

September 2000

Universities and the Judicial Field

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Recommended Citation

Saenz Elizondo, Maria Antonieta (2000) "Universities and the Judicial Field," *Florida Journal of International Law*: Vol. 13: Iss. 1, Article 18.

Available at: <https://scholarship.law.ufl.edu/fjil/vol13/iss1/18>

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I think it is an obligation to both deal with those issues and address the issue of educating students generally to be attorneys in the Americas. I think we have a more difficult task dealing with public service for which this conference represents a beginning. We need to develop an infrastructure for a legal system that exists throughout the Americas that supports not only commerce but makes life difficult for money laundering and makes life easier for those who seek equal justice whether they be women, men, or minorities.

I think that our capacity to discuss what kind of judicial system it takes, what kind of dispute resolution system it takes, what kind of legal structure it takes, is something that can be done in law schools with the participation of folks like those in this room. We have brought experts together and we have the capacity to do that. We have the capacity as law schools to do things which may sometimes be more difficult for government. We, as law schools, and I know the history of our institutions, far outlive political institutions and individual governments, so the relationships that we can begin to establish among institutions like law schools, may allow us to perpetuate a dialogue and create an infrastructure for the rule of law in the Americas to not only survive but to prosper.

It is our obligation collectively, those of us who had the interest and focus to come to this conference, to carry on our responsibilities.

PANEL OF DEANS

XVIII. UNIVERSITIES AND THE JUDICIAL FIELD

*Dra. Maria Antonieta Sáenz Elizondo**

SUMMARY

Preamble

- A. The Influence of the University on the Judicial Field.
- B. Role of the School of Law of the University of Costa Rica in the Development of Judicial Science and its Influence on Constitutional and Legal Reforms.
- C. Improvement and Modernization of Judicial Administration and the Colleges of Law.

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- D. The Traditional Model of the Latin American University and the Challenge of the Era.
- E. The University of the New Era and International Cooperation.
- F. Conclusions: In Search of a New Model in the Preparation of Lawyers in the Americas.

PREAMBLE

I wish to thank the University of Florida for this distinguished invitation, so that together with the dean of the Levin College of Law, the dean of the College of Law from the University of Rio, Brazil, and the Director of the Free School of Law of Mexico, we have an excellent opportunity to reflect on a subject that has permanent interest, since it is part of the university mission to promote judicial studies.

After a few decades of living within the university environment, I am convinced daily how important this area is and the most noble purpose is a result of the sincere and dedicated attitude of the majority of the professors and investigators in perfect harmony with the students, in search of knowledge and truth which inevitably will create knowledge as an expansive wave. The University will occupy a place in the daily life of society which it will modify thanks to the impact that the scientific development imprints on all. We assist in transformations that are manifested in the improvement of the general conditions of social groups, in health and services, work, technological and scientific advances that permit society to be more organized in the conquest of better living conditions, not only in the private sector but also in daily relations among members of the community, in the workplace, in security, and others.

The University alone represents the hope of the people in general, given the task that it has in removing ignorance and lead towards a conscience which surrounds us, visible or invisible, and the confidence that human beings work with intensity, quality, and commitment to offer solutions, answers, and ideas in all types of situations and human coexistence in different parts of the planet.

The noble mission of the University is dedicated exclusively to construct, conserve, and transmit knowledge and culture. Special mention must be made of the universities in developing countries which confront assignments that go farther than the proposals that universities in more advanced countries will encounter.

In this respect, the Latin American universities have similar objectives because they follow certain vocations by the liberty which makes them more sensitive to the social future carrying their work and the cultural diffusion each time to a higher level. Therefore, it will be a an important factor in social and human development.

This is a very valuable occasion for us to speak of the function and significance of the teaching of Law in the universities of the American Continent and its enormous influence on legal reforms and the rise of the legal system.

A. The Influence of the University on the Judicial Field

In the nucleus of universities there have been innumerable discoveries and inventions that are the fruits of persevering studies and benefitting humanity. Relative to evolution there is the appearance and formation of law in the universities.¹⁰⁸

We perceive the importance of judicial science in almost everything connected with peace and social justice and the permanent fight of human rights during the last fifty years of the past century.

The Law as a cultural expression marks day by day the reaffirmation of the Status of Laws, the inseparable union between power and limits of power, that in the end is nothing but respect for human beings for whatever reason, which results in legitimizing the exercise of public liberties and life in democracy. This is what formulates today's way of life common in all countries following some local wars and world-wide conflicts.¹⁰⁹

It has been a tonic of the Latin American University and especially the Faculties of Law to generate the most profound reflections to fortify the fundamental rights of individuals. I refer to the reflections which are not new, nor isolated, but that have been on the move for several years and have allowed legal and constitutional changes of great importance. The birth of these substantial new developments have opened the door to safer and peaceful societies and, as a result, greater justice. We recognize this new reality which emanates from the efforts of universities to affect a task of collective and integrated benefit of social problems.

Today we see that the union between universities and society disappear given the presence of challenges that are marked by socioeconomic, technological and scientific changes. These changes force us to rethink the course that academia must take.¹¹⁰

The influence exerted by the Schools of Law of the Latin American continent on institutional life was raised by public universities, especially during periods in which they did not coexist with private universities,

108. PACHECO, M., *Historia y misión de las universidades*, Chile 1999.

109. CAPPELLETTI, M., *La fenomenología del siglo xx*, Revista Judicial No. 45, Costa Rica, 1988.

110. AGUILAR HERNANDEZ, MARIELOS, *La misión de la universidad latinoamericana ayer y hoy*, Revista de Ciencias Sociales, Universidad de Costa Rica, año XLII, No. 83-99.

whose influence at the moment is minor. This is not the case in Costa Rica. In Costa Rica, a true consolidation of private universities and that although there is not a monopolistic character of public universities, there is a tremendous conviction that public universities are more superior in quality than the private ones. As a consequence, the participation of the College of Law at the University of Costa Rica in the production of laws and orientation of the same has without a doubt been significant.

B. Role of the School of Law of the University of Costa Rica in the Development of Judicial Science and its Influence on Constitutional and Legal Reforms

This Faculty appears with the birth of the first university of Costa Rica named Saint Thomas of Aquino in 1843, but it is distinguished with other faculties that were created then. When the University of Saint Thomas was closed in 1888 due to lack of resources, the Faculty “was adopted” by the School of Law that did not allow it to die until the reinstallation of the University, with the decided support of the government in 1940, and what is presently the University of Costa Rica. Since then, the School of Law has been very important. From this college many have graduated, and there have been many Costa Ricans who have gone through our national history occupying political positions, as much in the Executive Power as in the Legislative, not to mention those in Judicial Power.

The Faculty of Law of the University of Costa Rica resulted in making itself the School of Law with the oldest and highest tradition in the teaching of laws, and for that reason consults on projects that enable professionals to attend the five postgraduate colleges that we have and also continue their educational programs in law, which the Faculty provides under the responsibility of distinguished professors with excellent preparation and experience.

From this Faculty have emerged distinguished alumni which, thanks to a plan of scholarships outside the country administered by the Office of International Projects and External Cooperation of the University of Costa Rica, form an educational Faculty with recognized prestige since 1970. Upon their return from different countries of Europe, the alumni have enriched the teaching and investigation. We have many professors who have dedicated themselves to producing high level judicial works which are circulated inside and outside the country, or in journals and books. This judicial literature covers all branches of Law, Philosophy of Law, Penal and Procedural Law, Labor, Commercial, Constitutional, Civil Process, Administrative Law, etc. They are favored with enormous authority — the activity of the young and junior professors to innovate the national justice

order. For that reason it is worthwhile to mention the fact that our jurists and educators have accomplished, thanks to their meticulous work and enormous capacity, to enact laws such as: the General Law of Public Administration, the Law of Constitutional Jurisdiction, Procedural Codes in penal matter, the Law of Juvenile Penal Justice, effective Civil Procedural Code, the General Process Project Code, etc., and several works that are sources of consultation not only for students but for lawyers in general.

The academic conditions of our Faculty merit them the confidence of all civil society, the political class, the economic class, and the Judicial Power; that our opinion has an important weight with respect to legal projects, investigations, and capabilities.

Historically, our College of Law has played an excellent role in the formation of professionals. Fifteen presidents of the Republic have graduated from this Faculty. In a similar way, many of our professionals have been senators, ministers, and members of the Judicial Power not only in the courts, collegiate tribunals, but as in the magistrate, a position more elevated than in the Judicial Power. These attorneys have been the architects of our democracy.

C. Improvement and Modernization of Judicial Administration and the Colleges of Law

Based on the foregoing, we can say with certainty that the College of Law of the University of Costa Rica has a very important mission, which is renewed every day by virtue of a profound academic spirit towards teaching, investigation and social action which characterizes it. The country always awaits its contributions as the most authorized. Suffice it to say that plans for modernization of the judicial administration will depend not only on the judicial sector which will see it to the end, but also on the quality of lawyers. Modernization of the judicial system depends on good quality legal professionals who will improve the manner in which justice is done. It is urgent to have a united and rigorous concept of academic quality. The challenge is to give society the jurist who has a great vision and can acclimate themselves to the times we live in. This will have a direct bearing — revise what is being done, validate and look for new alternatives that are necessary to construct an ideal model.

We live in a world that is constantly changing. Today more than ever this characteristic is accelerated, requiring a lawyer who can resolve cases using all theoretical and practical instruments that are required to meet new demands, that support novel norms and, sometimes unknown as a result of the bombardment on conservative justice of commercial laws, private contracts, civil obligations, actual rights and civil procedures, that do not

correspond to special laws that regulate the relations of International Private Laws, Intellectual Property, International Arbitration, Protection of the Consumer, the Trusteeship of Diffuse Interests, and others.

The efficiency of the administration of justice merits consideration above all else — the profile of the litigant and judge from optical extent of real and judicial surroundings. We are speaking as much of the abundance of the academic-professional as the forward vision of the situations they confront. That is to say, their mentality.

New laws are being created that are destined to operate in a contemporary world, but at the time of application there is not only good management and knowledge of this legislation. Moreover, there is an enormous mental barrier which blocks the professional in Laws that gives its traditional preparation and does not allow entry in the new surroundings.

It is here where our schools of law play a substantive role to confront change and direct its force towards development and excellence of judicial studies, enrolling young students in a new judicial vision and pointing them to a reality that in the end will be able to associate the law as systems designed to regulate a sane and peaceful coexistence. They would permit the professional not only to learn and dominate those judicial institutions, but at the same time know the reason why it is so, and be able to discover each figure within the order in narrow union with what happens daily. This is the entry door by which we can speak of attorneys in the context of the requirement of their time and able to break walls in the true attainment of a just and opportune reform of everything that is our judicial system. From now on, we are referring to a reform to improve real and effective terms in total harmony with a model of economic and social development.

In an effort to achieve this goal, we need a substantial change in the manner in which we teach law to enable us to produce a strong influence not only in the generation of new legislation to solve problems, but also to offer to society the professional which it needs.

D. The Traditional Model of the Latin American University and the Challenge of the Era

The role of Latin American universities in constitutional and legal reforms has been redeemed since public universities entered in crisis at the end of the twentieth century in social and economic change. The university is a center of economic growth, constituting a motor which moves markets. The past was characterized by efforts to promote interests of which few or none had relations with the economy. It was perceived that this action was a characteristic problem of public administration, political reflection, and social action. This was a feature of the Latin American university, a mission

which removed the pure economic context to convert it to institutional change and human development. Proof is found in¹¹¹ the fact that Latin American universities in the fifties and sixties were concentrated on fortifying the humanities and the principle of university autonomy as the model of the state benefactor. Today, we start a debate about the destiny of Latin American universities across an external panorama which imposes new challenges.

The transition between one era and another coincides with the maturation of changes being developed within a process that culminates in the globalization of the university, placing the university as a center of knowledge par excellence at the top of multi-dimensional modernity that claims political splendor. We encounter a world of high productivity and competitiveness that dominate all spheres. For this reason, today we compete not only for economic apparatus but social conditions, educational systems, politics of scientific and technological development, and from this the politics of development in judicial science and legislation.¹¹² Society always expects more from the university.

E. The University of the New Era and International Cooperation

In actuality, the tendency is to try to find a new course that the public university must take within a scheme that does not alter its essential humanity but, at the same time, there is an agreement between that tradition which characterizes it, the new exigencies of globalized economy, and the force that the private economic activity has acquired. We are in the presence of a phenomenon which should approach itself in an integral manner now that the diversity of themes which are offered by the actual era, demand attention not only to the national reality but a major opening among universities in the international field in order to extend horizons and spaces with joint operation. And compelled to undertake new projects that promote interaction among countries and as such learn more and identify our needs as collegians.

It is extremely important that the university embarks on a mission to fortify and make effective the inter-university interchanges and to surpass each time its own borders. It is equally important to intensify the alliances between universities of first order and promoting a greater cooperation for the joint work in teaching, investigation, and isolated academic work. The

111. Ver AGUILAR HERNANDEZ, op. cit., pp. 24-25 y ss.

112. TUNNERMANN, BERNHEIM C., La educación superior frente al cambio, No. 1, Colección CSUCA, 1997.

consolidation of strategic alliances in the face of international cooperation between universities opens an ample way to make possible the transformation of the curriculum, methods of teaching, and qualifications of professors and students, the transfer of bibliographic information that arise as a result of materials produced from the same interchange. It is natural that a force of this kind contributed a strong support in the judicial development of those countries involved.

We can point to the fundamental traditions of public universities relative to autonomy and social projection. While there is no need to feel sacrificed nor abandoned, we are in a historic period of great mutations which demand a necessary adaptation to absorb the change.¹¹³

The university should always be conscious of its role within the potential well being of society in the ample sense of expression, a collaboration oriented in a form parallel with the real phenomenon. In this manner, the new economic vision and market should take into account the academic approach besides a clear and firm conviction of the operation of its own democratic values of a society based on the strict attachment with respect to the Law and its institutions. In other words, the university should be in total harmony with the conscience of the period, maintaining its critical capacity and its transforming force.¹¹⁴ At the same time, it should cross bridges between knowledge and the capacity of persons to procure productive development in democracy. An innovative society leans on the university, but it is impossible to advance in knowledge if there is no critical function. Education must be centered on the capacity to learn, in knowing where to get information and how to adapt to new situations to procure progress and to incorporate itself like actors and protagonists of the effective development of societies.

F. *Conclusions: In Search of a New Model in the Preparation of Lawyers in the Americas*

The work done by Cappelletti,¹¹⁵ from a period in which technological revolution operated by communications at every level, such as maritime, air, telephone, and satellite, are directly responsible for his impact on all social reality. It demands an accurate reaction to obtain a congruent relation between change and judicial answers that must occur.

113. Ver un enfoque semejante en la conferencia de los rectores de la Universidad de Salamanca, JOSEP MA. BRICALL MARSIP, *La Universidad al final del milenio*, Salamanca, 1999.

114. *Ibid.*

115. CAPPELLETTI, M., op. cit.; FRIEDMANN, N., *El derecho en una sociedad en transformación*, Buenos Aires, 1966.

As a product of this revolution, we will assist a globalized world and as a spiral that does not find limits and is positioned in all that a contemporaneous humanity does. The challenge compels us to design new schemes to continue ahead in the proper formation of future professionals in Hemispheric Laws. No doubt that as we travel together, on a trip without return, to do the same things in different places despite material and cultural borders, we are implicated in common proposals because they are the answer to the daily exigencies of a world filled with magnitude and multidimensional dynamism, of a society that overtakes the professional paradigms. The resulting priority is to rethink the way to integrate actions and grow together.

We note how each time interchanges of professors and students among universities become more frequent. We have had wonderful experiences within our faculty when young people graduate and transfer to an American university for postgraduate work. Their contact with other students begin to develop the reciprocal involvement to study problems and solutions in each regulation. These contacts result in permanent contracts in offices which bring to our country important professional and academic experiences considered applicable as much in the cases as in *modus operandi* of these offices. There exist other methods of work in conjunction with professionals in Law who obey this urgent need to attend to new conflicts and distinct challenges with international agreements among all not only in the commercial world, but also camps of human rights and others.

An example that we cannot forget is the European integration in the last ten years, during which frontiers have opened to allow legal professionals work without limits or sovereign judgments.

XIX. BRAZIL — THE REINTRODUCTION OF A DEMOCRATIC STATE AND THE LIBERALIZATION OF A PREVIOUSLY CLOSED ECONOMY

*Daniela Trejos Vargas**

Traditionally in Brazil, the law schools formed the political leaders of the country. But this changed since the advent of the military regime in 1964, and it is common to hear in Brazil that we are now the “Republic of the Economists.” Former students and professors of economics, mainly of the PUC-RIO College of Economics and the University of Campinas —

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