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Legal Education in the Americas: The Anchor for Hemispheric Justice

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LEGAL EDUCATION IN THE AMERICAS: THE ANCHOR FOR HEMISPHERIC JUSTICE

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I. INTRODUCTION

Globalization requires a legal infrastructure. The challenge of educating a cadre of lawyers for the twenty-first century is complicated by the myriad legal traditions and systems. Our focus is the harmonization, functional compatibility, or at least mutual understanding, across the legal systems of North and South America. The University of Florida's Levin College of Law sponsors an annual "Legal Issues in the Americas" Conference to foster understanding among institutions and individuals in this hemisphere. We thank the members of the *Florida Journal of International Law* and

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their faculty advisor Professor Berta Hernandez-Truyol for publishing the papers presented at that conference.

Lawyers were called the “architects of order” in a study of legal education.¹ The goal of legal education is to develop a system that graduates these architects of order who both understand the need for and can foster the development of “order” in the hemisphere. Legal education must react to the changes in political, economic, and cultural perspectives and realities.² The effects of globalization in the twenty-first century include:

1. More cross-border legal and contractual relationships;
2. An increased number of transactions with multiple countries having jurisdiction;
3. A constant flow of assets across borders;
4. The unification of international law and principles through international organizations and treaties;³
5. The internationalization of human rights principles and laws;⁴
6. The existence of trade agreements that obligate multiple nations to agreed upon conduct, e.g. GATT, NAFTA, CAFTA, FTAA.⁵

All of these effects involve legal issues among nations of this hemisphere. There is a growing trend towards synthesizing different legal systems to meet the challenges of globalization.⁶ Globalization requires legal infrastructure and lawyers capable of operating in the new environment. How are the legal education systems in this hemisphere handling this new environment?

1. Alberto Bernabe-Riefkohl, *Tomorrow's Law Schools: Globalization and Legal Education*, 32 SAN DIEGO L. REV. 137, 162 (1995).

2. *See id.* at 137-39.

3. *See id.* at 153 (discussing the harmonizing of laws amongst countries based not only in international treaties, but also on “common legal traditions and cultures”).

4. *See* Claudio Grossman, *Building the World Community: Challenges to Legal Education and the WCL Experience*, 17 AM. U. INT'L L. REV. 815, 844-50 (2002) (describing the efforts of such institutions as the International War Crimes Tribunal Research Office and the Human Rights Training Program to internationalize human rights).

5. *See generally* Bernabe-Riefkohl, *supra* note 1, at 148 (stating that the way around unwillingness of nation-states to reorganize is the creation of “economic alliances, or transnational trading blocs”).

6. Alfredo Fuentes-Hernandez, *Globalization and Legal Education in Latin America: Issues for Law and Development in the 21st Century*, 21 PENN ST. INT'L L. REV. 39, 50 (2002).

II. LEGAL EDUCATION

In the emerging complexities of globalization, the law must provide guidance and stability to cope with these difficult and rapidly changing landscapes. To accomplish these goals, legal education in the hemisphere must equip young lawyers to understand this new world.⁷

Despite common goals, there are still different teaching methods and distinct legal systems to teach. The civil law system and the common law system are, of course, distinct, both being taught in a unique manner. Through internal initiatives, there have been changes in civil systems in several countries, such as expanded oral participation in court proceedings and the acknowledgment of the value of precedent. Both civil and common law systems also share areas of future development, such as alternative dispute resolution.⁸ Yet the legal education systems in North and South America remain quite distinct.

The traditional Latin American civil law education is a five-year program without other higher study. Instruction is based largely on passive lecture without skills instruction or engagement in problem solving techniques. There is a shortage of full-time faculty in Latin American law schools. Most professors work as lawyers.⁹ Full-time faculty members are the exception, rather than the rule. In many places in Latin America, access to a legal education for those in lower income groups is limited.¹⁰

In the United States, the approach to a common law legal education is called Langdellian, after the influential Harvard Dean of the 1800s.¹¹ This method focuses on developing analytical abilities rather than concentrating on particular answers.¹² The Langdellian method has been criticized by the American Bar Association for not adequately training students for the

7. See Bernabe-Riefkohl, *supra* note 1, at 162 (explaining that law schools in the globalization era should “provide students with a complete education[;]” one that develops practical skills, yet still emphasizes research, criticism, and contributions to society).

8. See Fuentes-Hernandez, *supra* note 6, at 45.

9. See *id.* at 42. Lack of teachers is not the only problem facing Latin American education. If professors were full-time, they would be teaching in institutions with “poor physical facilities, limited and obsolete library resources, [and] outdated curricula. . . .” See *id.*

10. See *id.* at 42-43. This inequity is a continuation of an overall trend in Latin America, where, “[o]n average, [students] . . . remain in school fewer than nine years, much less than the U.S. average of 13.5 years. . . .” See *id.* The need for “well-designed student aid mechanisms” is paramount, so low-income students do not have to work to continue their studies. See *id.* at 42.

11. See Jean R. Sternlight, *Symbiotic Legal Theory and Legal Practice: Advocating a Common Sense Jurisprudence of Law and Practical Applications*, 50 U. MIAMI L. REV. 707, 721 (1996).

12. See *id.* at 721-22.

practice of law and for being weak in practical legal training and skills.¹³ Another criticism of most U.S. law schools is that too little emphasis is put on international law.¹⁴

Both the common law and the civil law systems of education face a challenge from the ever-shrinking world, which requires schools to prepare their students for a reality beyond their domestic laws.

III. LAW AND DEVELOPMENT OF THE 1960S

An earlier method of dealing with the diversity of legal systems was an effort by some to convert Latin American systems to a more American system.¹⁵ This technique was later criticized as “legal imperialism,” an effort to impose U.S. legal systems in Latin America.¹⁶ This effort failed to grasp the deep cultural and historical differences between the United States and Latin America.¹⁷

Even the old colonial systems of North and South America were different, as evidenced by the development of different legal cultures and systems. North America was a colony of Great Britain until it broke its colonial yoke, based on the idea that ability and morality would define status, not royal blood or inheritance.¹⁸ Latin America, colonized largely by Spain, developed highly centralized bureaucratic governments, intensely loyal to the crown. Postcolonial systems remained centralized, with most Latin American nations retaining “strong, intrusive executive branches[,]” and weak legislative and judicial branches.¹⁹ Therefore, Latin America’s legal system was based on implementing the written rule consistent with the Roman Law tradition rather than the common law

13. *See id.* at 722.

14. *See* Bernabe-Riefkohl, *supra* note 1, at 154.

15. *See* Francis S. Snyder, *The Failure of “Law and Development,”* 1982 WIS. L. REV. 373, 373 (1982) (reviewing JAMES A. GARDNER, *LEGAL IMPERIALISM: AMERICAN LAWYERS AND FOREIGN AID IN LATIN AMERICA* (1980)).

16. *See id.* at 374-76.

17. *See, e.g., id.* at 386-91. Snyder both agrees and criticizes James A. Gardner’s view that American “legal missionaries” failed in Latin America because they were “poorly informed about the political, economic, and social conditions in the countries where they worked, and were frequently ill-trained and ill-prepared to cope with cultural and social differences.” *Id.* at 377, 387.

18. *See* Sternlight, *supra* note 11, at 720-21.

19. *See* John Linarelli, *Anglo-American Jurisprudence and Latin America*, 20 FORDHAM INT’L L.J. 50, 50-51 (1996).

tradition.²⁰ In this context, the attempts to impose new legal systems and methods of teaching have floundered.²¹

IV. JUDICIAL REFORM

However, some efforts at cross-border idea-sharing still continue. For example, judicial reform has been a catch phrase and a focal point for international law reform.²² This focus on judicial reform comes from concerns based on Latin American citizens' lack of faith in judicial systems because of their apparent disregard for the rule of law or how it is implemented by their courts.²³ The North American judicial system is also imperfect. One clear example is the perceived gap between legal education and legal practice in the United States.²⁴ This gap is evident when courts in the United States are continually confronted with international issues and many judges lack the requisite experience or training to handle such issues. Basic legal education should include more international components to prepare both lawyers and judges.²⁵

Efforts at judicial reform in the Americas have met with some success in places such as Chile and Costa Rica. However, substantial resistance to change comes from those satisfied with the existing system, including political elites and judges.²⁶ Cases still take an extremely long time to be resolved in Latin America.²⁷ This dissuades many from entering the

20. *See id.* at 61.

21. *See generally* Snyder, *supra* note 15.

22. *See generally* Linarelli, *supra* note 19, at 69-71 (explaining the problems with weak judges and the need for a stronger judiciary in Latin America).

23. *See id.* at 73. Although many Latin Americans have a "rule-oblivious mentality[.]" Linarelli points out they also, paradoxically, exhibit a certain "faith in the 'ideal of law. . .'" *Id.* at 74.

24. *See* Bernabe-Riefkohl, *supra* note 1 at 145-47. An ABA task force formed in the 1990s concluded that many young lawyers lacked the "simpler skills" necessary to assume the responsibilities of practicing law. *See id.* at 146. Bernabe-Riefkohl noted that Professor Harno also reported this deficiency in America's judicial system forty years earlier. *See id.*

25. *See id.* at 154. Legal education must anticipate the importance of the growing "collective law" created from globalization by "offer[ing] this general knowledge of the different law traditions" and "expan[ding] . . . international law and comparative law courses. . ." *Id.*

26. *See* Maria Dakolias, *A Strategy for Judicial Reform: The Experience in Latin America*, 36 VA. J. INT'L L. 167, 170 (1995) (stating "[b]ecause those who control the judiciary enjoy a monopoly on the justice system, they have no incentive to promote reform or act efficiently.")

27. *Id.* at 170-71; *see also* Linarelli, *supra* note 19, at 73.

judicial system to resolve problems.²⁸ Further, some critical reforms such as increased public appropriations to the judicial system, enhanced judicial salaries, and training will take more time to have a significant impact.²⁹ Maybe the best way to fundamentally improve legal and judicial systems across the Americas is to focus on the basics, with an eye toward the future; that is, to focus on legal education.

V. EDUCATION REFORM

Legal education defines the next generation of lawyers' abilities, ethics, and understanding of transitional issues. There are calls for harmonization, increased exchange of students and faculty, and recognition that, ultimately, law students and lawyers should share similar cultures and roles throughout this hemisphere.³⁰ Some scholars are concerned that Latin American legal systems have lagged behind social reform movements and thus have lost relevance.³¹ These scholars advocate fundamental changes in point of view.³² In other words, they believe that lawyers have a role in our societies as "architects of order."³³

What common goals should Latin America and the United States establish to develop lawyers who are architects of order? An initial step may be simply offering or requiring more courses in comparative and international law.³⁴ Another goal should be persuading law schools to teach substantive knowledge and practical skills that transcend borders,³⁵ such as foreign languages.³⁶ An example is the creation of courses that promote cultural understanding of other legal systems and peoples.³⁷

Additionally, promoting values that emphasize public service is a necessary component to developing lawyers who respect their roles as architects of order.³⁸ Clinics, which represent public service at the law

28. See Dakolias, *supra* note 26, at 170-71 (explaining that cases often take up to twelve years to resolve, which causes a backlog of the system and additional losses for those lucky enough to have their cases heard in the first place).

29. *Id.*

30. See Fuentes-Hernandez, *supra* note 6, at 52-54.

31. See Linarelli, *supra* note 19, at 54.

32. See *id.* at 53-54 (quoting John Henry Merryman's "basic work on civil law tradition").

33. See Bernabe-Riefkohl, *supra* note 1, at 162.

34. See *supra* text accompanying note 22.

35. See Bernabe-Riefkohl, *supra* note 1, at 154.

36. *Id.* at 153.

37. See *id.* at 154. This instruction, however, cannot simply begin at the graduate level, but instead should be emphasized at lower education levels. See *id.* at 152-53.

38. See *id.* at 157-58.

school level, should establish international educational opportunities, to expose students to a global practice and foster a global community.³⁹ Service towards clients and other lawyers is another aspect of public service that requires an across-the-border teaching of ethics and professionalism.⁴⁰ Finally, for lawyers across the hemisphere and globe to view their role as architects of order, legal education must create common standards for practice and professionalism.⁴¹

VI. CONCLUSION

Previous efforts at hemispheric harmonization appeared as efforts to change Latin American legal systems to look more like those in the United States. These efforts at “legal imperialism” failed. A long-term view would instead seek to harmonize our understandings, principles, and values. For that result, changes in legal education would be more lasting and profound. As a point of departure, we should use the fact that practically all nations in the hemisphere articulate virtually identical goals for their legal systems. We thereby establish common ground to educate lawyers for a system that operates honestly and transparently, provides due process, justice, and equal treatment to our citizens, and provides stability and continuity to commercial activity.

The European Union has established standards for membership that represent a common legal system.⁴² The driving force in establishing legal system standards or transnational legal standards seems to be trade agreements and commerce.⁴³ In the Americas, the Free Trade Agreement of the Americas may be a driving force. Beyond the motivation of commerce and trade, the most stable method for achieving the general principles of a hemispheric legal system is a common purpose in legal education that will prepare students for the twenty-first century practice.

39. *See id.* at 158. Bernabe-Riefkohl points out that with globalization must come recognition of legal education’s responsibility to the community. *See id.*

40. *See* Bernabe-Riefkohl, *supra* note 1, at 156.

41. *See id.* at 162 (stating that the “ideals of professionalism and justice” must be maintained by legal educators, in the face of the new economic realities of globalization).

42. *See id.* at 153-54 (discussing how some European Union legal educators have gone so far as to suggest the “standardization of legal education throughout the continent”).

43. *See, e.g., id.* at 148. Globalization and expansion of foreign markets will subject many business and contractual relationships to “more than one legal system.” *Id.* at 149. Therefore, attorneys will be the new legal “interpreters” of the globalization markets, forcing legal education to adapt to “new forms of the practice of law.” *See id.*

Ultimately, educational institutions outlast many political movements and governments. The annual conference on “Legal Issues in the Americas” will continue to provide a forum for discussion of mutual goals and ideals for the rule of law. If multiple educational institutions in the Americas can agree on elements of a common agenda, we can develop a cadre of new lawyers who speak a common language of legal values in a way that promotes lasting justice and democracy.