light of the overall design needs, with consideration given to the other pearls with which it will be assembled, the materials with which each will be strung, the needs and interests of the customer who will ultimately wear the pearls, the cost of completing the design, and any other constraints.

A clinician selects cases and projects with similar considerations in mind. This Part begins by identifying the different aspects of cases and projects that are the pearls of clinical legal education, recognizing the variations that exist in pearls and case assignments alike. As with the creation of pearls, numerous external factors and forces shape the variations in case and project selection, as well as the other components of clinical teaching that operate in tandem with the lawyering activities.<sup>88</sup> Clinical programs must adapt their case and

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86. Kestenbaum et al., *supra* note 5, at 483. Kestenbaum identifies the practical lawyering skills “necessary for international human rights practice,” borrowing from the MacCrate standards and adding skills of particular relevance in the human rights context, including:

(1) understanding the past, present, and future directions of the international human rights movement as well as the legal advocate’s role(s) within the movement, (2) recognizing the limits of international human rights law and advocacy, (3) conducting international human rights research, (4) planning and implementing a human rights fact-finding or other in-country mission to further project goals, (5) interviewing victims or their representatives, (6) building and supporting human rights coalitions, (7) identifying, negotiating, and overcoming cultural and other barriers among local and international human rights partners, and (8) developing and implementing media and advocacy strategies to advance a human rights issue.

*Id.*

87. See, e.g., NEIL H. LANDMAN ET AL., PEARLS: A NATURAL HISTORY 45, 45–61 (2001).

88. The number of credits allotted for the clinic has an impact on the amount of time a student can reasonably expect to devote to his clinic work, as does the scheduling flexibility that may or may not exist in his schedule. With regard to time, clinics also vary in length from one

project selection to meet the host of constraints that may exist within each academic institution, while also looking to build on, rather than duplicate, opportunities provided elsewhere within the institution, providing critical added educational value through the work they do.<sup>89</sup>

Assembling the docket of cases and projects that will (1) engage students in the rich complexity of the real world and the dynamic nature of people's lives and goals and (2) serve as effective vehicles for teaching the full range of competencies identified as core to the making of a lawyer is an unending challenge.<sup>90</sup> The real world is fraught with complexity and dynamism not reflected in the static nature of appellate case law. It cannot be dictated in the way that hypotheticals and simulations can be, but with careful thought, there are ways to control and account for unpredictability.<sup>91</sup>

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semester to one year, while other law schools allow their students to participate for multiple semesters over the course of their law school career. The availability of financial and other resources, competing demands on the time of the faculty supervisor, as well as physical location and community demands also play a role in determining what cases and projects can reasonably be undertaken by a clinical program. While the need for resources and time is exacerbated in international human rights clinics – where cases and projects often arise in distant localities, where language interpretation and translation may be required, and where travel to meet the client cannot be accomplished in a few hours or even a day – these considerations are not unique to the international human rights clinic. See Kestenbaum et al., *supra* note 5, at 468–69 (noting that clinicians must manage conflicting goals and interests by balancing expectations against the limitations of the law school academic calendar, resources available, and the viability of project goals).

89. In extracting theory from their experiences in promoting the right to free education in Columbia, faculty and students from the Cornell International Human Rights Clinic set forth the following six steps in clinic design:

- (1) determining broad clinical legal education goals; (2) determining general project purpose and goals; (3) forming and strengthening strategic alliances among local clinic partners; (4) developing local human rights legal and advocacy strategies; (5) implementing local legal strategy and human rights advocacy; and (6) reflecting and processing with partners and students while revisiting steps (4) & (5).

*Id.* at 481. They go on to set forth the following goals:

- advancing human rights and social justice on the ground for the individuals, groups, or organizations with whom the clinic is working. At the same time, project goals may seek to educate and impart practical skills to law students in various aspects of international human rights and social justice lawyering. Other goals may include teaching students to think and act both globally and locally toward improving access to justice and human rights, or assisting in the empowerment of historically marginalized groups by engaging them in the process of law and policy reform.

*Id.* at 482.

90. See Deena Hurwitz, *Engaging Law School Students Through Human Rights Clinics: A Perspective from the United States*, 11(2) *AUS. J. HUM. RTS.* 37, 42 (2005) (noting that “[s]election of appropriate projects is a particularly complex task for human rights clinics”).

91. *Id.* at 42–43.



*A. Assessing the Pearl's Value*

While ultimately graded by how well they serve the identified pedagogical goals of the clinical program, cases and projects—like pearls—are shaped by external and internal forces, and are distinguished by various criteria. Determinations of value are not limited to a single factor. As with pearls, clinic cases can be assessed based on: their shape and structure, their durability, their layers that give richness to the learning experience, their luster—their shine that attracts even the untrained eye—and their fit with the other cases strung together as part of the overall design.

*1. Shape and size in clinic design*

Clinic cases and projects come in a variety of shapes and sizes. As with different varieties of pearls, the shape and size are determined by a variety of internal and external factors, including the oceans from which they came and the different environmental forces at play, as well as how early in their development they were plucked from the ocean. Similarly, the shape of the clinic experience is determined by the number and variety of pearls strung together. Shape may be determined by the nature of the project itself, the client, the geographic location of the advocacy, the forum, the lawyer, and other parties engaged. For example, the shape of a case on behalf of an individual before a court or an administrative body will depend on established rules of procedure, deadlines, and criteria upon which it will be adjudicated. Another shape may involve advocacy before an international human rights body, brought on behalf of a group of individuals or a community of people (narrowly or broadly defined), where the rules for participation may be less clear and the outcome of the engagement even more undefined.

As with pearls, while there may be a central structure in place, what builds up around that structure and how it is built, is at least partly in the hands of the lawyer and the clients or partners engaged in the advocacy. While pearls are often judged based on how large and how perfectly spherical they are, the more prevalent, smaller and asymmetrical seawater pearls add dimension to the design. When clustered together, they provide interesting elements in completing the overall design sought. The job of the clinician, as with the job of the jeweler, is to assemble the pearls in ways that form a cohesive and complete design, provide a varied and contemporary learning experience with broad appeal and accessibility, and give a

multidimensional set of opportunities from which students may learn.

## *2. Finding the holes and assessing the imperfections*

In addition to shape and size variations, pearls and cases need to be assessed for imperfections. Small imperfections in the surface area of a pearl are the inevitable result of their natural creation. Cracks or holes in the surface, however, or a surface that is thin or flaky, reveal greater weakness in the pearl and greatly reduce its value. When selecting cases, it is important to identify the potential weak spots and evaluate whether what may appear to be a great experiential learning opportunity will ultimately hold its value.

Flawless pearls are rare, and exist mostly in a simulated state, just as the perfect client or the perfect case with a flawless set of facts exists only in simulation and not in the real world. In the case of individual client representation, clients are rarely perfect and their stories are not without holes or flaws, which must be explained when presenting them to the adjudicator. Similarly, relationships with clients and partners are rarely completely smooth, and holes or cracks may emerge due to friction intrinsic to human relationships. A certain degree of imperfection creates important learning experiences for students, and learning how to control friction in a way that mends rather than deepens those cracks is an important part of lawyering. But it is also important to recognize when the holes and the cracks—in the case or in the client or partner relationship—ultimately weaken the overall endeavor and diminish the educational value to the students. When more time is spent trying to fill the holes, navigate the rough surfaces, and mend the cracks, other pedagogical goals are sacrificed. Sometimes those imperfections and the depth of those imperfections are not readily visible and are even less visible to the untrained eye. Gaining knowledge in how to recognize imperfections and their ultimate impact on value becomes an important part of the overall training endeavor.

## *3. The nacre—layers of cases and projects*

Cases and projects have many layers—the nacre—that build up around the core of the case over time. As with pearls, the more time that passes, the thicker the nacre. Cases and projects that evolve over time and are multilayered provide the richest and deepest learning opportunities for students. But cases that are multilayered

take time both to develop and to navigate. Further, there is a balance between the case or project that has been strengthened by time and the case or project that has become impenetrable as the nacre has thickened to such a degree that it hides the essential beauty and simplicity of the pearl.

#### 4. *Luster*

Perhaps the shine of human rights clinics, more so than other areas of clinical legal education, attracts students, prospective students and administrators. Law schools regularly promote and advertise international travel and human rights advocacy undertaken by students in ways that highlight the exotic and emphasize the shine.<sup>92</sup> Shine attracts resources, and it also attracts students. There is undoubtedly value to ensuring the case provides enough brilliance so as to engage the students through means not otherwise available in their legal education. But for that shine to be durable, it must be more than an applied polish or glossing. Instead, the shine must emanate from the pearl itself. The way in which a pearl refracts light is core to the determination of its value. In looking for cases and projects, it is important to ensure that students can see the light that refracts from the layers. Over time, the luster may dim. Thus cases and projects, like pearls, must be carefully handled to maintain their shine and the value that shine provides. If the shine is superficial rather than organic and there is no depth from which lessons are extracted, the luster diminishes and the value diminishes with it.

#### 5. *Match or fit with the other pearls in the docket*

Ultimately, each pearl must be assessed not only for its own individual value, but also in light of the other pearls with which it will be strung in creating a complete design. While there are a few rare pearls that can stand alone, pearls are more often assembled together with pearls that complement each other and contribute to the overall design. When identifying cases and projects, it is important to see how they align with the rest of the docket. How do the small pearls complement the larger pearls? What unique set of experiences will the multifaceted but smaller seawater pearl, with less luster and thinner nacre, provide alongside the spherical and shiny pearl?

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92. Harvard Law School, for example, advertises that it sent students to fifty-five countries in 2010–11 alone. *About ILS*, HARVARD LAW SCH., <http://www.law.harvard.edu/news/spotlight/ils/about/index.html> (last modified July 12, 2012).

What do the smaller individual cases add to the bigger human rights projects? And how does one case or project refract light and learning experiences in ways different from the other cases? It is equally important to assess how the assembled cases and projects form a design that is complementary to, and adds value to, the other curricular and extra-curricular activities that form the complete ensemble of law student training.

*B. Examining the Pearls and Assessing Their Value: Case Studies from the Transnational Legal Clinic*

When the TLC was founded at Penn Law, the ocean was vast and the previously drawn maps rarely reached the coastline, let alone expanded beyond the familiar territorial waters. The TLC was founded on the eve of an expansion in international opportunities and increased focus within the institution on the internationalization of legal practice, tremendous student interest, and a dramatic growth in student-driven pro bono activities. A key factor in selecting the pearls that comprise the docket has been to ensure the clinic plays a complementary role within the institution and adds substantial value to the students' learning experience.

In examining individual cases and projects, and the diversity of pedagogical goals they serve, there is recognition that there is no single perfect pearl through which students can gain all lawyering competencies.<sup>93</sup> Thus, while presented individually below, the individual client cases are often selected and assigned simultaneously with the broader systemic advocacy cases and projects in the TLC to ensure the full set of pedagogical goals outlined above is met. When there is not sufficient time for students to engage directly in both types of cases, seminar time and case rounds are used to expose students to different skills and values, complexities, challenges, and avenues for moving forward in those cases in which they are not directly involved. Furthermore, clinic design requires attention to how the selected pearls will be strung together with seminar, simulation, and supervision to achieve the maximum transfer of the wealth of fundamental lawyering competencies outlined above.

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93. See Srikantiah & Koh, *supra* note 37, at 453–54.

1. *The individual client representation in immigration proceedings: The small but multi-faceted pearls*

Immigration cases on behalf of individuals are often viewed as small pearls compared to systemic human rights advocacy projects. However, immigration cases often have many layers and refract critical lessons in client representation—interviewing, counseling, fact investigation, case theory, narrative theory, cross-cultural competency, and persuasion. At the same time, students are required to navigate the interaction between the federal immigration statute and accompanying administrative regulations, administrative jurisprudence emanating from the Board of Immigration Appeals, and appellate case law. Furthermore, given the prominent role of discretion in the prosecution and detention of immigrants and in the adjudication of their claims, students must develop an understanding of the interaction of law and policy with practice. And they must learn to translate their client's experiences and communicate the context in which those experiences occurred in a manner that will facilitate the adjudicator's ability to understand and empathize.

In addition to understanding the varied layers of law within the U.S. immigration system, students also must research and analyze international and foreign law. Asylum law, for example, is based on the Refugee Convention,<sup>94</sup> and international and comparative law and practice are deemed persuasive.<sup>95</sup> Asylum law requires the client to demonstrate a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.<sup>96</sup> Where the persecution is being conducted by a private party, the individual must also prove that the government in her home country is either unable or unwilling to protect her.<sup>97</sup> It therefore becomes imperative in building the case for asylum that student representatives understand how the law within the home country treats their client, what variations may exist between national law and the laws of the state or locality where the client is

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94. United Nations Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137.

95. See, e.g., Beth Lyon, *Changing Tactics: Globalization and the U.S. Immigrant Worker Rights Movement*, 13 U.C.L.A. J. INT'L L. & FOREIGN AFF. 161, 182 (2008).

96. See Immigration and Nationality Act, 8 U.S.C. § 1158(b) (2009) (citing to § 1101(a)(42)(A) defining refugee).

97. See e.g., *Chakir v. Gonzales*, 466 F.3d 563, 570 (7th Cir. 2006) (explaining "[t]he acts of private citizens do not constitute persecution unless the government is complicit in those acts or is unable or unwilling to take steps to prevent them."); see also 8 C.F.R. § 208.13 (2012) (explaining the requirements for establishing asylum).

from, and how those laws are executed. The complexity of the immigration system and the myriad of issues students must tackle in representing clients' immigration matters allow for both depth and breadth in their training, as set forth in greater detail in the examples below.

The representation of an individual asylum seeker may also give rise to broader, systemic human rights advocacy initiatives. Synergies may emerge between the individual client experience and the systemic human rights issues addressed outside the immigration court. Asylum law is a dynamic and evolving area of practice, made the more so by the increased mobility of individuals. This has contributed to more diversity both in the demographics of asylum seekers in different communities across the United States and in the nature of the claims presented. In cases where an asylum seeker may be detained by the Department of Homeland Security, denied meaningful judicial review, or puts forth novel legal arguments, international human rights advocacy becomes a complementary strategy for achieving the underlying goal of protecting the fundamental rights of asylum seekers who may experience a new set of rights violations upon arrival in the United States.<sup>98</sup> As a result, the TLC has contributed amicus briefs addressing obligations under international human rights law in federal court litigation and has engaged in advocacy before the Inter-American Commission on Human Rights and different United Nations' human rights monitoring mechanisms to address the systemic issues.<sup>99</sup> Each strategy involves different, but complementary, skill sets and contributes to the students' training in the full range of lawyering competencies, which are examined in greater detail in the following section.

#### a. Choosing the immigration cases

Since its inception, the TLC has represented individuals from around the globe in a range of immigration proceedings.<sup>100</sup> While

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98. See Submission to the United Nations Universal Periodic Review, ADVOCATES FOR HUM. RTS., *Migrants, Refugees, and Asylum Seekers* (Nov. 2010), [http://www.Ushrnetwork.org/sites/default/files/migrants\\_refugees\\_and\\_asylum\\_seekers\\_joint\\_report.pdf](http://www.Ushrnetwork.org/sites/default/files/migrants_refugees_and_asylum_seekers_joint_report.pdf).

99. For an explanation of the Inter-American Commission on Human Rights, see *Inter-American Commission on Human Rights: What is the IACHR?*, ORG. AM. STATES, <http://www.oas.org/en/iachr/mandate/what.asp> (last visited Mar. 28, 2013). For a description of the United Nations human rights monitoring mechanisms, see *United Nations Priority*, UNITED NATIONS, [www.un.org/rights/HRToday/hrmm.html](http://www.un.org/rights/HRToday/hrmm.html) (last visited Mar. 28, 2013).

100. See *Making an Impact Worldwide*, U. PA. L SCH., <http://www.law.upenn.edu/clinic/transnational/> (last visited Mar. 28, 2013).

there was initial interest in having the TLC focus on asylum cases that required students to do factual and legal research on human rights issues outside of the United States, it became readily apparent that expanding the individual client-representations to other areas of immigration practice would (1) provide students with a more diverse set of learning experiences, (2) would better serve the legal needs of the immigrant community,<sup>101</sup> and (3) would allow students to develop a better understanding of the relevant legal systems and to contextualize their clients' experiences.

The diversity in clients and relief sought provides opportunities for students to develop traditional lawyering skills, while engaging in explicitly cross-cultural communication. Students are challenged to exercise and develop competencies in responding to what is likely unfamiliar to them—be it the client's national origin, race, and/or language, as well as the client's life experiences in a country with different history, legal systems, educational systems, cultural practices, politics, and more. Many of the immigration clients have endured significant trauma and students must learn how to effectively communicate with and represent such individuals. Students realize the need to build rapport, and to exercise and display empathy, while also learning how to ask the difficult questions necessary to provide competent, as well as compassionate, representation.

The immigration cases also often require students to engage the services of experts as they look to build the evidence necessary to prove their clients' cases. They may engage country condition experts from departments of history, sociology, anthropology, and political science, as well as forensic experts who can provide psychological or medical evaluations of our clients. In doing so, they must develop an ability to talk across disciplines, to gain the support of the expert (often pro bono), and to work with the expert to ensure the affidavits, reports, and/or testimony provided are legally and factually relevant and persuasive.

The diversity in the immigration docket also challenges students to navigate the complexities and frustrations of immigration law, where statutes, regulations, directives, and practice may not be consistent and often do not provide a clearly defined set of answers for

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101. While not directly tied to the core lawyering competencies outlined above in establishing the pedagogical goals, the Transnational Legal Clinic has sought to fill service gaps in all of its representations. This has added importance when providing pro bono services that may be viewed as competition for the private bar. It also serves the broader values-based pedagogical goals relating to instilling in our students recognition of the importance of pro bono service.

how to proceed. As they navigate the complexity of the law and its intersection with practice, they develop an understanding of the role of a legal counselor and the value added by competent lawyering. Well-selected immigration cases also require students to critically evaluate notions of who is a “worthy” client, what makes a client “worthy,” and how to present a client in a way that recognizes the client’s agency, resilience, and strength where the law appears to reward victimhood and helplessness and clients are readily trapped in an essentialized narrative.

For example, the TLC has represented several clients who underwent female genital cutting (FGC) in their home country, came to the United States, and subsequently gave birth to daughters who they were determined to protect from undergoing the same procedure, as well as the other hardships and traumas they had endured during their childhood and beyond. When we initially began the representations, we had high expectations that our clients’ claims would succeed. But then the Board of Immigration Appeals issued two decisions on the eve of the hearing for one of our clients that held (1) female genital cutting was a one-time harm that could not be replicated and therefore could not give rise to the fear of future persecution,<sup>102</sup> and (2) parents could not claim derivative asylum based on the persecution their U.S. citizen children would endure in the parents’ country of origin.<sup>103</sup> Having already struggled with crafting a case theory and client narrative that respected our one clients’ autonomy and agency, and having struggled to not essentialize the client or demonize her family and culture, the students suddenly were required to adapt and change their case theory, literally overnight, to respond to the changes in the applicable legal standards. Similarly, the students representing our other client whose claim initially seemed to be a relatively straightforward application for asylum based on FGC had to change their case theory and adapt their evidence to meet the shifting legal requirements.

While the TLC was representing the individual mothers in their asylum proceedings, it also undertook the representation of a young man with a criminal history compounded by his lack of immigration status that resulted in the U.S. Department of Homeland Security initiating removal proceedings against him. The criminal charges di-

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102. *In re A-T-*, 24 I. & N. Dec. 296, 299-301 (B.I.A. 2007), *vacated in part*, *Matter of A-T-*, 24 I. & N. Dec. 617 (A.G. 2008), *on remand*, *In re A-T-*, 25 I. & N. Dec. 4, 5-7 (B.I.A. 2009).

103. *In re A-K-*, 24 I. & N. Dec. 275, 278-79 (B.I.A. 2007).



minated his already limited opportunities for relief.<sup>104</sup> Had he been provided with legal representation when he was first placed in foster care as a boy, he likely would have applied for and have been granted Special Immigrant Juvenile Status. This would ultimately have resulted in legal permanent residency,<sup>105</sup> which would have provided him with greater access to services and opportunities for success.<sup>106</sup> While he viewed himself and was viewed by others as American, having been brought to the United States as a young boy, the law viewed him as someone without lawful status and deportable.

The TLC has represented this particular client for seven years now, and just when the students were about to concede that there were no more possible avenues for relief, they found new avenues to try to hold off deportation. Each team of students working on this case has extracted lessons on client interviewing and counseling. In a case where the client is detained nearly five hours away from the school, students do not have the luxury often presented in clinic cases of hours of face-to-face time with the client over a period of months. To elicit the client's story, students have worked hard to create as comfortable an atmosphere as possible in light of the circumstances, to develop the theory and narrative, and effectively counsel and represent the client.

Central to understanding the client and developing an effective legal strategy is the ability to understand the different ways in which the foster care and juvenile justice systems in the United States can, and in this case did, contribute to the client's current situation. In crafting this narrative, though, students have struggled to not paint the client as a mere pawn in the system, but to allow for client agency and give voice to a client who speaks little. The students have learned how to navigate the prison system and work with the people that control his day-to-day activities. This fosters important interpersonal and problem-solving skills for the students, while forcing them to confront the question of who is a "worthy" client and develop the empathic skills needed to understand the cli-

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104. This data is taken from the TLC's clinic cases. Client files are on file with author but are confidential and protected by attorney-client and attorney work product privileges.

105. 101(a)(27)(I) of the Immigration and Nationality Act (INA), as amended by Section 235(d) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. 110-457, 122 Stat. 5044 (2008).

106. Because he was not able to prove lawful status, the client had a difficult time enrolling in school, and was not eligible for numerous work-release or other programs upon release from the juvenile detention facility after his initial encounter with the juvenile justice system.

ent as more than his list of criminal convictions, so that they may effectively represent him. Furthermore, this representation has presented an important balance to the asylum docket where the focus of rights violations is in the countries of origin, and the client typically presents as a victim of persecution.

b. Clustering the immigration cases

Included among the individual client representations of the immigration docket are the immigration cases that involve a cluster of clients, a cluster of pearls that circle around a shared set of facts and circumstances and provide enhanced opportunities for achieving a complementary range of pedagogical goals. The TLC was contacted for assistance in providing immigration representation to a group of approximately 100 workers brought to the United States from India to work as welders and pipe-fitters in the Gulf Coast post-Katrina, with the promise of good wages, housing, and most importantly, green cards for themselves and their family members. Our clients incurred significant debt to pay fees and travel expenses. From the initial point of contact in India, the workers had been charged exorbitant recruitment fees just to be allowed to pursue the opportunity, as well as the costs of their travel, lodging and food—fees that well-exceeded the value of the services provided. When the clients arrived, they found a situation far different from the promise—the working conditions were unsafe, and the living conditions were cramped and unsanitary.<sup>107</sup> Additionally, the promise of green cards was illusory—the workers had been brought to the United States on temporary visas that provided no opportunity for them to obtain green cards or bring their families here and tied them directly and exclusively to the one employer<sup>108</sup> subjecting them to abusive working and living conditions. Beginning with two intensive long weekends to conduct first-round screening interviews, first in Washington, D.C. and Maryland, and later in rural Texas, students conducted more than twenty initial client interviews. Having had the

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107. This data is taken from the TLC's clinic cases. Client files are on file with author but are confidential and protected by attorney-client and attorney work product privileges. See also Julia Preston, *Workers on Hunger Strike Say They Were Misled on Visas*, N.Y. TIMES (June 7, 2008), [http://www.nytimes.com/2008/06/07/washington/07immig.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2008/06/07/washington/07immig.html?pagewanted=all&_r=0) [hereinafter Preston, *Misled on Visas*]; Julia Preston, *Suit Points to Guest Worker Program Flaws*, N.Y. TIMES (Feb. 1, 2010), <http://www.nytimes.com/2010/02/02/us/02immig.html> [hereinafter Preston, *Guest Worker Program Flaws*].

108. See Preston, *Misled on Visas*, *supra* note 107; Preston, *Guest Worker Program Flaws*, *supra* note 107.

opportunity to conduct those initial interviews in person, the students followed up with interviews from the clinic offices via Skype and telephone, gathering all of the additional information needed to draft client affidavits and prepare the application materials.

In addition to providing intensive cross-cultural interviewing experiences for the students, these individual client representations, undertaken in the context of a group of exploited or harmed workers, created unique opportunities for students to see the complained of exploitation in context and to gather a better understanding of the pervasive and systemic issues at play in creating both the conditions of abuse, as well as the opportunities for redress. Where civil litigation is pending, as it is in a similar case recently undertaken by the TLC, it also forces students to carefully think through questions of professional responsibility. For example, to whom do they owe the duty of confidentiality, and how do they fit that duty into the broader litigation and advocacy team?

## 2. *International human rights advocacy*

Bridging the time- and often emotionally-intensive individual client representations in the immigration cases with the human rights docket presents layers of complexity and challenges, particularly in the context of a one-semester clinic. While students have a very steep learning curve in the representation of individuals in immigration cases, they generally have to learn just one body of U.S. law and procedure and need to develop just one attorney-client relationship. Although they need to build relationships with key witnesses, the adjudicator, and perhaps opposing counsel, students are ultimately accountable to just one client. And while there is much that is unsettled and ever-changing in the area of immigration law and practice, there are rules, procedures, and deadlines that provide the underlying framework onto which the students can build a case plan. Within human rights advocacy, there are a multitude of laws and legal systems that students need to learn—in terms of what the law is, how it is carried out, and what impact it has on the lives of individuals and communities. Once students understand the overlay of international human rights law, they must then examine what the different fora for advocacy will provide, and what the rules, procedures, and likely outcomes for each forum will be. Human rights practice is made all the more complex because it is carried out in the context of broader social movements with multiple actors who have varying agendas and personalities.

The value added to the overall clinical pedagogy by incorporating human rights cases and projects merits the struggles described above. International human rights clinics have a limitless range of cases and projects in locations and jurisdictions as diverse as subject matters from which to choose. All arguably provide pedagogical and service opportunities that expose students to a range of lawyer roles within human rights advocacy globally, as well as to the different contexts in which advocacy occurs, and the ways in which that advocacy manifests itself. It is important, then, to reflect on the depth of the training the students will gain, as well as the intentional and unintentional consequences of the advocacy undertaken.

An ongoing dialogue exists within the international human rights clinical movement about the role of clients, the nature of the advocacy undertaken in the human rights context, and the extent to which that advocacy is legal or non-legal. While recognizing that we are training lawyers, it is also important to be mindful of the range of skills lawyers employ—those that are traditionally considered “legal,” as well as those that have been termed “extra-legal,” such as report writing, media work, visual legal advocacy, coalition building, public hearings, and community education. Furthermore, in a world where social media and social networks permeate every aspect of both professional and personal lives, and have the power to catalyze movements and social change, it will be increasingly important for our graduates to be facile with and understand the potential impact of these extra-legal advocacy skills moving forward.

The cultivation of international human rights cases and projects presents unique considerations, and in assessing the pearls, particular attention needs to be paid to the external forces shaping the pearls, as well as the cracks and holes not necessarily in the case itself, but in the relationships that ultimately drive and give shape and value to the representation. In addition, it is important that the pearl hold the value promised—not just for the students, but also for the subject of the advocacy. Assessment of value must be ongoing.

#### a. Finding the pearls in our own oceans

While pearls from distant oceans take on a level of exoticism and shine, pearls from our own oceans can provide similar depth of learning, while allowing the value to be assessed from a closer vantage point and maximizing the synergies between individual client

representation and international human rights advocacy.<sup>109</sup> This is true whether the advocacy undertaken is litigation-based or more broadly defined advocacy.<sup>110</sup>

In the litigation-based human rights advocacy model, the TLC filed a petition (with the ACLU and the National Employment Law Project as co-counsel) addressing the rights of undocumented workers in the United States. The petition specifically addressed the denial of remedies for workers injured on the job, fired in violation of the National Labor Relations Act, and discriminated against or sexually harassed on the job. Students assigned to work on the petition in the first semester interviewed two of our individual petitioners, both residing in Pennsylvania at the time and both suffering from workplace injuries for which they were denied the right to a full remedy because of their immigration status. In addition to developing their story, the students counseled the clients about what their involvement before the Inter-American Commission would mean for them and the reality that it would not result in financial compensation or any other form of direct, individualized relief, but rather was part of a systemic advocacy initiative to protect future workers. In addition, they worked with our clients' workers-compensation lawyers to understand the domestic law and to craft affidavits that ultimately supported the Commission's finding that our petitioners had exhausted domestic remedies, thus making the petition admis-

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109. See Carrillo & Yaksic, *supra* note 37, at 104-12 (extracting lessons from public interest and human rights law clinics in Latin America, arguing that context matters both for pedagogy and service, and arguing for engaging in domestic human rights advocacy).

There are several reasons why ensuring a significant degree of domestic focus in human rights clinical work is important. First, it provides students with concrete opportunities to apply in practice much of what they have learned elsewhere in law school, making their clinical experience more relevant to their legal education generally. Second, it affirms for students the message that good human rights practice begins at home, and that human rights abuses are as much a U.S. problem as one faced by citizens of other countries. Third, by working on human rights issues through domestic legal and political systems, a human rights clinic and its students will be better situated to promote the internalization and eventual enforcement of basic rights than when they operate in a foreign country. Last, but certainly not least, addressing domestic human rights issues confers upon U.S. clinics that also work abroad an enhanced legitimacy when responding to skeptical counterparts in other countries who (rightfully) complain of U.S. moral imperialism and hypocrisy in the area of human rights.

*Id.* at 105.

110. As Professor Haynes has noted, "[T]he further away the client and the advocate are (both figuratively and literally) from the persons suffering the abuse, the greater the risk for essentializing those suffering the abuse, and the greater the risk of engaging in Western Imperialism . . ." Haynes, *supra* note 39, at 384.

sible,<sup>111</sup> and supporting the underlying claim that the domestic legal system discriminated against our clients solely because of their immigration status.

As noted above, the duration of human rights cases is one of the challenges of human rights advocacy. Six years from the date of the initial filing, the Commission deemed the case admissible, and new students are proceeding with the case on the merits. Moving forward, they will have to submit additional written pleadings and evidence to the Commission and prepare our witness testimony for presentation before the Commission. They will work with our partners and clients in preparing the hearing strategy, including media outreach and other advocacy to take place alongside the hearing.

In addition to the TLC's appearance before the Commission in a contentious case, TLC students have appeared on three separate occasions before the Inter-American Commission on Human Rights in thematic hearings on U.S. Immigrant Detention and Deportation.<sup>112</sup> These hearings resulted in a significant report on that issue by the Commission and then a working meeting hosted by the Commission to address implementation of the report's recommendations. Students assigned to work on this project drafted the requests for the hearing and working meeting, drafted materials (including a short video) for presentation to the Commission, and presented the opening statements to start the hearings before introducing our key witnesses.

The six students who had the opportunity to present at the Inter-American Commission, as well as the two who participated in the working meeting, had to develop a significant understanding of domestic law, policy, and practice. They then had to map that understanding onto the evolving international law framework addressing immigrant detention and due process in removal proceedings. Confronted with volumes of materials, the students also had to develop testimony that could be no longer than three minutes in one case and seven minutes in another, as the total time allotted for initial presentation before the Commission was twenty minutes per side. Advocacy such as this builds on the case theory and persuasive advocacy lessons taught in the TLC seminar. While they did not have individual clients, students questioned how to ensure the ad-

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111. No. 134 /11 (2011), available at <http://www.oas.org/en/iachr/decisions/admissibilities.asp> (last visited March 28, 2013).

112. See *Making an Impact World-Wide*, U. PA. L. SCH., [www.law.upenn.edu/clinic/transnational/](http://www.law.upenn.edu/clinic/transnational/) (last visited Feb. 27, 2013).

vocacy undertaken was responsive to and respectful of the individuals who comprise the diverse communities whose rights we were seeking to enforce in a manner that supported ongoing work of local and national advocacy organizations. As students critically examined the potential impact of the discussed policies and practices on the subjects of advocacy, they worked with our partner organizations to establish priorities, define the scope of the advocacy, develop proposed recommendations, and identify parallel advocacy opportunities, including media and legislative engagement.

The work at the Inter-American Commission on Human Rights has served to complement TLC students' individual client representation, including the representation of individuals in detention and individuals struggling while they wait for work authorization. It has served to provide context for their clients' cases as they strategize around systemic reform and has rounded out the range of lawyering competencies undertaken. It has also provided an opportunity for critical engagement around human rights law and practice, as something that occurs not only in other countries, but also within the United States.

b. Pearls from deep and distant oceans—risks and rewards

Just as pearls are often harvested from distant seas, the work of international human rights advocacy often happens in places beyond U.S. territorial waters. Giving students experiences outside of the United States and challenging them to adapt to unfamiliar environments allows for explicit teaching about law, the lawyer, and advocacy across culture, language, and legal and political systems. But it becomes more challenging when diving into uncharted waters—or at least unfamiliar waters—to assess which oysters possess the pearls and which pearls will have lasting value. While certain pearls have great appeal from a distance, they may lose their luster upon closer examination.<sup>113</sup> The initial assessment, conducted with a particular set of goals in mind, may not reveal cracks and holes that emerge when placing the pearl into a different setting. And it may

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113. Challenges and opportunities persist when human rights advocacy becomes more removed from individual client representation. See Haynes, *supra* note 39, at 408–09 (“[C]hoosing to approach human rights advocacy through issue-based lawyering requires an even more careful, rigorous and reflective look at the motivations in play when taking on the ‘case’ or project in the first place.”).

ultimately be decided that the overall design would be better served by a different pearl or set of pearls.

The TLC's work with Liberian refugees at the Buduburam Refugee Settlement in Ghana – which first began accepting refugees in 1991 – is one such example. In fall 2007, the TLC participated in taking statements from Liberian refugees as part of the Liberian Truth and Reconciliation Commission's (TRC) Diaspora Project, coordinated by The Advocates for Human Rights, an international human rights organization based in Minneapolis, Minnesota.<sup>114</sup> Initially, The Advocates asked us to help coordinate the statement taking of Liberians living in the greater-Philadelphia region. But as the project got underway, The Advocates soon realized there was a tremendous interest among the Liberian refugees in the Buduburam Refugee Camp to give statements, and we were invited to join a delegation to Ghana to assist in taking statements there. Five students and their supervisor joined The Advocates in Ghana and took statements from over 100 Liberian refugees over the course of a week. Those statements formed a critical place in the TRC's understanding of the conflict in Liberia and the production of a series of recommendations in a comprehensive report prepared by The Advocates for the TRC. While responding to a request for assistance, students gained intensive interviewing experience that directly engaged them in one aspect of transitional justice – the listening of stories and witnessing the experiences endured during a brutal civil war, in flight, and as refugees. This experience had a tremendous impact on each of the students, their understanding of interviewing and story-telling, responses to trauma, and the importance of context.

After several follow-up discussions over the course of two years with The Advocates about possible follow-up work on behalf of the Liberians living in Buduburam, we decided to return to share the findings of the TRC report and to assess the needs and opportunities for legal advocacy on behalf of the remaining Liberian refugees, some of whom had been living on the camp since it opened in 1991. In March 2010, we made a return visit and spent several days at the Buduburam Refugee Settlement meeting with individual refugees, the principal and a teacher who had set up a school on the camp, the leadership of the Liberian Refugee Welfare Council, representatives

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114. See *Making an Impact World-Wide*, U. PA. L. SCH., <http://www.law.upenn.edu/clinic/transnational/> (last visited Mar. 28, 2013); *Liberian Truth and Reconciliation Commission Project*, ADVOC. FOR HUM. RTS., [http://www.theadvocatesforhumanrights.org/Liberian\\_Truth\\_and\\_Reconciliation\\_Commission\\_Project\\_2.html](http://www.theadvocatesforhumanrights.org/Liberian_Truth_and_Reconciliation_Commission_Project_2.html) (last visited Mar. 28, 2013).



from several of the Liberian-run and operated vocational training programs, and the Camp Manager. Two students, who had previously taken the Mediation Clinic at Penn Law, conducted a conflict resolution clinic for the camp residents, ranging in age from three to seventy, including many former child soldiers. The students also spent time in Accra, meeting with representatives from the Office of the United Nations High Commissioner for Refugees, the Ghanaian Human Rights Commission, as well as different human rights non-governmental organizations to discuss the future of the Liberian refugees and their options moving forward.

The experience had a profound and unique impact on each of the students who participated and provided a multitude of unique learning experiences. The interviewing skills required varied from those of statement-taking. The role of the statement-taker is to record the individual's story and serve as witness to the experiences. As interviewers, our role in 2010 was to gather information, assess the information, and test the assumptions the underlay that information. We were looking to identify what possible legal strategies or opportunities existed for advancing the rights of the remaining Liberians. The interviewing also differed from that undertaken in representing individuals in immigration cases; the individuals were not our clients and there were no clearly identifiable avenues for providing legal relief to the refugees. Students confronted their own limitations as advocates. One student commented how she went to law school so that when she saw injustice, she could sue to right the wrong. But protracted refugee situations do not lend themselves to quick fixes brought about by litigation. The students quickly realized traditional legal advocacy was not going to bring free water, free education, or full and affordable access to medical care, to the refugees. And the law did not require any one party to ensure the remaining refugees on the camp be resettled into countries outside the African continent. This led to frustration. But the experience also contributed to the students' understanding of human rights advocacy, the limitations of the law, the challenge of pulling together disparate information into a comprehensive and accurate assessment of the "facts," and the need to evaluate that information within the particular social, political and economic context. The layers of the pearl were thick, and underneath the luster and the surface layers were more opaque and impenetrable layers. Upon our return, follow up communications with the refugees, as well as with international agencies and others, revealed communication gaps and com-

peting expectations that made both the lawyering and learning more difficult and created cracks in the surface of the pearl.

In deciding whether and how to move forward, in light of the cracks and the diminishing luster and persistent opacity, students assessed whether further efforts to continue to pry the pearls from the oyster would have a positive, neutral, or perhaps even negative impact on the refugees. Students were forced to confront many questions, common to human rights practice, and crystallized in the context of clinical legal education. What additional value did we bring to the refugees? Looking forward, could we—operating within the constraints of the law school clinical model—achieve the refugees’ desired outcomes, recognizing the refugees did not have a monolithic set of goals? Did legal advocacy give us the tools we needed to achieve the diminishment of suffering on the camp, or the ultimate resettlement of refugees to the United States? What unfulfilled expectations did we create just by virtue of our presence? Did the limitations on what we could accomplish diminish the value of the teaching pearl, while also doing more harm than good in the fragile and tense ecosystem of the refugee camp? These are the questions lawyers, and particularly lawyers engaged in human rights advocacy, ask every day.

These questions led us to the conclusion that the most productive and positive contribution we could make was to draft a report using the Buduburam Refugee situation as a case study for understanding protracted refugee crises and developing forward-looking recommendations. The report seeks to identify what actors have what responsibilities, when those responsibilities attach, and what the critical moments for intervention are. It also assesses systems and mechanisms intended to facilitate the ultimate repatriation or integration into the host country, while also ensuring those who still have valid refugee claims are able to pursue resettlement in a safe third country. This project has evolved to employ the law students’ skills and the academic resources at their disposal. At the same time, it is providing students with intensive training in researching, compiling, and analyzing the rights and obligations of a multitude of institutional and individual actors operating within and across multiple domestic and international legal and political systems and structures. It also forces students to grapple with questions of objective facts and subjective realities. And it further develops students’ legal and interdisciplinary fact-based research, analytical, and writing skills.

While the client is removed from the project, the students must address the question of to whom they are ultimately accountable in the drafting of this report: Is it our partner organization, is it the Liberian refugees, or is it other refugees in protracted situations now and in the future? Will the report withstand scrutiny from the international community, including international organizations, governments, and the advocacy communities? And, does it do justice to the tens of thousands of refugees who are its subject? Importantly, these lessons are not occurring in isolation, but as part of an overall clinic design that also incorporates representation of individuals seeking immigration relief in the United States, as well as human rights advocacy on behalf of local organizations interested in using human rights as part of their overall community organizing strategy.

The TLC's work in Haiti, on the other hand, has been strengthened significantly by the existence of a Haitian-partner organization that has defined the goals of engagement and has helped shape the strategies for achieving those goals, providing on-the-ground support to the project not available to TLC's work in Buduburam.<sup>115</sup> The model of representation provided by the TLC in Haiti has been akin to that of co-counsel contributing resources and a particular expertise to the joint endeavor of providing capacity-building services to the partner organization and its client community. Haiti's proximity to the United States, its historical relationship with the United States, and the entrenched role of the international community in Haiti, make that country an appealing ocean into which to dive for pearls. But touristic or missionary diving into the country has created an undercurrent that has arguably worked against the interests of the Haitian people, and led to distrust of and disdain for the international community.<sup>116</sup> Having a local community-based partner,

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115. Professor Haynes has argued:

The further the subjects and objects of the advocacy are from the advocacy itself, the more attention needs to be paid during the interviewing and counseling stages so that the solutions developed with the client are consonant with the real needs and desires of the people who will be impacted by that advocacy.

Haynes, *supra* note 39, at 412. Professor Hurwitz has commented similarly, stating that while "[n]ot having individual clients . . . affords human rights clinics the freedom to design a comprehensive program," she has also observed, "[c]lient-related dilemmas abound in human rights clinics. Where there is no individual or live client, there is always a question of how to stay connected to the people who are the subjects of the work—and the higher risk that the project will feel like applied research." Hurwitz, *supra* note 1, at 540–41.

116. See, e.g., Meena Jagannath et al., *A Rights-Based Approach to Lawyering: Legal Empowerment as an Alternative to Legal Aid in Post-Disaster Haiti*, 10 N.W. J. INT'L HUM. RTS. 7, 7–8 (explaining that in Haiti there has been a "failure of the humanitarian aid community to adhere

whose mission is legal empowerment and who helps define and direct the goals and the strategies, builds value for the students and helps shift the tides' influence in more positive than negative ways.<sup>117</sup>

The TLC undertook its advocacy in Haiti after a local rights-based advocacy law firm asked the TLC to conduct a workshop and training for grassroots organizations and their members on how they could use the United Nations Universal Periodic Review process (UPR) (based on our prior active engagement in coordinating civil society participation for the U.S. UPR the year before). The workshop participants concluded they wanted to participate in the UPR and solicited our assistance moving forward. Through our collaboration, TLC students assisted in bringing to the forefront perspectives of persons not otherwise seen or heard at the United Nations. Students conducted interviews with representatives from the tent cities, from small community-based women's organizations assisting survivors of rape and other forms of gender-based violence, student groups, and labor activists. Students also interviewed private employers, representatives from the International Labor Organization's BetterWork Haiti program, the UN Mission in Haiti, and several of the international non-governmental organizations operating in Haiti. The interviews formed the basis for the drafting of a report on Labor Rights in Haiti, as well as a report titled Restavek: The Persistence of Child Labor and Slavery, endorsed and submitted by Bureau des Avocats Internationaux (BAI) and its partner organizations to the United Nations.<sup>118</sup>

Two students then accompanied our partner organizations to Geneva to lobby delegates from the UN Human Rights Council on core questions and recommendations emanating from the report. That

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to a 'rights-based' approach to assistance" and that instead "international agencies have largely provided humanitarian services . . . through a top-down approach" without "meaningful input" from Haitians.).

117. Professor Hurwitz argues that

[h]uman rights advocacy should involve the people who are affected by its consequences. In practice, this means that international advocates must work closely with their local counterparts and depend on the local political and cultural perspectives of the situation. Making rights real for people involves an engaged 'critical consciousness' that is developed through education, training, and community organizing, as well as strategic lawyering.

Hurwitz, 28 YALE J. INT'L L. at 516.

118. For copies of the reports, see Institute for Justice and Democracy in Haiti, Universal Periodic Review Republic of Haiti: Submissions to the UN Human Rights Council (2011), <http://www.ijdh.org/wordpress/wp-content/uploads/2011/04/LERN-Compiled-UPR-Submissions1.pdf>.

visit resulted in several key recommendations being issued, and at the end of fall semester, TLC returned to Haiti to conduct workshops and trainings addressing the UPR outcomes and opportunities for follow up. As with the students who went to Ghana, the students engaged in the Haiti UPR project and follow up work have gained first-hand experience in human rights lawyering. They have worked with grassroots organizations to: identify priority areas for reform, frame those issues in light of international human rights law, develop proposed solutions, and craft recommendations. They witnessed and participated in a full mix of formal and informal advocacy opportunities and gained practice in coalition building, teamwork, and effective but challenging partnerships between lawyers, legal advocacy organizations, and grassroots organizations. As Haiti moves forward to the implementation phase of the UPR, the TLC continues to provide technical and legal support in developing and conducting human rights training modules that build in strategic planning around developing the capacity and structures for ultimate advancement and enforcement of those rights.

Questions persist in the Haiti work, as with all cases and projects undertaken, as to whether the TLC is well-suited for wearing the pearls—for carrying out the different projects emerging from our partnership with BAI. Time will tell whether the multiple layers that have built up over time and through a variety of complex internal and external factors will continue to reveal a depth and richness of learning opportunities or instead a pearl containing many cracks and holes. Diligent assessment and reassessment over time of the range of pedagogical goals—traditional lawyering skills, legal translation and knowledge transfer, coalition building, as well as ethics, morality and professional responsibility—will facilitate the durability and value of the overall design, even as individual projects may morph, dissipate, or evolve.

### *C. Guarding Against the Risks*

#### *1. The risk of drowning—harm to our own pedagogical goals*

In compiling the docket and looking for the pearls that, when assembled, will provide the most complete and valuable training, it is easy to over-commit. When clinics take on too many cases and projects with too much variety, it becomes harder to transfer ownership of the work to the students and harder for the students to extract lessons from practice. Clinicians must therefore carefully assess and

reassess the docket in light of the multitude of pedagogical goals and the different qualities of the pearls. Are they reflecting and refracting light the students can use to guide them into their professional career? Is one pearl simply crowding out or overwhelming the others? Or is the luster getting lost in the plethora of pearls? Similarly, clinicians may grab hold of oysters that appear to hold the promise of a great pearl, but that may ultimately prove too difficult to pry open. The question then becomes, when do we keep prying, and when do we let go? Or, in the alternative, when do we find a new place in the overall design for the pearl—as with the TLC’s Buduburam project. Those are all questions that clinicians must ask themselves when taking on new cases and evaluating the ongoing representation and engagement in pending matters.

## 2. *Guarding against the harm when diving in search of oysters*

The opportunities in human rights clinical education are as vast as the oceans from which oysters are plucked in search of pearls, but in finding the pearls that are at the heart of clinic design, we must take steps to guard against any negative impact on the fragile ecosystems into which we dive. I have argued that pedagogy should drive clinic design and case and project selection and have identified tremendous experiential learning opportunities available in the United States and around the world, while also flagging potential risks to the communities in which we operate. The question that persists is: Should the pedagogical mission drive the decisions around case and project selection? And where the potential contribution in terms of service is great, but the pedagogical value is more limited, what trumps in the decision-making process? These questions are not unique to the human rights context, but are heightened when lawyers and law students reach beyond individual client representations and beyond the communities in which they live and work.<sup>119</sup> Questions of resources, power, and legitimacy all overshadow discussions about the role of a human rights clinic and the work it un-

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119. Those risks may multiply when operating out of an academic institution. Arturo J. Carrillo has noted:

[T]he universities’ participation is widely perceived as imparting an aura – if not an actual ‘stamp’ – of academic approval to both the advocacy and the underlying cause it promotes. In the eyes of many, this academic aura transmits an impression of neutrality and rigor that tends to legitimize the movement’s resistance to the problem addressed, while enhancing the trustworthiness of the surrounding advocacy.

Carrillo, *supra* note 5, at 565–66.

dertakes. Again, these questions are not unique to human rights clinics, but become more profound when the waters may be unfamiliar territories for the law students and even the clinical professor, but perhaps have been explored and charted by others with developed expertise.

The answers to these questions are not always readily apparent, nor are they static, and oftentimes further reflection reveals perceived rather than real tensions between pedagogy and service. But pedagogical goals are multifaceted and dynamic; they operate in tandem with service and are not devoid of professional ethics and values. Among the professional values we may seek to impart in our students are humility and the willingness and ability to critically assess what, if any, value we add by legal representation or engagement in a particular advocacy project. When our added value is not clear, we may reassess whether we should play a role at all. We may decline to engage or we may take a backseat to others and fill more of a supportive or behind-the-scenes role. While having the students take a backseat may seem antithetical to clinical legal education, serving as primary legal representative does not always mean taking center stage—it means making the strategic and goal-oriented decisions as to what role the lawyer should play, whether that means taking center stage during the “performance moments,” or merely assisting to prepare the client or other individuals to seize the “performance moment.” The assessment as to whether to engage, and what contributions the lawyer can and should make in furtherance of the overall advocacy objective, mirrors the assessments lawyers make every day.

#### CONCLUSION

The process of selecting cases and projects in designing a clinic can be as arduous as it can be fun. First, we must decide what type of pearls we want. This Article has argued that those decisions should be based on the set of pedagogical goals identified. Then we find the oysters whose shells are opaque and pry them open in the hopes of finding the right pearls. We may find the oyster we think will reveal the perfect pearl, but find it impenetrable or empty. Once the pearl is revealed, we must assess its shape, its color, its surface, and nacre to determine what goals it serves and how it fits into the overall clinic design. We may be handed a synthetic pearl, simulated reality, but that pearl will soon reveal itself to be lacking in pedagogical richness as compared to the natural pearl. Oyster farms

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more reliably provide cultured pearls, just as certain areas of practice or communities more reliably provide cases and projects, but if we only swim in charted territories, we may miss the rare pearl that provides unique and invaluable learning for our students. At the same time, the search for the rare pearl should not blind us to the myriad of design opportunities and pedagogical goals that can be achieved when stringing together the diversity of pearls the world has to offer. While the pedagogical value of the cases and projects we select when designing a clinic is rarely immediately apparent, and never static, with experience and critical reflection, we can learn where the good oysters may be. We can better understand which oysters may reveal the pearls of value and what pearls we want to string together, and how, in training future lawyers.