

In Search of Commonality: Argentine and Chilean Law Professors Discuss Law

Teaching and Research

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1. Introduction.

These notes do not touch directly the issue of effective techniques for teaching about other cultures, but a closely related theme: sharing teaching experiences between law professors of different countries. I want to reflect on a recent meeting between Argentine and Chilean Law Professors. This experience may be of some interest for our educational program because it was an effort to build links between two legal systems which have much in common but also differ in many relevant respects. A global understanding of legal teaching should start with an acquaintance of legal cultures closer to us. In other words, the regional is a natural starting point for the global.

The meeting took place in Santiago de Chile last April. For two days, 30 law professors and researchers from 8 universities of Argentina and Chile discussed the challenges posed to researchers and teachers by the new realities of the market of legal services, the new technologies, and the current state of Latin American young democracies. These were some of the issues debated:

2. Market or Democracy?

A heated discussion revolved around the function of Law Schools. Is it the primary duty of a Law School to form professionals for the market? Or, instead, is the function of Law Schools to form university graduates, but not necessarily to teach abilities and skills demanded by the market? As would be predicted, a middle point was reached. It would be irresponsible for Law Schools to ignore the new requirements of the markets

for legal services. On the other hand, the market that we should have in mind is the market of the next 40 or 50 years, not the market of the next few years. A lawyer is not a product, in the sense of many other activities, where a product is defined to be consumed or bought immediately. Lawyers who get their diploma this year will be active for the next four or five decades (perhaps more). This enhances the need of focusing on those skills that may strengthen the flexibility of lawyers to face a changing world.

3. “Black letter law” vs. Philosophy and other extra-legal discipline.

In Latin America there is a well studied trend according to which the legal profession as a whole is losing societal and political influence. The space originally occupied by lawyers is now being claimed by economists, sociologists, and professionals from other disciplines. How should law schools readjust their mission? Some scholars think law schools should strengthen their competitive advantages, focusing on the knowledge of the law and the development of legal skills, and weakening the focus on interdisciplinary studies. Others, in contrast, note that although lawyers have lost their exclusive access to governmental roles and although today is not necessary to be a lawyer to act as a public intellectual, still there are thousands of lawyers acting inside the state and occupying positions of leadership. They think, therefore, that Law Schools should enhance the teaching of allegedly extra legal stuff, like moral and political philosophy, economy, sociology, history, etc. Some professors even think that the core subjects (like Torts, Contracts or Criminal Law) should be “illuminated” by perspectives from other disciplines.

4. What does innovation mean?

Law teaching tends, in our region, to be hostile to changes. Law is being taught more or less in the same way today as it was 50 years ago. Teaching is dominated by the lecture method (the Professor speaks for 2 or 3 hours, and the students listen or make minor questions). Although we are all aware that there is something wrong with the way we teach, we don't exactly know what changes should be favored. Modern pedagogy seems to show that methods of teaching that are deemed to be very efficient (like the Case method or the Socratic Method) in fact are only small improvements compared to the Lecture Method. Students retain 5 % of the content of a lecture, and perhaps 10 or 15% of what is taught under the other methods. The two more efficient ways of teaching, are, on the other hand, very expensive. They are the methods of "Learning by Doing", best exemplified by the Legal Clinics, and "Learning by Teaching", in which students prepare and teach a subject to other students.

5. Accreditation and relevance of legal research

For the last two decades various Chilean law schools have been hiring full-time professors who teach and do legal research. A similar trend is developing in Argentina. An important question is, by what standards should their work be evaluated? One institution assigns points to each publication according to the prestige of the journal where the work is published. Furthermore it only assigns points to publications in Anglo-Saxon journals. The problem is that this ranking may be biased against certain type of research, for example research about local problems, and may create a disincentive to publish in local journals or periodicals, diminishing the impact in the national or regional contexts. Nevertheless, there is much to be said in favor of a ranking with international standards. First, it makes it more probable to have links with important universities abroad. Second, it helps to open job opportunities for professors.

As always, an intermediate position (combining national and international impact) appears as the most attractive.

6. Democracy in the Classroom?

Professors disagreed on the exact combination of authority and inclusion to be achieved in the classrooms. Some emphasized the need for a clear recognition of the authority of the professor, who is the person who knows the subject. Others, instead, defended a less ambitious picture of the professor, as one who needs to learn *with* the students. There was, nevertheless, a practical consensus regarding **evaluation**. In Latin America there exists a long tradition of oral examinations without any recourse to revision of the grades. The participants in this event agreed that we should migrate to a system of written exams, and that students should have access to a discussion of the grades with the instructor.

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7. Conclusion.

These were some of the issues discussed in this meeting. The professors were enthusiastic about repeating the event every year. The next gathering will take place next April in Buenos Aires, including perhaps professors from Brazil and Colombia. Chile and Argentina are quite different legal and political cultures, but a lesson from this meeting is that there is enough commonality among our law schools to make it a worthy effort to continue debating our problems and sharing insights and experiences. A feasible goal would be to share teaching materials, produce some joint classes (through the internet), and to explore the possibility of some joint research project.