Towards a New Understanding of Social Responsibility: The Experiences and Challenges Faced by Peru's Law Schools

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Abstract

In Peru, a recent legislative reform obliges all universities to implement social responsibility initiatives. Thus, law schools have promoted clinical legal education. This process has been drastically disparate, due to differences in engagement and resource availability. The proposed chapter aims to identify the structural clinical legal education in Peruvian universities.

Keywords

SRHEI – legal education – legal clinics

1 Introduction

Universities are key players in constructing a more just society, insofar as they prepare students to act with social responsibility in their personal and professional lives (Dima et al., 2013; Giacalone & Thompson, 2006; Naval & Ruiz-Corbella, 2012). In order to fulfill this role, and with the growing importance of social responsibility in higher education institutions (SRHEI), universities have undertaken different initiatives that allow students to engage with society beyond the university's environment (Dima et al., 2013, p. 25).

SRHEI has been defined in different terms across the globe. Some authors understand it to be:

The need to strengthen civic commitment and active citizenship; [...] developing a sense of civil citizenship by encouraging the students, the academic staff to provide social services to their local community or to

promote ecological, environmental commitment for local and global sustainable development. (Vasilescu et al., 2010, p. 4178)

In Spain, it is understood as the need reconceptualise universities, using values and techniques that promote a greater commitment to society and follow a sustainable model, both internally and externally (Comisión Técnica de la Estrategia Universidad 2015, 2011, cited in Naval & Ruiz-Corbella, 2012, p. 110). In Mexico, SRHEI has been defined as a set of principles and values that respond to the community, and affect management, teaching, research and extension programmes (Aldeanueva Fernández & Jiménez Quintero, 2013, p. 18).

Despite the slight differences in focus and wording between definitions, some key aspects are common to all of them. With these as a starting point, we understand SRHEI to be a series of actions and values, stemming from civic commitment and engagement, that require administrations, students and faculty to engage with the communities around them in a sustainable manner. By its very nature, SRHEI improves education (Dima et al., 2013, p. 25) and establishes bonds with local and national communities (Naval & Ruiz-Corbella, 2012, p. 104). In this chapter, we will briefly examine the way SRHEI has been implemented in Peru, and the significant challenges these initiatives continue to face in law schools in particular.

2 Social Responsibility in Higher Education in the Peruvian Context

In Peru, SRHEI was set aside for many years. At the legislative level, only the constitution provided for the inclusion of solidarity, ethics, civic commitments and human rights as key elements in education. Until 2014, this constitutional provision was not accompanied by any laws or programmes facilitating the implementation of said values.

In 2014, the Peruvian Congress passed Law 30220, *Nueva Ley Universitaria* (New University Act), in order to properly reflect the constitution and improve structural deficits in Peru's higher education system. The Act contains three provisions that are essential in providing context for our observations:

- Articles 5 and 6 establish that pluralism, inclusion, intercultural dialogue and commitment to the country's development are the guiding principles of higher education, and universities should strive to interact with the community and engage in socially relevant teaching and research.
- Article 124 defines SRHEI as “the ethical and effective management of the impact generated by the university in society”, which is understood to “include managing the impact produced by the relationship between the

university's community and the environment, and other public and private organisations that constitute themselves as interested third parties".

- Article 130 establishes the obligation to implement SRHEI. Per this article, every university should create a Programa de Servicio Social Universitario (University Social Service Programme), through which students apply knowledge in a way that improves the quality of life of people in traditionally marginalised groups.

A systematic interpretation of these articles reveals a legal framework that is aligned to the theoretical framework of SRHEI. Taking the values set out in Articles 5 and 6 as a starting point, we posit that the Act in fact obliges all universities to construct all their programmes with a social responsibility component. This because if a university were to focus strictly on managing impact, as per article 124 of the Act read on its own, it would not be compliant of the principles and obligations set out in Articles 5, 6 and 130. An example of this systematic approach can be seen in Pontificia Universidad Católica del Perú's (Pontifical Catholic University of Peru) social responsibility policy, which states that the university should contribute to the construction of new relationships between university and society by working with communities and other institutions (Pontificia Universidad Católica del Perú, 2014, p. 2).

However, the obligations set out in the Act have had a disparate and difficult implementation. This may be due in large part to the lack of further regulations, policies or government sponsored programmes to accompany the Act. Where universities did not have the necessary expertise or resources to create or enhance SRHEI programmes within their institutions, there was no state-sponsored support for their implementation.

In fact, a 2018 study by Unión de Responsabilidad Social Universitaria Latinoamericana – URSULA (Latin American Social Responsibility in Higher Education Union) found that all 18 Peruvian universities surveyed had difficulty in executing socially responsible initiatives, with results below the regional average (p. 17). In line with this finding, a 2017 study by Peru's ENARSU Network (Network of the National Meeting on Social Responsibility in Higher Education) found that only 43% of the 50 universities surveyed considered SRHEI as a central pillar in their institution (Stojnic Chávez & Jungbluth Melgar, 2017, p. 4). This last report also found that only 36% of universities studied were incorporating SRHEI into curriculums and campus life (Stojnic Chávez & Jungbluth Melgar, 2017, pp. 5–6). These insights are useful in order to understand the level of commitment and capacity that universities have had with regards to SRHEI initiatives and should be kept in mind when looking at the challenges faced by law schools, since most of the challenges stem from lack of institutional support.

3 Implementing Legal Clinics in Peru

Clinical legal education is a method of teaching that originated in the 20th century in the United States as an alternative to traditional teaching that would bring students face to face with actual cases, alongside practicing lawyers. It sought to, more accurately, prepare students for professional practice (Frank, 1933, pp. 917–918). The method then expanded and began to be implemented in Latin America in the late-20th century, financed by a Ford Foundation initiative. In its current form, clinical education requires students to litigate real cases, so that they learn by interacting with members of the community and reflecting upon these interactions (Kerrigan, 2011). The method allows students to develop practical skills, encourages reflection (Casey, 2014, pp. 319–320) and is better suited to teach ethics and professional responsibility than a traditional classroom setting (Duncan & Kay, 2013, p. 292). In doing so, clinical education provides students and faculty the opportunity to combat structural inequality and approach the law with social commitment (Cavallaro & Elizondo García, 2011, p. 131; Cody, 2015, p. 2015). Students interact with issues of public interest, as cases will often relate to marginalised groups' access to the basic conditions necessary to exercise rights, freedoms and representation (Torres Villarreal, 2013, p. 718), and thus are able to address social justice issues that they have previously approached from a theoretical standpoint (Barry, 2014, p. 35; Meghdadi & Erfani Nasab, 2011, p. 3015).

In order to achieve these goals, clinical education can take many forms. The most common of these are free legal aid clinics and public interest clinics. The first ones provide counsel and litigate cases for people from disadvantaged backgrounds, while the second take on high profile cases through strategic litigation, *amicus curiae* and advocacy strategies (Mestre & García, 2018, p. 40).

In Peru, law schools have implemented some forms of clinical legal education since the 1980s. This has been done, in most cases, through free legal aid clinics and only in a few cases through public interest clinics (the latter started in Perú with a pilot programme developed at Pontificia Universidad Católica in 2005 as part of a World Bank initiative) (Gonzales, n.d.). Parallel to this, some universities have research institutes – such as Pontificia Universidad Católica's Institute on Human Rights and Democracy or Universidad del Pacífico's Research Center – with projects and areas dedicated to public interest issues. While said institutes do produce academic content and policy recommendations, and allow for student internships, they are not exclusively designed as social responsibility or legal advocacy centres. In fact, legal advocacy centres dedicated to specific issues (for example, indigenous or LGBT+ rights) are not associated with higher education institutions.

As such, by the time the University Act was passed, multiple law schools did already have an SRHEI foundation from which to build on. With the added incentive of this now being a legal obligation, the Act opened a window of opportunity to empower clinics and radically transform the way legal education engages with social responsibility (Cavallaro & Elizondo García, 2011, p. 1935; Wizner, 2002, p. 128). However, it seems to have been a missed opportunity. As the data explained below shows, where clinical education was already in place, few steps have been taken to strengthen it, and where it was not, few clinics have been created and most lack institutional support.

3.1 *Key Findings*

The process of implementing SRHEI as standard practice has been drastically different across all law schools, due to vast differences in institutional commitment and available resources. Through an ongoing project to elaborate an in-depth diagnosis of the situation, the authors have had access to information on implementation in 31 law schools throughout Peru.¹ The field research conducted looks at material resources, student and faculty engagement, staff, and success rates, amongst other factors, as markers of the structural needs that social responsibility offices have. Using this as a starting point, we will outline 4 key findings that illustrate the current situation of clinical education in Peru.

First, it is interesting to note that of the 31 institutions surveyed, only 3 have implemented public interest clinics, while the remainder have opted for free legal aid clinics. The latter often function as alternatives to internships, where students can get educational credit and recognition for internship work (27 institutions). The research shows that free legal aid clinics are evenly distributed in public and private universities throughout the country, while public interest clinics are concentrated in three private universities in Lima, Peru's capital. This could be because there are only a few dedicated public interest lawyers in Peru, and the high courts of Peru (Supreme Court and Constitutional Court) are both in Lima.

Second, we found that almost all universities have chosen to implement legal clinical education towards the end of a student's education, often requiring them to have passed a certain set of classes (usually related to procedural law) in order to participate.

Third, out of the 31 universities, 15 stated that clinics are a compulsory course. While this theoretically allows for better service and more student engagement, the model does not seem to take into account the students' context. By the time students take a clinical class, they may already have chosen to specialise in a different area of the law and are probably occupied with another

dissimilar internship. These factors may severely hinder the quality of service provided to users and the number of cases taken on.

Fourth, in terms of the areas of the law that clinics work on, most free legal aid clinics (22 universities) accept cases of varying nature. Out of the 31 clinics, 24 free legal aid clinics provided services in family law and 16 provided representation in criminal law cases. Surprisingly, only 15 of the clinics indicated that they deal with civil law cases – an unusual number given that civil law is the most common area of practice in Peru. It is also surprising that only 10 free legal aid clinics stated that they take on administrative cases, given that citizens in Peru often have difficulty navigating the State's heavy bureaucracy and public services tend to provide deficient attention, often receiving complaints from users.²

3.2 *Key Challenges*

An initial overview of the situation of legal clinics may paint a generally positive picture – clinics seem to be well ingrained in the curriculum and provide an attractive offer for students and the community. However, a look at resources, workload and ethical components show a different reality.

In terms of resources and institutional support, 16 universities reported that they did not receive university funding, nor did they have a set amount of funding per semester, even though most of these universities did provide free legal services. This problem occurred mostly in public universities – only 3 out of 15 private universities reported it, while 4 of 6 public universities experienced this issue. Likewise, 9 clinics (6 public and 3 private) reported that their offices were underfunded. Not having a fixed set of financial resources not only shows a lack of institutional support, but also creates problems in the provision of services. Where a clinic does not know how much money it will receive in a year, it cannot set goals regarding the number of cases represented, given that a legal procedure inevitably means covering procedural costs. This, in turn, compromises clinics' ability to provide fully free services. In fact, at least 2 clinics reported that they have had to ask users to cover administrative costs, such as transport, printing and photocopying, because the clinic itself could not afford to do so.

With regards to staffing, most clinics reported having only between 1 to 3 teachers in charge. 11 law schools had a single teacher overseeing their clinics, usually a professional lawyer and often a teacher who has to balance clinical work with teaching other courses. This is worrisome when we consider that, on average, free legal aid clinics oversee over 200 cases in a given month. Even with the help of assistants and volunteers, staff will inevitably be overwhelmed by an unreasonable workload. Consequently, in practice, clinics are often

unable to provide the personalised and detailed teaching they are intended to give students and are unable to provide sufficient attention to the multitude of writs produced per month.

On a different note, a surprising 12 (out of 31) clinics noted that they do not have or do not enforce a set of internal Rules of Procedure. This is particularly concerning given that in order to provide consistent and high-quality services, clinics should enforce rules that allow them to decide on whether to represent a case or not, and should establish certain standards of conduct for their students and lawyers. The fact that over a third of the clinics surveyed do not yet have rules of procedure in place speaks to a lack of professionalisation in the provision of services. Only 12 clinics indicated that they have ethical guidelines for their students and faculty. Although most clinics indicated that ethics was incorporated into the clinic's learning process, no specific information was provided. Most clinics indicated only that it was always considered when teaching and reflected upon with students.

4 Conclusions

Preliminarily, results show that law schools have adopted SRHEI either through free legal aid clinics or public interest clinics, while few have implemented both. These different strategies may be indicative a school's choice to engage with society on an individual basis or by connecting with larger social groups. Considering the number of human rights issues that urgently need to be addressed in Peru – ranging as wide as the prison system, the protection of LGBT+ rights, adequate recognition of the right to identity – we posit that law schools should aim towards establishing public interest clinics. While these certainly are more demanding, in terms of the specialisation of faculty and time demanded of professors and students, they provide for a more in-depth learning experience for students and are more likely to have a transformative impact on the socio-legal landscape in Peru.

Likewise, while the advances in Peru in the past few years are certainly commendable, fully implementing legal clinical education still faces several challenges. In most universities, staff reported that both clinics and legal aid offices tend to be underfunded and overworked. This reflects a lack of institutional commitment and may perhaps demonstrate that university administrations are more concerned with formally meeting their legal obligations than ensuring that students and users receive a high-quality service. If this is the case, then universities have not fully committed to incorporating social responsibility in their programmes.

There remains a need for schools to not only preach the values and principles of SRHEI, but to fully materialise their commitment by implementing fully funded and properly staffed programmes. Achieving this goal requires commitment both from universities and the government. On one hand, university authorities should be properly trained on the meaning and impact of SRHEI, in order to correctly implement initiatives in their own institutions. However, such information is not readily available, as most of the literature on SRHEI is in English and often behind a paywall. On the other hand, the lack of regulation and national programmes regarding SHREI makes this difficult. Universities – especially public ones – tend to be underfunded and understaffed *per se*, and in that context SRHEI is not a priority to authorities. If the government were able to provide more funding or guidance to private and especially public institutions, perhaps university leaders would be better equipped to implement well rounded SRHEI initiatives.

Law schools may choose to face the challenges outlined throughout this chapter in multiple ways. For instance, public interest clinics may provide a better alternative when resources and personnel are scarce, because they require teams to engage in strategic litigation as opposed to representing a large volume of cases. In strategic litigation, cases are selected by taking into account the potential ripple effect their resolution might have on other members of a social group (Torres Villarreal, 2013, p. 725). Given that most free legal aid clinics reported that both students and faculty were overwhelmed by the number of cases received, perhaps law schools should be looking towards implementing public interest clinics. As previously mentioned, although these clinics certainly require a further degree of specialisation from professors, they provide an alternative for law schools to provide both a more profound, enriching learning experience for students and a more impactful engagement with the user or community they represent.

Universities should also look to create and participate in existing networks, such as the Global Higher Education Partnership for Sustainability. Taking advantage of networking opportunities can certainly be helpful in increasing outreach and acquiring know-how where resources are limited. By engaging in larger networks that may even transcend legal clinics, universities can access broader funding opportunities, exchange best practices and even collaborate on advocacy in common issues. In Peru, for example, both Pontificia Universidad Católica del Perú and Universidad Peruana Cayetano Heredia collaborate on project “Unicxs”. This collaboration allows for Universidad Católica to have a street law clinic on the rights of trans persons, while Universidad Cayetano Heredia focuses on academic research on the issue.

Likewise, as has been suggested in Colombia, legal clinics should look to establish strategic partnerships with NGOs and social organisations that may

already work in the field of choice. This would facilitate opportunities for strategic litigation (Torres Villarreal, 2013, p. 726), as NGOs tend to have a broader network from which to draw cases, and often have access to more personnel and funding than clinics. In working with NGOs, legal clinics may find that they can reach a greater audience and, at the same time, receive wider recognition. In Peru, Universidad Antonio Ruiz de Montoya has had a successful experience in doing so by establishing a migration and refuge law clinic alongside ONG Encuentros. In this arrangement, the NGO identifies cases and provides funding for the clinic, whilst the university provides students and professors to represent cases. This has allowed the clinic to reach a larger number of users due to Encuentros' previously established networks. This may well be a best practice that should be replicated by other institutions.

Notes

- 1 The fieldwork for this project was carried out by Cristina Valega, Maria Alejandra Espino and Peter Cruz, through Pontificia Universidad Católica del Perú's Office of Academic Responsibility, part of the university's law school.
- 2 A 2017 Inter-American Development Bank study found that 83% of government transactions (including use of public services) carried out in Peru were complex because of their duration and the number of interactions they required, well above the regional average of 36%. 48% of people were dissatisfied with the transaction they carried out. Most of this dissatisfaction has to do with transactions regarding the use of social programs, education and health services (Roseth et al., 2018, pp. 59–63).

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