Law Schools as Agents of Change and Justice Reform in the Americas

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Introduction.

As the legal community of the Americas evolves, so also does role of law schools. The realities of globalizing commerce and communication dictate that the legal profession understand and deal with the emerging legal relationships. Whatever may be the future of various treaties between nations in this hemisphere [e.g., CAFTA, NAFTA, the FTAA, Mercosur etc.], the Americas are irrevocably drawing closer.

American law schools cannot escape the obligation to deal with the global trend. In fact, the President of the Association of American Law Schools identified the top current challenge to legal education as the globalization of the legal practice.¹ Last year the United States imported 1.5 billion dollars in legal services and exported some $1.25 billion. “Law schools find themselves racing to keep up with the rapid pace of the changes…”

How will law schools participate and react? There is, in my opinion, an obligation for universities and particularly law schools, to be involved in society. That concept is not alien to Latin America.² The challenge is to be in harmony with contemporary society and a force for change at the same instant. The opinion that colleges should be agents of change is not universally held. But even a more limited view that defines the role as preparing law students to become lawyers, judges and other

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¹ Hines, Ten Major Changes in Legal Education Over the Past 25 Years, AALS NEWS, November 2005, at 1, 4.
² Maria Antonieta Saenz Elizondo Role of Colleges of Law on Legal Reforms in the Americas, Paper delivered at the Conference on Legal and Policy Issues in the Americas, Gainesville, Florida, May 2000, at 1 (unpublished paper on file with the author) (“It has been a tonic of the Latin American university and especially Faculties of Law to generate the most profound reflections to fortify the fundamental rights of individuals.”).
legal professionals, must recognize the contemporary environment and the coming changes. 31

On what basis should the law schools grade themselves? As partial answer to this challenge, we submit three main categories to assess how well law schools are participating in the legal and cultural evolution of our hemisphere, together with some thoughts as to how law schools can improve how they prepare students for the new international legal environment.

A.  Training for transnational legal and professional practice.

The future lawyers of the Americas should learn that the rule of law is a derivative of the society in which it is located. If the society is democratic and open, then the law will likely be. We must also learn about the differing cultural and historic contexts that have guided our legal development. The difference in the colonial histories of the USA and the rest of the Americas matters, for example.4 American colleges rarely teach a course comparing Roman Law to Common Law theories, and when such courses are offered, they feature mainly as electives for small groups of curious upper-level students.

While we realize the need for increased global interaction, restrictions remain on externships and foreign exchanges that often limit the ability of law schools to conduct foreign programs on accreditation grounds. There are however very successful exchange programs (both of students and faculty), and a central requirement of better mutual

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3 See Alberto Bernabe-Riefkohl, Tomorrow's Law Schools: Globalization and Legal Education, 32 San Diego L. Rev. 137, 162 (1995) (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).

4 Of course, significant distinctions exist within Latin America based on differences of culture, history, and geography. Similar, though lesser, differences exist within the various states of the United States. Nevertheless, and especially within the context of addressing distinctions between the common law and civil law traditions, there are important commonalities within Latin America.
professional understanding is a better knowledge of language, culture, history and context. The classroom can provide valuable background and contribute to this understanding, but it cannot ultimately replace on the ground training.

Traditionally, legal education in both Latin America and in the United States focuses on the classroom. In the United States the Langdellian method of Socratic teaching using casebooks of mainly appellate court decisions remains basically unchanged since the late 1800’s. This method of developing analytic abilities through the Socratic method has been criticized as lacking practical training in the actual practice of law. The growth of clinical teaching and skills courses has emerged as a partial response to this criticism, but American law schools remain focused on the older methods. The other significant factor about American legal education is that it is a three-year graduate program which follows an initial four-year undergraduate study, that is often conducted in areas entirely unrelated to law.

Latin American civil law education is an initial five year university program without further required study. Instruction is traditionally based on passive lecture without skills instruction or engagement in problem solving.\(^5\) Reported structural issues in many parts of Latin America include a shortage of full time faculty, salaries and access to law school for lower income groups.\(^6\) Some law schools have undergone changes in the last few years. One example is the reforms recently instituted in Guatemala. These included changes to the curriculum to include courses on conflict resolution, gender, human rights, indigenous peoples, and domestic violence, as well as teaching approaches


that attempt to integrate practical applications as well as theoretical lectures. Further reforms included upgrading facilities, providing for use of legal technology, improving clinics, and introduction of externships with courts, prosecutors and public defenders. Attempts to limit enrollment or introduce tuition fees has been more problematic, however.

Facing all law schools across the world are a new set of laws which some have termed “transplant laws.” These legal and statutory changes are made for a number of reasons: cost saving, compliance with external dictates, entrepreneurial changes, and legitimacy generating transplants. What all these changes have in common is that they are changing the international playing field for everyone. Consequently, we, as law schools, have an obligation to adjust our teaching and curriculum. The point is that we are in a rapid state of change that requires law schools to react more quickly than they usually do.

The basic infrastructure of legal education is unlikely to change quickly. Thus, progress in integrating the profession will likely be incremental. There are numerous successful exchanges that exist between law schools. The University of Florida Levin College of Law has its own success story in its successful partnership with the University of Costa Rica. As a case study, this relationship is worthwhile and will be discussed more fully later. [See infra clinic section]

There are also short-term changes that could facilitate relationships and the development of common understanding. Student organizations and competitions have flourished in recent years. The range of international student organizations and

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7 For more on Guatemala’s legal education reforms, see Steven E. Hendrix, Restructuring Legal Education in Guatemala: A Model for Law School Reform in Latin America?, 54 J. LEG. EDUC. 597, 603-04 (2004) (describing USAID-funded legal education reforms in that country).
8 Id. at 601-04 (noting the differences in implementation of admissions and tuition reforms at various universities that may have contributed to success or failure).
competitions offers a menu of opportunities for our law schools for foster relationships and exchange. In an age of digital and instant communications, such relationships could be easily fostered. From a practical point of view and from personal experience, communications north and south can be easier that east and west simply because of time zones. Some example of student organizations we could foster:

- International Law Society;
- Jessup Moot Court;
- Journals focusing on international law issues.

Changes in curriculum are a basic tool of educational institutions. Thus increased availability of international and comparative courses is elemental to change. Exchange programs, giving American students the opportunity to study and live in Latin American countries are an important component to internationalizing the curriculum. The University of Florida Levin College of Law operates an interesting and innovative summer program together with the University of Costa Rica that puts American, Costa Rican and other Latin American law students together to study environmental law under American and Costa Rican professors.

Faculty exchanges, easier to organize than student exchanges can be a first step in building new international relationships. Nor must these necessarily be longterm exchanges. The University of Florida Levin College of Law has set up short-term faculty exchange programs, with foreign faculty coming to Florida to teach short “enrichment” courses of one to three weeks. This past semester, I was privileged to host professors from Peru and Chile in an enrichment course focusing specifically on law and policy in

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9 The University of Florida and the Pontifical University of Rio de Janeiro, Brazil, have established joint “enrichment” exchanges of faculty that take advantage of the differing academic schedules in Brazil and the United States to allow faculty to teach these short term courses.
the Americas. For more in depth study, LLM programs that bring foreign students to American campuses for additional postgraduate legal studies are another way to expand international relationships and awareness. Many U.S. universities operate such programs, and the University of Florida has established an LLM in comparative law reserved for foreign attorneys and law students. In the past ten years, UF has hosted law students from Brazil, Columbia, Costa Rica, Ecuador, Mexico and Venezuela for this one-year program.¹⁰

Accreditation is another issue that becomes essential in an increasingly complex legal environment. As institutions offering legal education proliferate, there needs to be agreed standards as to what is required for a minimal legal education. In the United States, accreditation is conducted by two private organizations: the legal education section of the American Bar Association (ABA) and the American Association of Law Schools (AALS).¹¹ The AALS is composed of member law schools meeting certain criteria involving teaching; research; the intellectual community; academic freedom; governance; and commitment to public service and justice.¹² ABA approval is more significant in the accreditation process, with law schools required to meet eight chapters of standards for law schools in areas of curriculum, faculty, admissions, financial resources, physical facilities, and library resources.¹³ The ABA requires periodic self-

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¹⁰ For more information on the University of Florida’s LLM in Comparative Law, see http://www.law.ufl.edu/programs/comparative/.
¹¹ The national accreditation role of these two organizations is especially significant given the fact that admissions to the practice of law remains a function of the supreme courts of the various states. The national accreditations allows these state bars to rely upon the legal education of out-of-state applicants. See James P. White, History of the Administration of the American Law School Accreditation Process, 51 J. LEG. EDUC. 438 (2001).
¹³ See generally 2005-06 ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS (2005).
studies by the law school itself and visitations by ABA site visitation teams composed of professors, practitioners and judges.\textsuperscript{14}

Both models of accreditation would seem available in the Latin American context. Regional consortia of universities already exist which may provide a foundation to evaluate the quality of legal education. Currently, as legal education has expanded in both public and private universities, enormous disparities have arisen in the quality of university facilities, faculty and accessibility.\textsuperscript{15} For instance, the Asociación de Universidades del Grupo Montevideo, composed of six universities in Brazil, Argentina, Paraguay and Chile, to promote research and improve education and the older Unión de Universidades de América Latina, in existence since 1949, has similar goals. These member-based organizations offer a possible locus for regional accreditation by guaranteeing the quality of their members.\textsuperscript{16} Another, national model for accreditation, is offered by governmental entities such as the Brazilian agency which monitors post-graduate programs (CAPES) or the Council for Research, which considers elements of undergraduate education.\textsuperscript{17}

B. \textit{Clinics and centers—Social Impact and Practical Training.}

Promoting Clinical and Direct Service Assistance to Individuals—The clinical movement has gained acceptance only recently, and to grudgingly, by the mainstream of

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\item \textsuperscript{14} See White, \textit{supra} note 9, at 441-42.
\item \textsuperscript{15} See Fuentes-Hernández, \textit{supra} note 7, at 42 (discussing the problems in quality in Latin American legal education that have accompanied the great expansion of enrollment).
\item \textsuperscript{16} See Monica Pinto, \textit{Developments in Latin American Legal Education}, 21 Penn St. Int’l L. Rev. 61, 64 (2002). Obviously, these organizations would need to address specific needs and requirements of legal education and provide for some monitoring of member universities.
\item \textsuperscript{17} See Nadia de Araujo, \textit{The Status of Brazilian Legal Education}, 51 J. Leg. Educ. 325, 331 (2001) (noting that the Brazilian Ministry of Education also conducts a two-part examination of law schools including its facilities, faculty, and student performance on national and bar exams).
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American legal education.\textsuperscript{18} The purpose of clinical education is not to replace the substantive law taught by mainstream academia, but rather to bridge the gap between theory and practice.\textsuperscript{19} Though clinics have long maintained some presence in law schools, modern legal clinics can be traced to the evolution of social issues in the 1960’s.\textsuperscript{20} There are multiple benefits of direct legal services clinics:

- Direct service to individuals in need (especially the poor or underserved indigenous populations);
- Practical training of students; and
- Promotion of careers in areas of public interest or public need.

Law school clinics now commonly allow students to practice criminal law, family law, consumer law, landlord/tenant law, environmental law, tax law, human rights law, and alternate dispute resolution, all under the supervision of a practitioner. The Conservation Clinic at the University of Florida Levin College of Law offers another approach at clinical education. Rather than litigation, the Conservation Clinic provides research and legal drafting support for clients such as NGO’s, state and local governments, and international organizations. UF’s Conservation Clinic operates in

\textsuperscript{18} ABA Standard 302(b)(1) states that a law school should provide substantial opportunities for “live-client or other real life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession . . . .” 2005-06 ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS 302(b)(1) (2005). This live practice requirement is met by provision of both clinics and externships.


Clinical education is one aspect of legal education that focuses on skills development. These courses would include counseling, interviewing, legal research and writing, and even alternate dispute resolution and mediation, all of which are an increasingly recognized – though undervalued – part of the law school curriculum. See Don Peters, Mapping, Modeling, and Critiquing: Facilitating Learning Negotiation, Mediation, Interviewing, and Counseling, 48 FLA. L. REV. 875, 876-77 (1996).

\textsuperscript{20} Margaret Martin Barry et al., Clinical Education for This Millennium: The Third Wave, 7 CLIN. L. REV. 1 (2000) (discussing the history of clinical education in the United States from the late nineteenth century).
conjunction with the University of Florida’s summer program in Costa Rica allowing
students to work on international environmental projects.  

Clinics began operating in many Latin American law schools at about the same
time they became a feature in U.S. legal education. There are clinics in the rest of the
Americas and some are significant and continuing. These clinics reflect issues and
concerns of their particular country. Chile provides an example of clinical programs
working well within a nation’s legal system to benefit students, society and needy
individuals. In countries such as Chile, clinical education, though not itself a
requirement, is promoted by requirements that law students provide a certain amount of
public service to the poor. The use of clinics in Guatemala has already been mentioned,
and these provide students with valuable experience in issues of civil, family and labor
law, while providing poor, women and indigenous people with access to justice. In
Costa Rica, the University of Costa Rica law faculty is considering the establishment of a

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21 To further this transnational approach to clinical legal education, the UF Clinic’s Director spent a semester at the University of Costa Rica faculty of law helping to set up a “consultorio juridico ambiental,” modeled after the UF clinic. The Consultorio now operates on a year round basis, and may be the first in-house clinic devoted solely to environmental law in Latin America and the Caribbean. The benefit to UF students and faculty is the ability to step into an ongoing clinical program with its own portfolio of projects, applying their U.S. legal skills to culturally distinct context. Good examples of this unique collaboration is the research and drafting support for a brief to a Costa Rican environmental administrative tribunal concerning the application of the ISO 14001 international environmental management standard to domestic Costa Rican law, and an endangerment petition under the World Heritage Convention to declare the Belize barrier reef a World Heritage Site endangered due to climate change. (see http://conservation.law.ufl.edu/summer_costarica) Students from the U.S. and Costa Rica collaborated in the former; while students from the U.S., Jamaica and Belize collaborated on the latter. For more information on the UF Conservation Law Clinic, see http://conservation.law.ufl.edu.


23 The majority of Chilean law schools now include clinical education in their curriculum. See Richard J. Wilson, Three Law School Clinics in Chile, 1970-2000: Innovation, Resistance and Conformity in the Global South, 8 CLIN. L. REV. 515, 520 (2002) (highlighting the examples of law clinics at the University of Chile Law School, the Catholic University of Chile Law School and the Diego Portales University Law School).

24 See Peña, supra note 5 (noting the public service requirement for admission to practice).

25 See Hendrix, supra note 7, at 604 (also discussing similar USAID-funded clinical education reforms in neighboring El Salvador).
Center for Conflict Resolution to train mediators, with the expectation that this will include a student training component.\textsuperscript{26}

There are also different types of law school based organizations that focus more on researching current issues of law and policy rather than on direct client service. These research type centers also grew in periods of social evolution. There a multiple policy centers dealing with issues ranging from environmental law to consumer law to human rights. Many are based at law schools.\textsuperscript{27} These usually are partially funded through grants (both private and public), contributions and law school sources. Again the benefits are multiple:

- Direct impact on public policy [legislative drafting and policy analysis]
- Experience and training in public policy
- Promotion of careers in public policy

There are examples in Latin America of such policy centers linked to higher education. A good example is the Centro de Investigaciones Jurídicas at the Universidad Diego Portales in Chile, which has been influential in the development and implementation of criminal procedure reforms in Chile.

\textbf{C. Interaction with the Legal Profession and with the Judiciary.}

Law schools are more than mere facilities to equip the next generation of legal professionals. They should also provide research, training and learning opportunities to the existing legal profession and judiciary. By the same token, where feasible, the profession and the judiciary should be utilized by the colleges to train and positively

\textsuperscript{26} See Don Peters, \textit{To Sue is Human; To Settle Divine: Intercultural Collaborations to Expand the Use of Mediation in Costa Rica}, 17 FLA. J. INT’L L. 9, 15 (2005) (noting that there is also discussion of creating a regional center for conflict resolution based at the University of Costa Rica).

\textsuperscript{27} The Center for Governmental Responsibility at the University of Florida Levin College of Law was founded in 1974 as a legal and policy research institute. Affiliated center staff teach at the College of Law and
influence their students. Clinical programs and externships are ideal places to introduce this interaction with students. Other programs, such as the Inns of Court, offer students the opportunity to be mentored by a practitioner. Law school faculty can help provide continuing legal education to practicing lawyers. This has the benefit of facilitating the interaction between academia and the profession, while also encouraging professors to think about uniting legal theory with practice. Law schools have a direct and explicit responsibility to prepare students to be part of the legal profession. In addition to the obligation to facilitate understanding of the modern consequences of the global community, there is also a duty to teach students about their ethical obligations both to their clients and to the community at large.

Increased attention to the ethical policies and practices involved in transnational and multinational legal transactions will be of increasing importance to lawyers throughout the Americas. Law schools in the United States now frequently teach ethics and professionalism as part of the curriculum. Bar exams in many states [all] have portions of the exam on ethics. However, I am unaware of any of these courses or exams that include substantial materials on transnational practice.

Conclusion.

The current era of uncertainty is a time when academic institutions of mutual good will have the highest obligation. Because law is so important a factor in the construction of society, legal education programs have a special obligation to ensure that they equip law students to make valuable contributions when they are practitioners and judges. The responsibilities of legal education in a globalizing world make it necessary
periodically to revisit law school programs, to allow for necessary reforms and improvements.

Because American law schools no longer operate in isolation, they must give attention to the laws and legal structures of our neighbors in Latin America. In Florida, a state that in many ways links the continental U.S. with Latin America, we must recognize that our graduates will regularly deal with the laws, practitioners and judges of different countries. The law schools of Latin America face similar challenges. Law school must prepare them to meet these challenges by providing not only a sound substantive education, but also the necessary skills and experience. By adapting curriculum to alert students to the international contexts, offering clinics and externships, promoting student and faculty exchanges, and emphasizing ethical foundations, today’s legal education will fulfill its obligation to train lawyers to serve their clients and society.