

LEGAL EDUCATION IN THE LATIN-AMERICAN REPUBLICS

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THIS study¹ is based upon visits to thirty-seven law schools in sixteen of the Latin-American Republics.² Though all operate under the civil law, there are wide variances, and comparison of the law schools of Latin America with those of the United States is very difficult. One must choose between descriptions of each school and generalizations which are necessarily inaccurate as to certain schools, as would be the

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² The schools in the order visited are as follows:

Ecuador, Universidad de Guayaquil, (Guayaquil)

Peru, Universidad Nacional Mayor de San Marcos, (Lima)

Pontificia Universidad Catolica del Peru, (Lima)

Universidad Nacional de Arequipa, (Arequipa)

Bolivia, Universidad Mayor de San Francisco Xavier de Chuquisaca, (Sucre)

Chile, Universidad de Chile, (Santiago)

Universidad Catolica de Chile, (Santiago)

Universidad de Concepcion, (Concepcion)

Argentina, Universidad Nacional de Buenos Aires, (Buenos Aires)

Universidad Nacional de la Plata, (La Plata)

Universidad Nacional de Cordoba, (Cordoba)

Uruguay, Universidad de la Republica, (Montevideo)

Paraguay, Universidad Nacional de Asuncion, (Asuncion, (Asuncion))

Brazil, Universidad de Sao Paulo, (Sao Paulo)

Pontificia Universidade Catolica de Sao Paulo, (Sao Paulo)

Universidad de Brasil, Rio de Janeiro, (Rio de Janeiro)

Pontificia Universidade Catolica do Rio de Janeiro, (Rio de Janeiro)

Faculdade de Direito de Rio de Janeiro, (Rio de Janeiro)

Venezuela, Universidad Central de Venezuela, (Caracas)

Colombia, Universidad Nacional de Colombia, (Bogota)

Colegio Mayor de Nuestra Senora del Rosario, (Bogota)

Pontificia Universidad Catolica Javeriana, (Bogota)

Universidad de Antioquia, (Medellin)

Universidad Pontificia Bolivariana, (Medellin)

Guatemala, Universidad de San Carlos de Guatemala, (Guatemala City)

Honduras, Universidad de Honduras, (Tegucigalpa)

Mexico, Universidad Nacional Autonoma de Mexico, (Mexico City)

La Escuela Libre de Derecho, (Mexico City)

Universidad de Guanajuato, (Guanajuato)

Universidad de Guadalajara, (Guadalajara)

Universidad Autonoma de Guadalajara, (Guadalajara)

Universidad de Nuevo Leon, (Monterrey)

Universidad de Puebla, (Puebla)

Universidad de Yucatan, (Merida)

Haiti, Universite d'Haiti, (Port-au-Prince)

Dominican Republic, Universidad de Santo Domingo (Ciudad Trujillo)

Cuba, Universidad de la Habana, (Habana).

case in attempting a short general description of all of the law schools of the United States.

The number of law schools is not as large actually as in the United States, where there are one hundred ten schools approved by the American Bar Association and in addition a large number of unapproved schools. However, relatively there may be even more in proportion because of the character of the population and the per capita wealth in certain countries.

The sharp distinction between "full-time" and "part time" schools which is made in the United States does not exist in the Latin-American countries where practically all the teaching is done on a part time basis by practicing lawyers and the full-time or "career" teacher, who puts in his whole day at the law school in student conferences or research is almost unknown. Though there are a few exceptional cases in some of the civil law schools, the schools themselves are set up on a part time basis, and the full-time teacher is usually a special or unusual case.

Usually the main working hours of the day are free for other activities both for instructor and students so that both may be gainfully employed. Not unusually some classes are held as early as seven in the morning, and since the dinner hour follows Spanish tradition—anywhere from eight to ten in the evening—a large proportion of lectures are held in the late afternoon or early evening.

Teaching is largely by the lecture method except in seminars and practice court work. This is not very different from the lecture method as it was used in the United States prior to the general adoption of the case method of study. As might be expected, however, the methods of presentation and the conduct of classes differ widely with various instructors. All the schools have been influenced by the formal lecture methods of the continental law schools, particularly those of Spain, France, and Italy where until recent years many students and professors went for special or post-graduate study. Thus it is not unusual to find a lecturer who asks no questions of the students and permits no questions by them, but delivers a formal lecture which is mimeographed or printed and given out to the students. When this is not done a few students take shorthand notes of the lecture which are then transcribed and given out to their fellows. In many schools this practice is encouraged.

A considerable change is now taking place. Many teachers encourage questions and pose hypothetical cases, though it is usual to have a definite part of the class hour set aside for this purpose. The emphasis is still largely on imparting information, rather than on the development of the student's reasoning powers so much stressed in the case method of study, and seldom are problems or materials given out to the whole class to be

studied before the next lecture hour. Where schools conduct seminars, as many of them do as a part of the regular undergraduate law course, the discussions are lively with the give-and-take characteristic of the classes in most United States schools.

Practice work is much emphasized, either through moot courts or through experience in actual practice under the direction of a licensed attorney. In many countries there is statutory authorization so that a student who has completed three years of law study may act as a lawyer's assistant. His activities go far beyond that of a law clerk in the United States, and he may carry on fairly extensive activities in the name of his sponsor or patron.

In several countries there are well-organized Legal Assistance Bureaus, or Legal Aid Clinics, where it is required that each student serve for a considerable period of time before being entitled to his law degree or his right to practice. Outstanding is the one conducted by the Bar Association of Chile. Not only must every lawyer belong to this association, but also the dues are very substantial, the major portion of which are used to employ a large staff of lawyers who supervise the work of the students. Some twenty thousand cases were handled by the organization last year. No student can be admitted to practice until he has put in this apprenticeship in an acceptable manner, usually for six months, but sometimes for much longer until he has shown his ability to handle a client's case properly.

Legal education is largely in the control of the state in many Latin-American countries with the government exercising more or less control over appointments, particularly of administrative officers and sometimes of professors. It is not unusual for the president, governor, or minister of education to have the power of veto even though nominations are made directly by the dean or faculty. Tenure is apt to be uncertain in those countries where sometimes control of the government has been effected by revolution. Since many teachers are in politics, they are apt to have expressed strong opinions as to the government, and such men are likely to lose their places with a change of the party in power, while others who have taken no active part may retain their positions indefinitely. In some countries appointments are for definite periods, *e. g.*, one, three, or four years, and therefore professors are uncertain as to their reappointment after their terms are completed. Deans in most schools hold only for a fixed term.

Since the number of faculty members is usually quite large, there are comparatively few schools that have faculty control as is customary in the United States. Rather, there is generally a faculty council of a

small number of professors who act for the whole faculty as an administrative or executive committee.

In connection with admission requirements, there is likely to be much misunderstanding because of the use of the same or similar words to designate very different situations. Thus the word "colegio" is apt to be translated by United States schools to mean what the word "college" means here, *i. e.*, education after preparatory school, while in fact the preparatory school itself is designated as "colegio" in the Latin-American countries. So with the expression "Bachelor's degree," which usually signifies in United States educational circles the degree awarded after four years of study following high school or preparatory school. This degree, however, is quite generally given in Latin America to those who have completed their high school training. Thus it is not unusual to find a person holding the degree of Bachelor of Law who has never attended law school. It normally signifies that he has taken the preparatory course for entrance to law school.

Nor do the grades in Latin-American public or preparatory schools necessarily correspond to the grades of the same name in the United States, since the pre-professional work may be divided in a manner very different from ours. Though there are variations, in general there are two or three years of pre-primary work, followed by six years of primary school, and five years of secondary school. This latter is often divided into three years of "high school" and two years of pre-professional education or "colegio," with separate courses in preparation for each profession.

A number of United States educators who have studied the content of the course in various Latin-American countries have come to the conclusion that the Bachelor's degree awarded by these schools takes the student through what would correspond to the freshman year in most United States universities.

In many countries, particularly where the number of applicants is large, entrance examinations are given to sort out for acceptance only the better students, while in others all who have completed the preparatory course are admitted. In some countries statutes provide that all must be accepted. However, with probably only one exception, the only pre-legal education required is graduation from the five year, or sometimes six year, secondary school course.

In so far as the course of study is concerned, one can speak only in the most general terms which do not accurately represent the situation in each school, or else describe each course in detail. With but very few exceptions the course is a fixed one of five years, and all courses must

be completed in order to graduate. The class load may be anywhere from eight to as much as thirty or thirty-five hours per week.

Since students come directly from preparatory school, nearly all of the first year and usually the major portion of the second year are given over to such courses as are required or recommended in United States schools for entrance to law study, *e. g.*, political science, economics, sociology, and kindred subjects, together with introduction to the study of law, Roman law, etc., with the first course in civil law as the one law subject almost universally studied.

The last three years in law school are usually devoted to strictly legal subjects, with the emphasis on economics and political science dependent upon the interest, background, and training of the individual instructor. In schools having seminars or institutes affiliated with them dealing with these subjects, or where definite graduate study is offered, the tendency is to give them more and sometimes very great emphasis. In the seminars the research and writing tends to be largely along these lines.

Very few countries have examinations that correspond to our bar examinations, where all students, whatever their preparation, are subjected to the same tests. Since the state usually controls education, the schools are considered as arms of the state and hence the diploma or certificate of the school is the only scholastic test for admission to practice. Here the schools differ greatly, some considering the student eligible for a practitioner's license as soon as the total number of subjects of the course is completed, while others give a comprehensive or "professional" examination over the whole course before certifying the student.

Nearly all schools require a thesis for graduation, and much of the seminar work is devoted to this end. Often the student continues work on his thesis for many months after his required courses have been completed.

Examinations are almost universally oral, both for individual courses and for the comprehensive or professional examinations. The time allotted varies greatly but usually it is ten to twenty minutes for each student, with the thesis examination being considerably longer.

In a number of schools a regular course of study is prescribed for graduate work and the thesis involves careful research, sometimes for as much as two years, while in other schools a Doctor's degree is awarded with no requirements other than the writing of a thesis. The majority of schools offer no advanced degrees.

The Bachelor's degree is normally given only to those who have finished their preparatory work. Though some schools award the Doctor's

degree to all who finish the regular course of study, the usual titles given are "Abogado," *i. e.*, Lawyer, Attorney-at-Law, or Advocate, or "Licenciado," *i. e.*, Licenciante in Law. If the Licenciado or Doctor titles are given they are as universally used before a lawyer's name as the title of Doctor is used by men in the medical profession. Where graduate work is given, the degree awarded is that of Doctor in Law, though in one school that has a very complete graduate course no doctor's degree is awarded because of prejudice from an early time against those holding this degree.

Student representation on the faculty or the governing board of the law school is characteristic of the great majority of Latin-American law schools. This representation ranges from one or two students, to a proportion, such as one-third or as much as one-half, of the faculty council or governing board. In some schools the student group is very assertive and to a very large degree influences the policies and administration of the institution, while in others they represent only the student viewpoint in matters brought before the law faculty council. It often appears that their influence is far beyond their proportional membership. Whether the policy of student representation accounts for the frequent student strikes in many institutions it is difficult to say. The student strike, however, is a phenomenon almost unknown in United States law schools where students have no part in the government of the institution, but this may be coincidence rather than cause and effect.

The extent to which rules of attendance have been influenced by student representation is also difficult to determine. While most schools have some requirement—from 50 per cent to 80 per cent, with 70 per cent more usual—in a number of law schools attendance is voluntary, so that with a student registration of several hundred for a particular class only ten or a dozen will actually be present. In most cases this practice stems from the traditions of European universities, but in some it is the direct result of student strikes, based on student reasoning as follows: If we pass the examinations, what do you care whether or not we have been present in class. This student attitude is being met in such schools by requiring attendance in seminars and certain courses denominated as "practical." The effect of the no-attendance rule is that many students by registering secure the privilege of taking the examinations when offered, and go about their ordinary activities with such study of lectures or text books as they think sufficient to get them over the hurdle at the end of the year or at such subsequent time as the rules of the school permit.

From the standpoint of the United States law schools, there is now nothing to prevent a school from giving at least one, and in some cases,

such as the Louisiana schools, as much as two years of credit toward a law school degree for study in the civil law. Each case is, of course, passed on by the school to which application is made, and is subject to their rules and requirements.

The situation is not so simple in many of the Latin-American countries. Where, as in the United States, schools may give a blanket year of credit for the study of civil law as such, the courses in the Civil Law Schools are practically all on a fixed basis, often specified by statute, with the requirement that no course can be taken until all the preceding courses of the curriculum have been completed.

Quite apart from such provisions, it is very difficult to determine that a course given in a common law school is sufficiently similar to be substituted for a particular required civil law course and treated as its equivalent. However, in a number of cases, certain Latin-American schools have gone quite far in recognizing what they have termed "theoretical" courses taken in the United States, and have required work in residence only for courses in local law and in procedure.

There is another situation which requires special mention. United States law students who desire to study for a year or so in civil law countries are normally not interested in taking subjects that are strictly local or that may not give them a general or broad view of the civil law. Such a student may wish to select a number of courses totaling a year's work for transfer credit to the United States law school from which he expects to get his degree. Such an arrangement is beset with many difficulties in a number of countries where the entire course of study is specified by statutory enactment, with the provision that no course may be taken until all of the previously specified courses have been completed. Though many schools have no specific provisions for foreign students of this type, practically all have felt that it would be permissible for such a student to be enrolled as a special student, giving him a certificate or statement as to his attendance and grades received, even though it might be necessary for them to state that such certificate or statement is of no force or effect in the country concerned, and is given only to inform the United States school of the facts stated so that it may give him credit for such study toward the completion of the requirements of the United States law school.

Such a statement would seem to be entirely sufficient, for it is not the purpose to have the student receive the law degree of a foreign country or to be admitted to practice there. If this is desired it is a problem to be worked out by the individual with the school or country concerned. Neither does the granting of credit in the United States to a student from

Latin America guarantee admission to the bar or have significance other than may be given to it by the particular school interested.

Working out any extensive exchange of law professors is beset with a number of serious difficulties. One of the minor ones is the difference between the school year in the South American countries and the United States. While in the United States the academic year normally runs from the latter part of September to early June, in South America the school year ends from the middle of November to Christmas time and begins from two to three months later. This difference, however, would not seem serious.

A quite serious difficulty is the difference between the position of the professor in Latin America and the United States. In the United States the law professor, with comparatively few exceptions, is on a full-time or career basis. His income is derived almost solely from his teaching position. If his salary is forthcoming and he secures a leave of absence, no serious financial problems other than traveling expenses stand in his way. But universities are notoriously short of funds and most arrangements would have to be made within the scope of the law school budget of the particular school or be financed from outside sources.

The Latin American law teacher, on the other hand, is a lawyer usually making his whole income from his practice. His professorship is not a career job but largely a matter of prestige with compensation in many cases almost nominal. If he should take six months or a year for a visiting professorship his income will be cut off temporarily and some of his clients probably lost permanently. He must be paid either by the school from which he comes or the school to which he goes, as will be the situation of the United States professor going to Latin America. Some special financial arrangement must be made whenever a full-time teacher is exchanged for a part time teacher. There is an added hardship for many countries because of their present shortage of dollars which makes living in the United States much more expensive than at home. But no doubt adequate financial arrangements can be made in a limited number of cases.

There is another difficulty. Because of the great difference between the two systems of law, but few subjects are really interchangeable as taught in most schools, such as, for instance, comparative law, public international law, and some phases of private international law. In medicine, the problem is much simpler since most diseases are essentially the same all over the world, while in law there may be but little common ground, and the procedure for the enforcement of rights may be vastly different. Hence, only a limited group of law teachers are in

position to go from one country to the other and have their subjects fit into the curriculum as regularly offered.

Another difficulty is that of language. Only those men are available who are bi-lingual. Even though a United States professor may be able to make himself understood in private conversation in a Spanish or Portuguese speaking country, or vice versa, this is very different from lecturing to a group of students who, though individually they may be very polite, collectively may be quite impatient if they do not readily understand what is being said.

These three difficulties, financial, subjects, and language, limit severely the field of interchange. They are not insuperable, but must be frankly met if any exchange of professors is to work out successfully. Perhaps the first step is for each country to make a careful survey of the men who are available, *i. e.*, how many who teach the particular subject to be presented have a sufficiently adequate knowledge of the language of the other to make acceptable public addresses, and how many of these are in a position to give the time required in accepting such an undertaking.

Finally, how many schools will be willing to accept exchange professors if all the other difficulties are eliminated.

In a country as large as the United States, where most of the practice deals almost entirely with local or internal matters, it is difficult to get students to study civil law or even comparative law because of the many other subjects which will demand their immediate attention upon entering practice. It is mostly in the large seaboard cities having commerce with Latin America that the interest exists. Since under the prevailing plan of elective subjects the number of courses offered is much greater than the students can take, it is difficult to induce any large proportion of them to take courses solely for their cultural value. However, the increasing international practice is inducing many firms to urge students to get some understanding of the fundamental principles of the civil law.

Except as civil law or comparative law is taught as a part of a course in graduate study, the exceptions to the general rule are to be found in Louisiana, which operates under the Code Napoleon and has its civil law taught as a regular and most important part of the law school curriculum.

Naturally, Louisiana as a civil law jurisdiction, furnishes the best comparison as to the methods of teaching law in the United States and the Latin-American countries. However, the comparison cannot be exact since the Louisiana schools are operated largely with full-time instructors teaching in general full-time students, while the Latin-Ameri-

can schools are conducted with part-time instructors and part-time students.

Among the teachers in the three approved Louisiana schools, Louisiana State University, Loyola University, and Tulane University, there is great diversity of method ranging from essentially pure case or problem method to straight expounding of the Code. But in all of them one fundamental characteristic is the study of materials before the classroom exercise and freedom of discussion in the classroom. The emphasis, no matter what method is used, is upon development of reasoning powers rather than the mere acquiring of information—the ability to think and to solve problems, rather than merely to memorize Code provisions or listen to the expounding of the law as contained in the Code.

Though almost everywhere in Latin America great interest and, perhaps, curiosity, was expressed concerning the case method as used in the United States, yet quite generally the opinion was expressed that it was not applicable to the teaching of civil law, since it is based on a "code" while the common law is founded upon "precedent." This, of course, is based on the same misconception entertained by most United States practitioners when the case method of teaching was being discussed in the United States in the early 1900's, *i. e.*, that the student was to learn each case as representing a principle of the law or illustrative of it. But the fundamental purpose of the case method is to make the student self-reliant and independent-minded through the discussion of the application of the law by the courts, whether based on precedent or Code provision.

Though a few instructors in Latin America are approaching their teaching with the fundamental ideas involved in the case method, and many encourage questions and class discussions, there are still a considerable number who follow the methods of the older continental universities, giving formal lectures which are often distributed to the students with no classroom participation whatever on their part. The reason for this attitude was succinctly expressed by an instructor in one of the schools who was asked by his president why he did not encourage student participation. He replied, "I am a Professor, not a school teacher."

It is interesting to find that law school deans or teachers, whether in Latin-American schools or those of the United States, quite generally complain that many of their foreign students have not done well. The United States schools complain of the Latin-American students, and the Latin-American schools complain of the United States students. This is easily understandable, since in each case the student comes with a background and with traditions very different from those of the country in which he is studying. The matter of language is also a very important

factor, for though a student may have a fair speaking knowledge, the acquisition of an extended vocabulary in general, as well as in a particular subject, takes time, and many things pass over his head or are imperfectly understood until a broad knowledge of the language is acquired.

The tendency of the instructor is, naturally, to apply rigidly the standards of his own school as being the only *right* standards. No school should be asked to change its standards, or apply them differently. But even if no allowance is to be made for difficulties of language or adjustment to new conditions, it is not asking too much that some special and personal attention should be given to the foreign student to help him orient himself in his new environment, and to make contacts with local students who will feel some responsibility to see that he becomes acquainted not only with the people but with something of their history and traditions. The attitude of these young men as they return to their own countries is of the utmost importance to all of us in the relations of our countries with each other. The more successful the student is in his studies the more enthusiastic he is about the country in which he has been studying.

The foreign student presents a challenge and an opportunity. It is not enough that he merely have the chance to study the common law or the civil law, but everything we do for him, for his happiness and the success of his work, for his understanding of the habits and traditions of the country, helps to make him an ambassador of good will, and cements the ties of friendship between the people of the Western Hemisphere.

The people we don't like are the people we don't know! Nowhere in educational work will a little individual attention pay greater dividends than in the case of the foreign law student in whatever country he may be.