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Private Troubles and Legal Imagination: Legal Clinics a radical view*

Problemas privados e imaginação jurídica: clínicas jurídicas em uma visão radical

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Resumo

O sucesso das clínicas jurídicas deve-se principalmente à ideia de que elas podem dar uma conotação profissional aos cursos de direito, enquanto a evocação da tradição realista, do direito em ação e a referência à justiça social parecem relegadas à mera função de um mito legitimador. Somente se caracterizada por uma opção teórica precisa que distingue claramente o texto normativo da norma e identifique o hiato entre os dois como o espaço do jurista, as clínicas jurídicas poderão estar no centro de uma mudança radical na educação jurídica. Mesmo a orientação para a justiça social não está implícita em nenhuma experiência clínica. Somente configurando uma clínica jurídica como um laboratório para os alunos aprenderem a usar fantasia jurídica para transformar os problemas particulares de pessoas marginalizadas em reivindicações que podem ser apresentadas a um juiz, a clínica contribui para o acesso desses indivíduos à justiça.

Palavras-chave: Clínicas jurídicas, realismo jurídico, construção jurídica, imaginação jurídica, acesso à justiça.

Abstract

The success of legal clinics is mainly due to the idea that they can give a professionalizing connotation to the degree courses in law, while the

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evocation of the realist tradition, of law in action, and the reference to social justice seem relegated to the mere function of a legitimising myth. Only if characterized by a precise theoretical option that clearly distinguishes normative text from norm and identifies the hiatus between the two as the space of the jurist, can legal clinics be at the heart of a radical change in legal education. Even the orientation towards social justice is not implicit in any clinical experience. Only by configuring a legal clinic as a laboratory for students to learn how to use legal fantasy to transform the private troubles of marginalized people into claims that can be brought before a judge, does the clinic contribute to these individuals' access to justice.

Keywords: Law clinic, Legal realism, Legal construction, Legal imagination, Access to justice.

Introduction

In recent years, the law courses of Italian universities have seen a significant spread of experiences that call themselves "legal clinics". The lowest common denominator of these different experiences is a didactic method of law based on a "practical" approach, aimed at supplementing, but usually not overcoming, the traditional legal teaching of civil law contexts. This trend seems to place law courses within what has been defined as "a global clinical movement" (Bloch and Menon, 2012)[2] focused on enhancing the professionalizing aspect of legal teaching (a trend highlighted, in Italy, also by the recent inclusion of a semester of legal practice in the curriculum of a master's degree[3]). It is this enhancement that generally supports the claim that, from a didactic point of view, the clinical approach represents a significant step forward.

In an era characterized by a philosophy of history that sees the market as the best possible tool for regulating society, legal clinics seem to be the teaching methodology that, finally, aligns the teaching of law to the needs of contemporary society. At a time when public competitions, the traditional goal of law graduates, are becoming less and less frequent, legal clinics allow legal faculties to attract students back and regain a professionalizing role (Marella and Rigo, 2015, p. 546).

By integrating clinical-legal education into their degree programmes, Italian universities aspire to be in line with US degree programmes where, since the 1970s, legal clinics have successfully spread to what are considered to be the top Law Schools (Harvard, Yale, Stanford,

[2] To realize the success of the clinical didactic approach in continental Europe, it is enough to remember the numerous universities that have activated legal clinics. They include Science Po (Paris), Humboldt (Berlin), Universidad Carlos III de Madrid. On the development of legal clinics in Italy, see the research by Clelia Bartoli (2015). For a survey of the development of the clinical movement in Europe see Bartoli (2016). A quick overview of the development of legal clinics worldwide and their polymorphic character can be found in Marella and Rigo (2015, p. 540-1).

[3] The framework agreement signed on 24 February 2017 between the Italian bar and the directors of law departments implemented the reform of the Italian legal profession (Law no. 247 of 31 December 2012), which in turn had partially modified the ways of carrying out the traineeship for accessing the profession. Now a law student in her final year can carry out a semester of legal practice as part of the curriculum, thus anticipating part of the 18 months traineeship that, originally, could only be carried out after graduating. The agreement provides that the trainee's professional guarantees, under the supervision of the bar, the effectiveness of training, encouraging the student's participation in hearings, in the drafting of documents and in research functional to preparing cases.

Columbia, NYU, Cornell, etc.). According to a recent survey conducted for the *Center for the Study of Applied Legal Education* by R.R. Kuehn and D.A. Santacroce (www.csale.org), in the society considered as the model par excellence of a dynamic organization capable of keeping up with the market, in the academic year 2016/2017 there were 1433 active legal clinics, distributed in 187 Law Schools, with an average of 7 clinics for each of them.

The success of legal clinics is therefore linked, in the first place, to their offering themselves as the response of law degree courses to the social pressure – supported / fuelled by the universities themselves – which calls for training to "produce" jurists able to quickly enter the professional world. In Italy, and in Europe in general, this pressure has been elected as the pivot of the so-called Bologna Process, which marks the shift of university courses from places institutionally responsible for the development of a knowledge and "culture" not intended for their commercialisation but aimed at the overall improvement of social life, to locations for the production of professionalizing knowledge. The university system is no longer conceived as aimed firstly at the production of a social good, but as an endowment, a wealth, private, exclusive, to be sold on the labour market.[4] In universities that have undergone this dramatic twist, legal clinics are the ideal tool of law degree courses that must no longer present themselves as "mere" (*sic*!) producers of knowledge, but must above all provide 'skills', abilities or competences, vaguely supported by 'values' (the use of quotes is meant to stress that the model is clearly American). They seem capable of compensating for the tendency of law graduates to claim, upon entering the legal profession, that all they have studied is useless (except, some of them, realizing later on the importance of what they have learned, but this late revaluation does not find much room in the dominant rhetoric).

The rhetoric of legal realism and "social justice"

If on a practical level the spread of legal clinics is due to their appearance as the tool that, finally, also allows legal teachings to be in line with the idea of a professionalizing university, on a rhetorical level they refer to the legal-realist approach and claim an "ontological" vocation to social justice, understood as facilitating access to justice by subjects considered "marginal".

It is no coincidence that Maria Rosaria Marella and Enrica Rigo (2015, p. 537-8) open their article – meant to give a positive evaluation of legal clinics, if not of their specific experiences at least of their underlying project idea – with the description of a heroic event in the jagged story of the "global clinical movement". The event, narrated in the form of a novel by Brandt Goldstein in *Storming the Court: How a Band of Yale Law Students Fought the President – and Won*, is the undertaking of some Yale students who, in the early 1990s, decided to bring the President of the United States to trial for the forced returns that prevented Haitian refugees, detained at the Guantanamo base in violation of any habeas corpus rule, from seeking asylum. The story tells how, under the guidance of a Yale professor, Harold H. Koh, and with the help

[4] On these issues, see the important article on legal clinics by Maria Rosaria Marella and Enrica Rigo (2015) which concludes by claiming the social value of culture and teaching and proposing to consider legal clinics a common good.

of a major law firm that offered pro bono its collaboration, the students "dedicated themselves body and soul" – as said it is the story of an epic, and successful, undertaking – to the study of the case and went to Guantanamo to interview the detainees.

This story is emphatically presented as a "paradigm" of the link between legal clinics, civil rights struggles, social justice and critique of law. It allegedly shows how "a legal clinic can become [...] an actor of transformation", arousing students' enthusiasm, awakening them from their frequent torpor of apathetic receptors of "frontal lessons". This affair also revives the splendour of the original heroic phase of the legal clinics that developed in the United States at the turn of the 1970s. These, in a historical moment marked by attention to racial, gender and social justice issues, characterized themselves as the 'Trojan horse' through which contestation entered the cathedrals of legal knowledge, prompting them to focus on the difficulties of access to justice of the so-called weak. Hence the connotation of legal clinics as "ontologically" suited to take charge of the personal problems of disadvantaged and discriminated people, guaranteeing them access to legal "knowledge" even before justice.

On the wings of this founding myth, the spread of legal clinics has been accompanied by a rhetoric referring to the famous opposition between law in books and law in action, developed almost a century ago by Roscoe Pound, one of the fathers of American legal realism. The clinics therefore seem to claim an approach to law that is in radical contrast to the Enlightenment tradition. Apparently, they claim a connotation that is disruptive to the dominant European continental legal conception and, at least, subversive to the traditional hierarchy of American legal knowledge. The latter, in accordance with a model of society based on contract and property, attaches a leading role to the civilistic doctrine, assumed, like that which accompanies the Napoleonic Code in Europe, as unitary, systematic and coherent.

In spite of these claims, the traditional conception of law and its teaching has shown in recent decades an obvious capacity to resist and neutralize the clinical movement's critical-innovative push and to make the movement functional to consolidate its domination. Retracing his career from a Yale law student in the late 1960s to a Harvard professor twenty years later, Duncan Kennedy (1982, 1983), one of the most influential authors of critical legal studies, pointed out that the promises of transforming legal studies that accompanied the birth of clinics have gradually disappeared. They have been relegated to the role of a founding myth, leaving room for their conception as a professionalizing supplement to the traditional teaching of law (cf. Jamin, 2015).

Today, not only in Italy, the recovery of realist rhetoric appears to be mainly functional to the need for law degree courses to respond to the widespread perception of the abstract nature of legal teaching, centred on law in books, as the reason for its scarce usefulness. Law schools can argue that, with legal clinics, the focus of teaching shifts towards law in action.

In fact, Jerome Frank, a prominent US legal realist, is considered one of the first supporters of the clinical-legal method, by virtue of his article "Why not a clinical lawyer school?", published in 1933 in the *University of Pennsylvania Law Review*. He stated: "Our law schools must learn from our medical schools. *Law students should be given the opportunity to see legal operations*" (Frank, 1933, p. 916, my enphasis). The need to provide "clinical" training also for jurists, based on the didactic experience of doctors, had already been argued, half a century

before, by Rudolf von Jhering who, in 1884, wrote: "We dissect legal cases as great anatomists would do; and we make diagnoses as doctors do when they are next to the sick's bed. But where should we acquire such a legal-medical culture if not in a legal clinic?".

In support of the founding myth of legal clinics, it can be argued that there is some affinity – a common sensitivity – between the jurisprudence of interests, which developed from Jhering's views, and American realism. The connection between clinical didactics and legal realism, and with it the link with an attention to the disadvantaged's access to justice, appears less tenable when we consider that in Italy the first to hope and urge the spread of clinical teaching of law was Francesco Carnelutti, the founder of the "systematic" or "historical-dogmatic" school. Tracing his profile, Giovanni Tarello, the greatest Italian legal realist, dismissed the connection between clinical approach and concern for the disadvantaged's access to justice, writing that Carnelutti excelled in the profession of lawyer "in which he earned the reputation of man not disinterested". Tarello (1977) went on to point out that:

> Carnelutti's contribution to criminal disciplines had a clearly formalistic character, and its role was supportive of that of the "technical-juridical" school and absolutely inserted in the political tendency of the fascist regime. The latter aimed at discrediting non-formal criminal sciences with a sociological method, to the advantage of a criminal policy of authoritarian conception, and at discouraging, from the academic point of view, non-technical-legal studies on the criminal sanction.

To clear the field of any misunderstanding, Tarello (1977) recalls that the course of studies, inspired by the "general theory of law" developed by Carnelutti in the 1930s, "has been called (unhappily, because the name creates confusion with other and more significant movements of legal culture) 'realistic' or 'naturalistic'. In Carnelutti's idea – in fact – [...] rules are arranged in a structure immanent in every legal system, a structure that the jurist 'discovers' as the natural scientist"

In 1934, therefore in the same years of Frank's article, Carnelutti published an essay entitled "Law Clinic", in which, in line with his theoretical position, the legal-realistic aspect had no role, nor had attention to social justice, while the professionalizing aspect was central. The opportunity to adapt the medical clinic method to the study of law was not seen as a way of questioning the foundations of the European continental tradition, let alone its social structure, but as a way of beginning to meet the prospective jurists' need for a practical training ground. Carnelutti, just like Jhering and Frank, noted in fact that, like the doctor, the jurist is called to solve problems that in real life affect and often afflict man. But "unlike the future doctor, the future jurist, as long as he remains in the university, never comes into contact with that real whose possession is the ultimate goal of his culture" (Carnelutti 1935, p. 169-70).

There is another reason for the persistence of the generic, and normally purely rhetorical, reference to the legal-realist matrix that characterizes the clinical approach to law today. It is its allowing legal clinics to present themselves as a didactic as well as a professionalizing tool,

capable of adapting the teaching of law to the proclaimed – and over-proclaimed – crisis of the system of legal sources and its hierarchical arrangement. At a time when the teaching of law in books, traditionally focused on the sources and their hierarchy, appears to be delegitimised by the impossibility of relying on an ordered picture of the legal sources, the reference to the legal-realist tradition allows the clinical approach to present itself as an effective tool to overcome the current dyscrasia between codified law and living law.

The emergence of the clinical approach and the valorisation of law in action against that in books – better, in normative texts – is certainly favoured by today's context. This is marked by the growing emergence of what is confusedly defined as soft law and by the prevalence of nonconforming implementation practices, sometimes considered, in particular by legislators, arbitrary or illegitimate (in this rhetoric it is often difficult to distinguish the Courts' constitutionally oriented readings of normative texts from delegification). The crisis of the Enlightenment myth of a complete legal system capable of performing an all-regulatory function, as in Bentham's dream of the *pannomion*, leads to a didactics valuing legal practice and contrasting normative texts with living law.

But the 'discovery' of the clinical method is not intended to call into question the normative and formalist approach which, in continental Europe, has characterised the approach to law since the time of the Napoleonic Code. The configuration that the legal clinics are taking on reveals the underlying belief that this situation is contingent. The idea and hope are clear that we will soon be able to restore the coherence and hierarchy of the system of sources, so that clinical teaching will no longer have to deal with theoretical problems, something it does not seem to have been designed for, but will simply carry out the professionalising task that is its own and is considered today an indispensable pivot of legal teaching.

As said, the "law in action" approach of learning by doing is in fact reduced to the goal of making students acquire professional skills, the 'craftsmanship' of subsuming a specific case under a general rule. This approach is somehow implicit in the medical analogy. The 'legal clinic' follows the lines of the 'clinics' of medical courses: doctors' clinical practice does not call medical science into question, just as legal practice should not call into question jurists' traditional conceptual apparatus, "legal science". Medical students, after learning anatomy and pathological anatomy in manuals in their freshman years, go to hospitals where "clinical" courses allow them to gain field experience and professionalism, to be ready to be "doctors" (Carnelutti, 1934). After studying normative texts, prospective jurists learn how to subsume cases by working on them with practitioners. Emblematic of this reduction of the legal clinical approach to professionalisation is the emphasis on "lawyering", a term which, according to the Collins Dictionary, means in American English "the profession of being a lawyer; the practice of law". Identifying the educational content of clinics in lawyering is, therefore, to implicitly reduce the practice of law, law in action, to the practice of the legal professional. This reduction is also confirmed by the Italian translations of the term, which portray the

practical skills it indicates as: "interviews with clients, examination of facts, study of solutions and defensive strategies, drafting of petitions, procedural documents and pleadings".[5]

That the realist connotation is merely rhetorical and superficial and has no impact on the background conception of law taught in universities is confirmed by clinical teaching often consisting in practices of simulation of legal activities and in the study of judicial cases. In many clinical experiences, in fact, the direct contact of students with users is completely absent. Even the actual case being studied is presented to students not as a specific person's problem, but as a mere legal problem posed by the clinic's coordinator, who is often a lawyer. After all, Frank himself, as we have seen, hoped that legal clinics would allow students to "see legal operations", so the 'doing' was reduced to an object of contemplation.

This totally removes from the framework of legal teaching the idea that an essential part of the jurist's experience is the relational and social dimension: empathy (or dislike) for the person posing the problem and the sharing of (or aversion to) the interest she wants to claim. But, above all, it removes the fundamental problem of translating what afflicts a person, to follow Carnelutti in the extension of the medical metaphor, into a legal problem: as if this were an operation with a constrained outcome that does not depend on the operator. Tacitly, the idea that it is a scientific operation, the subsumption of a fact under a rule – the result of which does not depend on who has the problem and the jurist who builds it as a legal case – rather than a creative, relational, claiming, social and political choice, is brought into 'learning by doing'. In other words, we lose what Mark Tushnet (1984), in an essay dating back to the time when the clinical movement was yet to consolidate, presented as one of the most significant values of legal clinics: their giving students an opportunity to 'create' a legal experience of an unstructured situation, not yet set in a relationship between the lawyer and the client, not yet defined by academic disciplines, or not yet brought back to case law records. Having to deal with a still unstructured legal experience teaches students that the law has to do with people, with the emotions they have or arouse, even before cases and technicalities. Today, in Italy, this experience is fully guaranteed by clinics such as the "Clinic of Immigration and Citizenship Law" at the Department of Law of Roma Tre University and the "Legal Clinic for Human Rights" (CLEDU) at Palermo University. Indeed, these clinics have set up a desk, within the universities, where foreigners go personally and are received by students who listen to their problems.

Thus, the clinics, conceived as a professionalizing tool, do not innovate but reinforce the conception of the jurist as a professional who sells his technical knowledge to the best buyer on the market, a conception very far from that of a social actor who makes choices laden with political significance. So understood, the clinical approach appears to be perfectly in line with a world where the market is seen as a unique natural paradigm for the organization of social relations, where universities themselves are thought of as businesses and the legal profession, therefore, is conceived as a way of being on a market characterized by the development of

[5] "Nascita e diffusione delle cliniche legali", document of the "Cesare Beccaria" Department of Legal Sciences of Milan University, accessible from the page on "Legal Clinics" (http://www.beccaria.unimi.it/ecm/home/legalclinics), which symptomatically and symbolically adopts the English name http://www.beccaria.unimi.it/extfiles/unimidire/385401/attachment/nascita-e-diffusione-delle-cliniche-legali-1.pdf.

what, not by chance, are called law firms. 'Learning by doing' in this context is simply a way of supplementing the traditional teaching of law, based on the identity of normative texts and rules, with first directions on how to articulate the subsumption of practical cases in the normative framework. Despite references to the legal-realist tradition, the current practice of the clinical approach is therefore perfectly in line with the classical Enlightenment conception of the jurist as the mouth of the law.

Emphasis on the professionalizing aspect also minimizes the value of the social justice proposals that mark the rhetoric of legal clinics and their spread. Even when they declare their will to continue the line that characterized their boom in the United States, recovering the attention for the rights of marginal or weak subjects, Italian legal clinics, like many of the current ones in the United States, seem at best to remind the 'market player' jurist that he must also carry out a pro bono activity for noble causes. According to a Kantian and Protestant approach, we move from the social to the individual level, from access to justice conceived as a tool to change power structures to calling the individual to ethical-moral values, if not simply to reminding the professional of his "deontological duties". Attention to marginal people is not declined as a 'right building' that favours their empowerment, but as a reminder of the idea that success, measured in economic terms – to which, however, a commitment to 'a humanitarian case', spent on social media, can contribute significantly – may not be enough to reassure, as Calvin had it, the lawyer about his "eternal salvation". In line with the philanthropic conception, which has always accompanied the development of the market in English-speaking countries, the clinical approach seems to have, therefore, above all the distinction of legitimizing the professional acting on the market, the law firm's associate, allowing him to think of himself as 'good', occasionally attentive to the needs of those who cannot afford high fees: "How are you feeling, friend, fragile friend? If you want I can devote an hour a month to you"[6] (De André, 1975).

From "learning by doing" to "learning by making (up)"[7]

The picture I have sketched depicts the spread of the clinical-legal method in Italy as a phenomenon that looks back instead of forward, a belated attempt to catch up with needs that were emphasized in the world of civil law as in that of common law in the 1930s. Under the pressure of the urgent need to make room for learning the practice, today's discovery of teaching methods born in the tradition of common law and linked to it, simply and partially values its centuries-long rejection of the very idea of a university teaching of law[8], and its

[6] The verse goes on like this: "You know I lost two children"; "Madam, you are one absent-minded woman".

[7] "We can easily imagine people amusing themselves in a field by playing with a ball so as to start various existing games, but playing many without finishing them and in between throwing the ball aimlessly into the air, chasing one another with the ball and bombarding one another for a joke and so on. And now someone says: The whole time they are playing a ball-game and following definite rules at every throw. And is there not also the case where we play and—*make up the rules as we go along*? And there is even one where we alter them—*as we go along"* (Wittgenstein § 83, the expressions in italics are in English in the German original text).

[8] In the world of Civil law, the first course in law was born in Bologna in the year (1088) twelve years later when, winning at Hastings, the Normans conquered England. In the common law world, the first chair of common law, the Vinerian Professorship, was established in Oxford in 1756, thanks to Charles Viner's bequest that allowed Blackstone to be the first English professor of

claim that law itself is a practice that can only be taught in the Inns of Court. On the other hand, the deep theoretical difference between viewing law as a tradition (first customary, then judicial) and as a body of normative texts is ignored. This completely neglects the difference between two ideas of law. On the one hand, law that builds up according to its capacity, proven over time, to satisfactorily proceduralise conflicts. On the other hand, law as a regulatory device containing the legislators' plan to define the modes of social coexistence, a device that is effective because it has normative force, i.e. it is expressed through a system of commands that control individuals' behaviour through the threat pf punishments.

This situation makes me suspicious of the claims (Bloch and Menon 2012, p. 273) that the "global clinical movement" is imposing a substantially uniform reform of academic curricula in very different contexts, reorienting jurists' training towards social justice. Rather, I see the clinical method as a sharp blade: it can be used to save a human life by removing a tumour, or to kill a person. Its use is not in itself a revolution in legal education. As the experiences, not only Italian, show, it lends itself very well as an ancillary tool of the traditional way of teaching, strengthening its professionalizing aspects.[9] Only if the clinical approach is used out of the conviction that, even before the ways of teaching law, the conception of law being taught must be profoundly revised, can its elements that are normally relegated to the rhetorical level fully develop.

Marella and Rigo (2015, p. 549-50), in the article already mentioned, suggest that in Italy you can "play tactically" the category of the Third Mission to give an appropriate container to legal clinics and, since it will be a criterion for the evaluation of universities, strengthen their orientation to social justice. This intelligent suggestion stems from the vaguely social colouring that the Italian National Agency for Research Evaluation (ANVUR) gives to this container of functions performed by the University. In fact, as the two authors point out, in the "language, albeit ambiguous, of ANVUR (2013) this mission must aim at the production of a 'public good' aimed at increasing 'the welfare of society'." Marella and Rigo rightly underline the ambiguity of the characterization of this container that includes all the activities with which universities "*interact directly with society*" (as if through teaching you came into contact with the vegetable kingdom). Given this all-encompassing nature of the category, bringing the clinical approach back to the Third Mission does not help to unravel the knot of the nature of legal clinics. This container accommodates both professional clinics aimed at producing market-ready professionals and those aimed at enabling lawyers to promote the rights claims of marginal individuals excluded from the market. In fact, ANVUR considers as a key aspect of the Third Mission, alongside the "cultural and social" activities that produce "public goods that

law. On the English legal world's hostility to the university teaching of law, which goes hand in hand with that for codification, and on its slow overcoming, I refer to Santoro 2008, chapter 2, see also Braun (2006). The spread of legal clinics in the English legal faculties starting from Oxford University (Oxford Legal Assistance Project) and the Queen Mary University of London (Legal Advice Centre) is therefore interesting, symptomatic of both the evolution of law teaching in England, and of the marketing/professionalizing pressure.

[9] According to the 'enthusiasts' (Bloch and Menon 2012, 271) the methodology of legal clinics that is spreading prepares law students "to understand and assimilate their responsibilities as members of a public profession in the administration of the law, in the reform of the law, in the equitable distribution of legal services in society, in the protection of individual rights and public interests, and in upholding the basic elements of professionalism." More than a reform of academic curricula, this description seems to outline their integration with a professionalizing part coloured by the emphasis of the ethical-deontological duties.

increase the welfare of society", the "economic valorisation of knowledge". Indicators for measuring universities' activity in this field include obtained patents or spin-offs. The latter are companies that exploit the commercial potential of innovation produced by university research that cannot find an adequate space on the market on its own: we could imagine university law firms as activities of the Third Mission.

I hope that the clinical approach will be a didactic tool used not to combine a practical-professional part with traditional courses based on normative texts, but to radically revise the teaching of law. This tool can and must be used not to support, but to oppose the professional reduction of university teaching, which in the long run will lead to the annihilation of legal knowledge. Legal clinics are an opportunity to do a job of great cultural value, even more than professional, a job which, I should like to say, is the work of universities. In other words, they are an opportunity to reaffirm, going in the opposite direction from what was suggested by the "Bologna Process", that one thing is university courses and another is those of the Radio Elettra School.[10] Legal clinics are interesting, in my opinion, if they allow us to establish this distinction, not to collapse it.

If law faculties choose to reduce legal clinics to a mere professionalizing tool, they miss a historic opportunity to rethink the teaching of law, abandoning an ideological conception of the legal phenomenon that its scholars have known, for at least half a century, to be outdated. The clinical method, if not used in an ancillary way with respect to traditional teaching, can instead be the pivot of legal degree courses capable of shaping critical autonomy and therefore of producing innovative and non-conformist students.

The task of legal clinic-based education should be to teach prospective jurists to address the problems individuals face and the conflicts they experience, enabling them to provide their clients with the tools to proceduralise and overcome them. The legal clinical method is an opportunity, in other words, to develop a teaching capable of making the student aware that his task is not to be a cog in a massive regulatory mechanism, to subsume a fact or a conduct under a rule. It appears as the tool to teach jurists that their task is to develop different effective methods of jurifying personal problems, of proceduralising individual and collective conflicts. The clinical method allows the teaching of a law conceived not as a more or less ordered system of normative texts, but as a knowledge that, using those texts and their readings, is built from below, from the problem and the proposed conflict, and develops by building together the legal problem (the "case") and its regulating rule. It is thanks to this feature that it can serve social justice by teaching students to care about how to 'build' access to justice for those who have never even thought that their problem had legal dignity.

If, instead of looking at the needs emphasised by Carnelutti in 1935 and neglected for about eighty years, we looked at the epistemological reflections that have developed since the mid-1960s and have always been ignored by legal science and law courses, then the clinical

[10] The "About us" page of the School's website (http://www.scuolaradioelettra.it/) reads: "SCUOLA RADIO ELETTRA. Professional training since 1951. An accredited centre for professional training, Scuola Radio Elettra provides theoretical and practical courses strongly oriented towards the world of work. The training offer, originally specialised in plant engineering, electronics and information technology, is now extended to the areas of food, beauty and wellness, health and social services. Active since 1951, Scuola Radio Elettra has trained more than 1 million people."

method could serve to radically change our teachings. Legal clinics could be the pivot of degree courses premised on the assumption that there is no such thing as "legal science". But the basis of this assumption would not be the old discussion between the deductive nomological model and the interpretive model, between the scientific method and the historical method. Rather, as we learned from the "linguistic turn" and from Kuhn's use of it in his masterly book on *The structure of scientific revolutions*, it would be the notion that even 'sciences' are but discourses. Legal clinics could be an opportunity to recognize that for a century the idea of legal syllogism was the pivot of an ideological operation that structured the organization of power in liberal-democratic societies and formed jurists' mentality, their *Denkstil* (Fleck, 1935).

If we took the legal-realist matrix of the clinical method seriously, we could use it not (only) to develop a teaching that takes the features of contemporary law and its transformations into account. Clinics provide an opportunity to teach law as something that is created daily by a community of jurists who work in the hiatus existing between the normative text, produced by legislators, and the norm, built by the community itself through dialogue, cross-critical scrutiny and review through different court levels. They provide an opportunity to bring to the fore this awareness, that the Enlightenment ideology (normativist, formalist, imperativist, etc.) relegated for decades to legal theorists' discourses, cultural and non-professionalizing, or to practitioners' background awareness, which does not interfere with their activities ("I know of Einstein's theory of relativity, but to do things in everyday – professional – life the Newton system is fine"). Legal clinics must be the tool to teach students not a professionalizing 'doing', how to use legal science in practice, how to perform subsumption, but a 'making' that is, first and foremost, a cultural break.

In order to carry out this operation it is not necessary to turn to American realism, just look at the Italian one and in particular at Giovanni Tarello's work. The Genoese legal theorist was in fact, in Italy, the most determined and shrewd critic of the theory that legal interpretation is knowledge of pre-existing norms and, therefore, a scientific enterprise (hence the idea of "legal sciences", which stands out in the name of a plethora of Italian legal departments) and not, instead, production of norms (and, therefore, a political enterprise).[11] When no one thought (any more) of legal clinics, Tarello (1976-77, p. 936) reminded us that, in legal practice, "different operators, at different times or at the same time, for different purposes or pursuing the same purposes with different means, identify different and perhaps conflicting norms in the same legislative texts."[12]

Clinics are the tool to finally develop a teaching based on the consideration that the normative statements, contained in the legal sources, are never open to one interpretation, but rather to a plurality of interpretations, none of which is for that very reason 'true'.

[11] Tarello's argumentative path began with "Il 'problema dell'interpretazione': una formulazione ambigua" of 1966 followed by the long essay "Studi sulla teoria generale dei precetti. I. Introduzione al linguaggio precettivo" of 1968 (now both collected in Tarello, 1974) and was fully accomplished in the work *L'interpretazione delle leggi* of 1980. His historiographic work too (*Storia della cultura giuridica moderna. I. Assolutismo e codificazione del diritto* of 1976) was devoted to reconstructing how, in modern times, jurists' role was technicalised and depoliticised.

[12] On Tarello's teaching see the first chapter of Guastini, 2017. On the distinction between normative text and norm, see again Guastini, 2011. Among the non-Italian authors who have clearly argued the same view Troper, 1994, is worth mentioning. On Troper's work, too, one can see Guastini's aforementioned volume, in particular, chapter V.

Whether an interpretation is admissible or not, what are the norms for which there are "assertability conditions", is decided, in different historical moments, by the community of interpreters (cf. Santoro, 2008, p. 281-334), that is, the jurists or, as Tarello (1967, p. 205) says, the "internal legal culture". In this 'realist' conception of law, every article of law, every paragraph, is not a norm, but a battlefield in which various actors clash to define the 'norm' to be derived from it. However, this clash takes place using a precise language, if you like 'technical', and its reference texts are a set, not only chronologically open (as we know today, thanks to the crisis of the system of sources), but constantly changing.

Insofar as the existing law is made up of norms, the law student cannot help but study the "legal building" (see Guastini, 2011, p. 105-228 and 2017, p. 20 and 80), that is, how the meaning of a normative text, the techniques used to argue the choice of the norm derived from it, are produced. Clinics seem to be a particularly suitable didactic tool to explain that in the construction work jurists always shift between a descriptive and a persuasive/prescriptive level. The first level is that of the "theory of interpretation" (Guastini, 2011, p. 407-32), that is, the recognition level of how, in judicial and administrative practice, legal operators have read and used normative documents until then. The second level is that of the "ideology of interpretation" (Guastini, p. 433), that is, of a persuasive discourse: a discourse which aims to create the assertability conditions for interpreting a normative text, while advocating that interpretation.

Direct contact with people and access to justice

Thus understood, legal clinics are a tool that allows students to understand that, as jurists, their job will be to devote themselves to the judicial and doctrinal creation of rules. First of all, they must be aware that they are not and will not be the wheels of a gear moved by a larger wheel, the legislator, but that, whenever they exercise their profession, they will make intrinsically and inevitably political choices. Clinical teaching is, in other words, the instrument to make jurists immediately understand that, regardless of the criterion guiding their work, they will make a 'political' choice, that is, relative to the use of legitimate power (Santoro, 2017, 161-167) and, at the same time, to make them aware that only if this political decision – the creation of the norm – is made explicit, will it be subject to critical scrutiny by the community of interpreters.

After developing this awareness, prospective jurists can start thinking about whether to direct their choices based on their practical results, on their impact on people's lives, rather than on the observance of elegant dogmatic constructions or on the more established opinion (criteria often assumed as indices of 'truth' validating the exegetic operation), or on criteria of productivity, decisions speed, which seem to be required, not only by the market of the legal professions, but also by the organizational ways of the judicial profession already fashionable or threatened by proposed reforms. Only by being aware of the intrinsically political character of their work will they be able to choose, if they so wish, to direct their action towards social justice, towards the building of a law that enables weak people to have access to justice. On

the other hand, they can also make the opposite choice, and direct their action, as professionals, to the maximization of individual profit (as, according to what Tarello reported, Carnelutti did), as judges, to the speed of their career.

Legal clinics are faced with the same type of choice: they can be structured with the aim of stimulating students' imagination on how to defend the weak and marginalized, or rather, using a broader expression that better conveys the idea of the enterprise, on how to create their rights. But they can also be simply professionalizing, giving law students the ability to build the law that is most in demand and best paid by the market, they can initiate them to build a law firm as a spin-off of their activity.

A legal clinic can make this choice primarily through its own thematic area. Attention to social justice also, or perhaps above all, shows up in the fact that legal clinics have mostly developed in areas that more often and more problematically involve weak people (family law, labour law, immigration law, criminal law, criminal enforcement law) or collective interests (environmental law and consumer rights). In the last academic year, 47% of the US Law Schools had a legal clinic in the field of criminal defence; 17% had a clinic in the field of criminal prosecution (therefore focused on the defence of victims); 9% had a clinic in the field of prisoners' rights. Thus, a significant part of the US legal clinics deals with both offenders, during the trial and then in the execution phase of the sentence – i.e. individuals whose fundamental rights claims appear to be undermined by their behaviour – and victims (e.g. women and children), seeking support for the protection of their rights. Significantly, the focus on the weak does not make these two paths appear contradictory, as is the case in the common discourse (which contrasts perpetrators' and victims' rights), but as part of the same approach. But delimiting the ambit in itself is not enough to characterize the orientation of a clinic, as in every ambit a radical, progressive or conservative approach can be taken.

In my opinion, the legal clinics that aim to address the weak and marginalised must learn to combine Mauro Cappelletti's views on access to justice with those of the American sociologist Charles Wright Mills on the "sociological imagination". For Cappelletti, access to justice is not only an individual right to be universalised, but an indicator whose development measures "a ceaseless social progress, which implies a constant debate both on the modes of access and on the resulting idea of justice" (Cappelletti-Garth 1981, I owe the quotation to Marella-Rigo 2015, 539-40). For his part, Mills (1959) urged sociologists interested in defending marginal people to develop a "sociological imagination", that is, a language capable of putting women and men in a position to transform their "personal troubles" into "public issues". Similarly, the legal clinics that intend to be attentive to marginal people's access to justice must develop, to recall the title of an essay by Pietro Costa, "legal imagination": a discourse capable of transforming the "private troubles" of marginal people into legal problems, into claims to be brought before a judge. Costa writes (1995, p. 33-34), at the conclusion of his essay (which every jurist should read and meditate on):

> Judges act as institutional resolvers of conflicts in the light of an order (apparently) already given and motionless, which however unfolds its project potential at the very time when judges reformulate it as a function of an

> intersubjective dynamic that is always new and different. Legal imagination unfolds in a story suspended programmatically between a depicted order that exists only as 'described' (in the jurist's possible world) and a developing project that exists only as implemented (in the context of daily social interaction).

Legal imagination is a fundamental tool for shifting from a "described" order, which tends to classify marginality conditions as 'private troubles', to a project, which will exist only as it is built by jurists, in which they rise to that particular configuration of a public issue that is a 'court case'.

'Troubles', in Mills' vocabulary, are personal issues, whose definition and resolution are considered by the individual as an operation to be carried out in his immediate environment, that is, in the social framework that is directly open to his personal experience, in the context of his immediate relations with his neighbours, and, within limits, through his voluntary activity. 'Issues' instead are problems that transcend an individual's particular environment and the boundaries of his inner life. 'Issues' are the responsibility of the institutions of a historic society; they arise from the overlapping and interweaving of power relationships and social structures that provide the framework within which individual lives are articulated. The resolution of a problem seems impossible without an institutional intervention that modifies supposedly structural conditions. The work of transformation that jurists have to do is different, more technical than what Mills asked sociologists: jurists have to transform private troubles into claims that can be brought before a judge.

People do not usually see their 'troubles' in terms of historical changes, they do not consider them 'public issues', they are driven by the style of thinking around them to attribute the welfare they enjoy or the misery they suffer to their own responsibility and to take charge of the blame, or to boast of the merit, for their own conditions. Mills described sociological imagination as the language that allows individuals to trace, in the chaos of everyday experience, the broad lines that make up the fabric of modern society, and to 'see' how they condition their affairs. Even less normally do marginalised people have the tools to identify the solution to their 'personal troubles' in claiming rights to be respected. In order to transform private troubles into legal problems, the operation of law must see the intertwining of powers (economic, social, physical, etc.) that lies behind those troubles, and understand if and how a power can be activated autonomous from the social stratification of power: the legal one. As Weber taught us, in fact, legal power often serves to compensate the other social powers, bridging the 'power' gap that afflicts marginal people.

The terms 'see' and 'language' are closely related and decisive for transforming 'private troubles' into claims that can be brought before a judge. It is language that allows us to describe and catalogue the situations we live in, imagining the strategies to deal with them.[13]

[13] George Orwell in *1984*, with the metaphor of the "newspeak", to which the appendix of the work entitled "The Principles of Newspeak" is dedicated, effectively underlined the ability of language to define the world and therefore people's possibility of action. Orwell shows how, if a totalitarian power engages in the creation of a "newspeak", it does not (only) do so to provide an expressive means that replaces the old worldview and the old mental habits, but also to try and make any other form of thought

Consider the following example, concerning issues that are much debated today. To be born in northern Mali, scourged by wars and massacres, is a "personal trouble". To make a convincing case, possibly underlining the post-colonial responsibilities of Western states, at the institutional level and in the political debate, of how the international community can take on the task of guaranteeing the lives of people born in Mali and saving them from the massacres being carried out there, transforming that "personal trouble" into a "public issue", is the task that Mills entrusted to the sociological imagination. To guarantee to those born in northern Mali, without risking their lives in the crossing of Libya and the Mediterranean, a (possibly successful) access to the asylum procedure, is the task of the legal imagination: a jurist undertakes this task by elaborating an imaginary order, where all people's fundamental rights are guaranteed, and presenting it to a judge for her to make it actual.

Through what sociologists call a "process of objectification", language gives situations identity and meaning, making them "objective". They are learned and internalized by users of a language with the connotation and meaning conferred on them by that language. Among the things "objectified" by language there are also individuals' actions that are automatically traced back to orientations, ends and means through which other group members give them meaning. Through the process of objectification some types of action, constantly followed, come to appear as appropriate conduct to keep in certain circumstances. The process of transforming appropriate types of conduct into rules is favoured by the fact that incentives and disincentives are often distributed, and resources are imperatively allocated, according to the conduct's appropriateness. Law is certainly a powerful means, even symbolically, to establish a conduct's appropriateness or unacceptability. Thus, legal language plays a key role in objectifying a given behaviour, in giving it its connotation as perceived within society. Once internalized, an action's connotation becomes common sense, that is, it becomes part of the definitions shared in the reality of everyday life.

When Mills thought of sociological imagination as a language capable of transforming "private troubles" into "public issues", he thought of a new language capable of influencing the mechanisms of objectifying situations and the types of conduct appropriate to deal with them, and therefore the mechanisms of rules internalisation and formation. His idea is based on the fact that the process of objectification of language is biunivocal: past objectification structures language, and therefore the world, but it is the use of language that allows the world to be structured. So when a language changes the way things are seen, makes them no longer be seen as private troubles but as public issues, it changes how the world is structured and, consequently, how the speakers will internalize the world itself.

Legal discourse and the judicial decisions that mark it certainly play an important role in the process of objectifying reality. The legal system, in other words, in our societies is not only a practical instrument of regulation, but also, and above all, a way to strengthen a binding system of beliefs and to give meaning to everyday life. The "jurist's imagination" is therefore a fundamental tool to trigger the (cultural) process, to transform public indifference to

impossible. Once newspeak has been rooted in the population and the "oldspeak" has been completely forgotten, any heretical thought (i.e. contrary to the party's principles) becomes literally impossible.

individuals' personal distress into a concern for their conditions of weakness and disadvantage, to transform these conditions from "personal troubles" to, if not public issues, at least situations worthy of legal protection.

Jurists' discourse has a fundamental importance on how the conditions of weakness are objectified and internalized, and become part of common sense. Only if their use of normative texts is based on the importance of offering forms of legal protection (rights) and proceduralisation of conflicts can interpreters help to restore a dignified life to marginalised persons. To achieve this goal, jurists must learn to use their "imagination" to develop a jurisprudential discourse aimed at compensating, rather than accentuating, the conditions of isolation and exclusion in which the "weaker" normally live. The task of a clinic oriented to the protection of these people is to stimulate the "jurist's imagination" (to put it in Costa's words), his ability to "invent" (to use instead Paolo Grossi's language[14]), by finding or creating it, a law that allows the many people who live on the margins of rights, without being able to use them, to access the remedies provided by the law.

A little didactic experiment: the legal clinics of Florence University

The Law School of Florence University accepted the proposal of "L'altro diritto", inter-university research centre on prison, deviance, marginalisation and migration governance, to activate, as part of its courses, three legal clinics that try to experiment with the realist approach that has been illustrated in these pages.

This operation is made possible by the cultural environment that characterises the School's teaching. On the one hand, students attend courses in legal history based on the teachings of the 'Florentine school' whose protagonists and great masters were Paolo Grossi and Pietro Costa. On the other hand, through the courses in legal philosophy which from the first year introduce them to legal realism, 'forcing' them to study *On Law and Justice* by Alf Ross, students also become familiar with the idea that this approach can be an interesting point of view to orient themselves in post-modern law. They are suggested that realism, especially in Ross's 'cultural' version, is a theory allowing orientation in a legal world characterised by the crisis of the hierarchy of sources and perhaps of the very concept of legal source. For Ross taught us that it is the interpreters' community that 'invents' the sources of law and not these that 'create' law. This 'cultural' line is also developed through the course of legal argumentation, all focused on Tarello's distinction between normative text and norm, and aimed at disseminating the case-law of the European Court of Human Rights. This Court, for many years now, claims in fact that its role is not to 'apply' the law, in its case the Convention, but to make it a living instrument capable of protecting fundamental rights while keeping up-to-date and progressively increasing the level of protection, moving through the legal cultures and normative texts of forty-seven countries. The course of legal sociology, too, focused on the

[14] The latest book by Paolo Grossi (2018) is entitled, not by chance, 'The invention of law". The title plays, in a fairly uncovered way, on the modern meaning of invention, as a creation *ex nihilo*, and the ancient Latin meaning of the same term (*inventio*), that is "discovery" or "finding" of something that already evidently exists, but also "stratagem".

sociology of punishment and deviance (in this order, due to a precise cultural option for the labelling theory approach), pays great attention to how the Court 'constructs' prisoners' rights in particular.

In this context, the Inter-University Centre and the School of Law have launched three legal clinics aimed at stimulating students' imagination so that they can 'construct' ways of transforming into rights the private troubles of sentenced persons and those who arrive in Italy asking for international protection, and so that they can learn the language of the ECtHR and begin to practice the Court's use of legal imagination.

The three legal clinics have a stated purpose of protecting the weaker people's rights since their very names: they are not legal clinics on sentence execution, asylum or ECtHR, but on "The rights of applicants for international protection", "The protection of the sentenced persons' rights" and "The protection of rights by the ECtHR". Thus, they are clinics openly devoted to the 'construction' of marginal people's rights.

Clinics on the rights of applicants for international protection and of sentenced persons are not operated, as is in the established clinical tradition, with lawyers. First, through seminars, students become familiar with the specialised legal discourses. Then, they go to work alongside the judges of the specialised Section for Immigration or the Supervisory Court and, for the clinic on asylum seekers' rights, the operators of reception centres, preparing applicants for the interview with the Asylum Commission. Students also work with the volunteers of the Altro diritto NGO, on the basis of an agreement with the Department of Prison Administration. Within several Italian prisons, Altro diritto has activated a number of counters for the protection of prisoners' rights, with the aim of supporting the latter in drafting complaints to the Supervisory Judges and other competent authorities.

This choice has been made, on the one hand, to ensure that students always start from the experience of people stating their "personal trouble" and giving their own account of this "trouble", and do not have intermediaries who transform in advance the "personal trouble" in a legal case. On the other hand, so that students can always compare the initial "personal trouble" with the decision that gives it a legal connotation and how it is made, and critically evaluate the judge's political choice. We have chosen to support the magistrates because the Specialized Section for Immigration of the Florence Court rightly considers it its duty to listen to applicants for international protection. Students then listen to the story, the personal trouble. At the beginning of their experience, as Frank says, they 'see' how the judge transforms that story into a legal case, and at the end of it they discuss with the judge himself this operation and its political assumptions and its consequences on applicants' lives. At the Supervisory Court, students also have the opportunity to understand, through the files of the sentenced persons, how the experience, the personal trouble, comes, step by step, bureaucratised, transformed into a legal-administrative fact and how this construction affects the effectiveness of people's rights.

The only legal clinic that does not provide for direct contact with people and their "troubles" or the support of 'judges at work' is the one on the protection of rights before the

ECtHR, and this, in large part, for obvious logistical difficulties.[15] We have decided to start this clinic, these difficulties notwithstanding, because, as mentioned, conventional law is, by explicit and repeated claim of the Court itself, a law that rejects the traditional relationship with the text. The Court explicitly states that it does not think of itself and does not want to be the "mouth of the law", but that it wants to be the "creator" of the text's meaning according to the consensus on the minimum level of protection prevailing in the Greater Europe, the Europe composed of the forty-seven Member States of the Council of Europe. Such a claim makes it unique on the European scene.

In a legal-realist framework, which aims to present the jurist's work as a 'construction', in dialogue with the other jurists, starting from the rule's normative text to protect certain interests, it has finally appeared of great cultural importance to focus on the work of the ECtHR as the most illustrious example of an actor who carries out this work openly and transparently. A cultural option such as the one underlying the Florentine clinics cannot overlook the activity of a Court that has used its legal imagination to build the right to economic social benefits under Article 1 of the First Protocol, which protects the right to property, in spite of the centuries-old liberal tradition that opposed the right to property to social rights.[16]

Finally, with regard to access to justice, which defines the level of legal civilisation, it should be remembered that the Court has, on a theoretical level, severed entitlement to rights from nationality,[17] with a radically legal-realist approach, but also shared by Kelsen, who saw law as an order not supported by force, but regulating the use of force. This approach has made the Court itself the reference point for many non-European citizens who could not bring their private troubles before a judge.

As its very title states, the Convention declares "Human Rights" and the Court is therefore called upon to guarantee these rights to all human beings. Of course, this does not mean that the right to apply to the Court rests with anyone, anywhere in the world, who considers that one of his rights under the Convention has been violated. The Convention is binding only on the member states of the Council of Europe. The Court therefore does not have universal jurisdiction: the rights of the Convention are not always enforceable by all human beings, even though they are attributed to all human beings. The abstract attribution becomes a possibility to appeal, and its protection becomes effective, only when the right is violated by an official of a state party to the Convention, wherever the violation occurs and whatever human being is the victim of the violation. Insofar as a right is a legal situation, a claim or an immunity (Hohfeld 1953, Ross 1958, 149-159) whose legal protection is the possibility to apply to a

[15] In order to ensure the transfer of experience to the students, various judges of the Court are called upon to participate in Florence in the work of the clinic and are part of the juries of the moot court, which takes place in French or English, the Court's vehicular languages. The moot court is students' practical activity. We also try to bring students to Strasbourg to attend at least a Grand Chamber hearing and, on that occasion, we also organise a seminar with some judges of the Court.

[16] See the leading cases *Gaygusuz v. Austria*, 1996, *Koua Poirrez v. France*, 1998 and *Konstantin Markin v. Russia*, 2012, accessible at the following links: https://hudoc.echr.coe.int/eng?i=001-58060, http://www.legal-tools.org/en/doc/b942dc/,. https://hudoc.echr.coe.int/eng?i=001-109868.

[17] In what follows I propose what I have already stated in Santoro (2017), with little change.

judge, the rights established by the Convention exist, i.e. they are enforceable, only when they are violated by officials of a state party to the Convention itself.[18]

For the first time, the universal nature of rights is matched by the actual and systematic possibility of their judicial enforcement, regardless of the right holder's state, provided that the violation is committed by a state party to the Convention.

A final reason for creating the clinic on the protection of rights before the ECtHR was that there are still no courses in Italian universities specifically devoted to the Convention on Human Rights "as interpreted by the Court". And this although the Convention has entered the Italian legal system from the top levels, "from the attic" if I may say so, through how the Constitutional Court has created the meaning of Article 117 of the Italian Fundamental Charter to frame the relationship between its case-law and that of the ECtHR and to substantiate the principle of subsidiarity underpinning the relationship between state law and conventional law. In the context of the legal clinics created to develop the imagination capable of making marginal people's personal troubles into legal claims, it is important to note that conventional law should also enter the Italian legal system from the lower levels, I would say, to continue with the metaphor, "from the cellar". In fact, for some years now, by introducing a case-law source into the Italian legal system for the first time, Article 35-*ter* of the Penitentiary Law has provided that a person may ask the supervisory magistrate or, when released, the civil judge for compensation for having been detained "in such detention conditions as to violate Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, ratified under Law No. 848 of 4 August 1955, *as interpreted by the European Court of Human Rights*" (italics of course mine). In this respect, the clinic on the protection of rights by the ECtHR is synergic with the clinic on the protection of sentenced people's rights.

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[18] For a famous case, concerning Italy, in which the Court's legal imagination, its imagined order, has been made a reality, an authentic interpretation of the Convention, see the case of *Hirsi Jamaa v. Italy* https://hudoc.echr.coe.int/eng?i=001-109231.

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