

The Current State of Legal Education Reform in Latin America: A Critical Appraisal

Juny Montoya

Despite its rich and numerous resources, Latin America faces the huge challenge of overcoming the highest ratio of inequality¹ and social exclusion in the world.² In this region, where education, and especially higher education, is the privilege of a few, lawyers play a crucial role in shaping society and its institutions.³ But there is general acknowledgment that traditional legal education leaves lawyers ill suited to confront those challenges.⁴

This article will assess efforts to tackle this problem, examining efforts to reform legal education in Latin America. To put this scrutiny in context, it will be necessary, first, to explore the general characteristics of legal education in the region and of the larger university systems. I will next outline the recurrent criticisms of legal education that have motivated prospective reforms.

In the second section of this article, I focus on seven law schools in Brazil, Chile, Argentina, Mexico, Colombia and Venezuela that opened recently or have attempted major reforms. Their curricula demand detailed examination for their innovative potential, along with thoughts about what is needed to improve the quality of legal education in Latin America.

The history of Latin American universities begins with the teaching of *leyes* (statutes) in the 16th century in religious schools. Because of the strong link between the state and the Catholic Church, colonial universities were both public and religious. After their independence, in the 19th century, most Latin American countries founded secular, public universities. Along with

Juny Montoya is Associate Professor and head of the Center for Research and Teaching on Education at Universidad de Los Andes, in Bogotá, Colombia.

1. Alberto D. Cimadamore & Antonio David Cattani, *Producción de pobreza y desigualdad en América Latina* (CLACSO - Siglo del Hombre 2008).
2. Bernardo Kliksberg, *Introducción: ¿Por qué la ética?*, in *La agenda ética pendiente de América Latina* (Bernardo Kliksberg ed., Banco Interamericano de Desarrollo 2005).
3. Carlos Alberto Lista & Ana María Brigido, *La enseñanza del derecho y la formación de la conciencia jurídica* (Sima editores 2002).
4. Carlos Peña González, *Characteristics and Challenges of Latin American Legal Education* (AALS 2000).

the movement toward secularism, governments came to view universities as a basic instrument for social modernization, inducing officials to exert public control while providing government funding.⁵

Since then, Latin American universities have been oriented toward teaching, differentiating them from their peers in developed countries where universities focus on research. Latin American schools have focused on professional education to the exclusion of general education and basic research; faculties have been highly independent; and studies show they have suffered from credentialism, an obsession with degrees, diplomas, and other academic trappings.⁶ These institutions also have become enamored with their elitism,⁷ as they see themselves molding and educating the region's political elite.

Latin American legal education has been embedded in the civil law tradition,⁸ part of the European university since its origins in the Middle Ages (12th to 13th centuries). The teaching of law has inherited medieval, dogmatic methods⁹ and later incorporated a further, inner dogmatism shaped by the ideology of codification.¹⁰

The ideology of codification also gives rise to legal dogmatics, which is the non-contextual analysis of legal systems and their internal relationships in order to reach decisions. In the continental tradition—to which Latin American legal culture is heir—legal dogmatics was organized under the model of Euclidean geometry. This explains why Latin American treatises on law seek to present the law in the form of deductive systems; even though the result in most cases is nothing more than a commentary on a legal text, usually for professional reasons. This also explains why Latin American legal culture is reluctant to make use of inductive methods, such as the case method. This feature of the region's legal culture is, as we will see, especially important in examining the teaching of law.¹¹

To see just how conservative and traditional legal education in Latin America can be, observers need only turn to the standard law curriculum with its orientation toward covering existing legal rules, disciplines, and the

5. Eunice Ribeiro Durham, Introducción: Los estudios comparativos de la educación superior en América Latina, in *Los temas críticos de la educación superior en América Latina en los años noventa: Estudios comparativos* (Rollin Kent ed., FLACSO 2002).
6. "Credentialism" is a term used to express the notion that the diploma means everything and that every course needs a diploma.
7. Higher education in Latin America is elitist because it serves only a small percentage of the population and only the socioeconomic elite. The masses, both urban and rural, always have been excluded from the system.
8. John Henry Merryman, David S. Clark, & John O. Haley, *The Civil Law Tradition: Europe, Latin America, and East Asia* (The Michie Company 1994).
9. See Renán Silva, *Universidad y sociedad en el Nuevo Reino de Granada: Contribución a un análisis histórico de la formación intelectual de la sociedad* (Banco de la República 1992).
10. See Peña González, *supra* note 4.
11. *Id.*

main codes. Go to most law classes and what is apparent there is a ritualistic, formalistic method of learning, emphasizing memorization. Lectures are the most widespread teaching method, consisting of systematic presentation of information by the professor. “What is paramount is the expository, central, and authoritarian role of the teacher. Instead of classroom discussion and debate, students ask questions about what the professor has presented.”¹² Finally, the professors themselves are uncomfortable with their low social status in a poorly funded educational system while aspiring to be part of institutions that value research, meritocratic recruitment, and a tenure track system.¹³

Widespread dissatisfaction with the quality of traditional, Continental legal education is the norm.¹⁴ In Latin America, criticisms replicate those directed toward European institutions along with complaints distinctive to the region.

In Mexico, critics complain that legal education has gotten stuck on the transmission of 19th century theoretical legal models and that academics teach by forcing young people to study outdated books—poor compilations of rules and court decisions from the 1950s and 1960s. These practices produce poorly prepared lawyers who cannot possibly advance their society.¹⁵ Some general features of Mexican legal education are shared across Latin America including,

a) The basic law degree is earned in undergraduate study, which students begin after they complete high school.

12. *Id.*

13. *Id.*

14. Just to give examples of concerns voiced about the Continental civil law tradition: French legal education has been criticized as elitist, too theoretical, memoirist, uncritical, oriented only to the promotion of academic vocations, and overcrowded, resulting in a lack of personal interaction between students and professors; see Thomas E. Carbonneau, *The French Legal Studies Curriculum: Its History and Relevance as a Model for Reform*, 25 *McGill L. J.* 445 (1980). Critics assail German legal education for its excessive reliance on lecturing; concentration on teaching the legal codes and their application to hypothetical cases; high-rate of dropouts due to rigid marking and the “conformity” of tests; restriction of studies to legal dogmatics with no exposure to other social sciences; and the absence of training in the skills needed by an advocate. See Erhard Blankenburg & Ulrike Schultz, *German Advocates: A Highly Regulated Profession*, in *Lawyers in Society: The Civil Law World* (Richard L. Abel & Philip S. C. Lewis eds., Univ. of California Press 1988). Reformers attack Italian legal education for its excessive formality, focus on interpretation of doctrine, lack of vocational preparation, and over-reliance on lectures with no compulsory attendance resulting in high absenteeism rates. See Vittorio Olgiatei & Valerio Pocar, *The Italian Legal Profession: An Institutional Dilemma*, in *id.* Spanish legal education comes under fire for being too conceptualistic, exegetic, and dogmatic; and for the low quality of its pedagogy, a consequence, perhaps, of “tradition” and the massive number of students that matriculate in its law schools. See Carlos Viladás, *The Legal Profession in Spain: An Understudied but Booming Occupation*, in *id.*

15. See Héctor Fix-Fierro & Sergio López-Ayllon, *La educación jurídica en México: un panorama general*, in *La formación jurídica en América Latina: tensiones e innovaciones en tiempos de la globalización* (Rogelio Pérez Perdomo & Julia C. Torres eds., Univ. Externado 2006).

- b) Generally, institutions offering the law degree function only as centers for the transmission of knowledge. Fewer than 20 percent of the institutions that offer the law degree are involved in research or other scholarly activities. Some institutions offer two or more law degrees in the same facility by requiring different durations of study, putting students on an array of schedules, including part- or full-time or other options, and by running classes at varying times of day.
- c) In most law schools, the curriculum is rigid. This means that students at each level are assigned their courses, professors, and schedule without choices. In every law program, students take between forty and seventy mandatory courses during their studies.
- d) More than 90 percent of the law professors combine teaching with professional practice, and most law programs do not have full-time faculty.
- e) The cost for opening and operating a law program is low. In general, all that is required is a few meagerly-paid lecturers; minimal facilities with but one classroom for each level; and a library with the books recommended for each course.¹⁶

In Argentina, critics say the nation's law schools teach legal rules and doctrine like a religion, with no place for criticisms or discussion. Critics say faculties promote a formalist way of thinking focused on those rules and their exegesis, a way of educating students that ends up representing legal science as a finished work and discourages any scrutiny or questioning of enacted law.¹⁷ In the last thirty years, Chile's entire legal profession has been under such attack and in such constant crisis that reformers have pushed to overcome a pervasive "legalism."¹⁸

In Venezuela, a well-known socio-legal scholar has lamented that "the aridity of its materials, the rigidity of its pedagogy, and the requirement of rote memorization, excludes from the profession the liveliest intelligences."¹⁹

In Brazil, a consensus since the 1990s has clamoured for law school reform dominated by dogmatic, positivistic, and theoretical approaches and by their

16. Luis Fernando Pérez Hurtado, *The Next Generation of Mexican Lawyers: A Study of Mexico's System of Legal Education and its Law Students (2008)* (unpublished Ph.D. dissertation, Stanford Law School) (on file with the author); and Luis Fernando Pérez Hurtado, *Content, Structure, and Growth of Mexican Legal Education*, 59 *J. Legal Educ.* 540.
17. María Inés Bergoglio, *Las facultades de derecho argentinas: Entre las tradiciones y los esfuerzos de cambio*, in *La formación jurídica en América Latina*, *supra* note 15.
18. Marcelo Montero, *El discurso de la crisis de la profesión legal en Chile: consideraciones analíticas*, Stanford Law School, *available at* <http://cejamericas.org/doc/documentos/cl-monteros-profesion-legal.pdf> (last visited Dec. 30, 2009).
19. Rogelio Pérez Perdomo, *Los abogados en Latinoamérica* (Universidad Externado de Colombia 2004).

remove from contemporary society. Critics also decry that nation's legal education for its lack of an interdisciplinary perspective and incentives for research.²⁰

In Colombia, legal education traditionally has been based on a "generalist curriculum," a five-year study that offers a "panoramic view" of major disciplinary areas. But critics call this approach impractical because it covers too much with too little depth and does not allow students to pursue alternative professional options. At the same time, it emphasizes the memorization of codes (organized bodies of rules) while giving short-shrift to training in legal reasoning and judgment, and fails to develop research capacities in both professors and students. Instead, the curriculum takes a technical-procedural approach paying zero attention to ethical and humanistic outlooks that could guide future professionals toward serving their societies. This curriculum, simply put, is out of date, nationally and globally.²¹

In summary, traditional legal education in Latin America is under wide attack for its excessive legalism, which promotes the ideal of an autonomous, self-contained legal thinking isolated from social contexts.²² Critics say legal educators try too hard to give students technical tools, allegedly neutral, that can be implemented to serve any purpose. Instead, legal education has earned regional notoriety for its absence of serious reflection about the limits of legal adjudication, the scope of a professional's social responsibility, and the real aims and goals of greatest value.²³

Changes at Leading Latin American Law Schools

While the reform movement has yet to become widespread in Latin America, there are notable exceptions to the institutional torpor and rigidity. Increased globalization and internationalization have forced universities to modernize and adapt to meet contemporary demands. And while it is more realistic to say there are few real differences between regional law schools today than a half century ago, there are important, isolated reforms under way. For instance, innovative legal educators have pressed to introduce more flexibility in the curriculum; offer more contextual and interdisciplinary study; engage faculties and students in more sophisticated scholarship; improve practical training and professional skills development; teach in ways that equip their students with the lifetime art of learning; evaluate what really works and does not in the Academy, and define the institutions' highest, best goals and aspirations.

20. Eliane Bothelo Junqueira, *Ensino do Direito no Brasil: realismo ou pessimismo?* (Instituto Direito e Sociedade 2002).
21. Colombia, *El abogado en el tiempo de la gente. Realidad y prospectiva de la enseñanza del Derecho en Colombia* (Ministerio de Justicia y del Derecho 1995).
22. See Genaro Carrió, *Sobre las creencias de los juristas y la ciencia del Derecho*, 1 *Academia* 111 (2003).
23. Carlos Alberto Lista & Silvina Begala, *La presencia del mensaje educativo en la conciencia de los estudiantes: resultados de la socialización en un modelo jurídico dominante*, 1 *Academia* 147 (2003).

Let's turn now to the telling experiences of those emerging "innovative" law schools as well as those pursuing reforms in their tired curricula. For the most part, reforms in legal education in Latin America have resulted from initiatives by leading law schools. Relatively few reforms have been produced by government policies, such as those on accreditation or nationwide standard examinations for law graduates.

In September, 2006, a group of Stanford Law School professors organized a seminar on "Innovations in Latin American Legal Education." Representatives were invited from law schools known in the region both for their innovations and for offering quality education. Deans and other faculty members from the schools made presentations about their own institutions' efforts and had a chance to discuss trends in legal education across Latin America. Scholarly papers from the event were recently published in "Cuadernos Unimetanos," a legal journal of the Universidad Metropolitana, Venezuela. The articles, included in one of two volumes devoted to "Law and Democracy," illustrate how these schools have developed innovative curricula, adding not only new subjects but also novel approaches to incorporating public policy analysis and the social sciences into Latin American legal education.²⁴

I took part in that seminar and will now briefly highlight the major innovations as described by each law school. I will analyze and compare the main features of their official curricula with my focus on seeing how courses were organized in five major categories: doctrine, theory, interdisciplinary, practice, and flexibility (elective courses).

To see some of the reform efforts in Latin America, scholars should look to several law schools that only recently were created. They represent a new generation of legal institutions and can put innovations in place more easily because they do not need to shoulder the weight of long traditions, which we will see later have played key roles in legal education. Most schools examined in this section are privately run, and though relatively new, have earned regional, national, and international reputations for their participation in international academic forums. This is a differentiating characteristic of the innovative law schools in Latin America. Unlike their hidebound peers, that are known for their local strength—teaching of local laws and preparing lawyers for practice nearby—innovative law schools make a conscious effort to keep in touch with what is happening in the world, preparing their graduates for global practice and worldwide academic scholarship and discussion. Their participation in the Stanford seminar and the publications that followed is one example of this international outlook.²⁵ This innovative group includes, Fundación Getulio Vargas (Brazil), Universidad Metropolitana (Venezuela), Universidad Torcuato Di Tella (Argentina), Universidad Diego Portales (Chile), Universidad de Sonora (México), and Universidad de Los Andes

24. Rogelio Pérez Perdomo & Manuel Gómez, *Innovaciones en la educación jurídica latinoamericana*, 15 *Derecho y Democracia: Cuadernos Unimetanos* 4, 5 (2008).

25. See Perdomo & Torres, *supra* note 15. See also *Derecho y Democracia*, *supra* note 24.

(Colombia). While some have a long history, such as Sonora (fifty-five years) and Uniandes (forty years), most are young institutions, especially compared with other law schools in the region that were founded in the 16th century. One old school in this group is Universidad Nacional de Córdoba,²⁶ which is notable for its curricular changes, a process that illuminates common challenges reformers at other public educational institutions face.

Fundación Getulio Vargas (Brazil)

Fundación Getulio Vargas created two law schools in 2000, in Sao Paulo and Rio de Janeiro, with the former campus the focus of our attention here. The Sao Paulo school is, by far, the most innovative of all in Latin America. In making this strong pronouncement, I took into consideration the fact that the school consciously sought to separate itself from the traditional legal education described earlier.

Professor Conrado Hübner Mendes has described his school's educational approach as differing in three crucial areas from more traditional models: the concept of law; teaching, and research structures; and teaching methods. Let's look first at what he terms the "concept of law." While traditional schools take a formalist approach, innovative institutions like his, he says, emphasize conceptual analysis, creating a sharp separation between norms and adjudication, and highlighting the role of the judge as a legal operator.

As for differences on teaching and research structures, he says that a traditional school develops around teaching, research revolves around disciplines, and the institution enforces a rigid separation among departments. The old-fashioned schools hire professors who are mainly lawyers and judges with no devotion to producing impartial knowledge but instead to partisan opinions. He believes lecturers see themselves as owning their academic chairs, with the school's prestige dependent on its professors' professional standing. The faculties at the out-of-date places employ an exclusively passive pedagogy. They mostly lecture and offer systematic explanations of laws in force and they force students to memorize lots of dated content—mostly broad overviews that aren't really useful—and test them on it in arbitrary fashion. In sum, this is a hierarchical, vertical faculty-student relationship.²⁷

In contrast, the innovative schools emphasize a concept of law that is more concerned with context and efficacy than with formal validity. These institutions substitute empirical research for conceptual analysis and acknowledge an insoluble relationship between creation and adjudication of norms. These schools take a fresh view that supports research, trusting that it will help reinvigorate and renew teachers. Innovative schools put a premium on research into social, political, and economic problems and prize work that breaks ground on solving real problems in new ways. At these schools,

26. The Universidad Nacional de Córdoba was established in 1613.

27. Conrado Hübner Mendes, La escuela de derecho de Sao Paulo de la Fundación Getulio Vargas, in *Derecho y Democracia*, *supra* note 24, at 22.

professors win appointments because they excel both at teaching and research, and they are expected to participate in scholarly activities and produce outstanding scholarship. Their home universities derive their prestige not just from their professors' experience but also from their research, publication, and other scholarly pursuits. Faculty in these cutting-edge schools focus on student learning more than their own teaching; they work to develop student skills and they assess performance not by testing memorization skills but the capacity to analyze materials and solve problems. The schools employ diverse teaching materials and encourage a collegial, horizontal (peer-to-peer) relationship between professors and students.²⁸

The Getulio Vargas law school has made significant, conscious efforts to meet these ideals. It developed a curriculum that departs from the encyclopedic approach, instead treating most important subjects in an integrated fashion. Each term is organized to fulfill a pedagogical aim, instead of trying to cover different, fragmented subjects.²⁹ The school takes seriously the task of planning a new program by recruiting staff and preparing teaching materials according to high purposes and principles. It operated as a "school without students"³⁰ for two years, while thirty part-time new professors developed educational materials and established two foundational seminars, one for research and one for pedagogy, providing a solid foundation for both teaching and research within the school.³¹

The curriculum is designed so that students are required to matriculate full time during their first three years. They get more flexibility and course choices in their second and third years, when they may elect to pursue different academic tracks aimed at preparing them for various professional pursuits, not just as an advocate but also, for example, in research and scholarship.

Because the school only opened its doors to students in 2005, it is too early to truly measure its successes and shortcomings. Some of the described features have not been implemented completely nor consolidated totally at this time; other aspects remain in negotiation, including the active learning approach. It is becoming more a matter of "pedagogical pluralism" to make room for traditionalist professors who are reluctant to change their teaching practices.

Universidad Metropolitana (Venezuela)

The law school at Universidad Metropolitana (Unimet) started in 2002 and offers a business oriented curriculum—the original plan was for the school to offer a degree in corporate law. In contrast to other Venezuelan legal education institutions, the new school features a flexible curriculum and lets students elect many of their classes. The curriculum runs on semester terms, a system

28. *Id.*

29. *Id.* at 16–32.

30. *Id.* at 28.

31. *Id.*

of credits, and includes a clerkship and a thesis as graduation requirements. Classrooms are small and the school has a reduced number of students.³²

The school combines these and other innovative features with traditional ones; the curriculum still includes staid subjects such as Roman Law and fusty courses that pore over chapters of the civil code.³³ However, the number of mandatory doctrinal courses is substantially smaller than in the other law schools in Venezuela. The school says the emphasis in these courses is not on memorization of rules but on the development of skills to identify and solve problems, negotiate, conduct research, and contextualize the law. Teaching methods emphasize cases and problem solving, research and writing, and simulation and mock trials.³⁴

The school's goals for professional practice are for its law graduates to understand fundamental problems, command the basic specialized language, formulate legal problems out of real situations, and search and interpret relevant information. Some degree of specialization is possible at this school because it operates under the assumption that all lawyers do not need to know all the same subjects.³⁵ Despite the school's emphasis on skills development, students particularly value courses that tackle doctrine. This may be because the curriculum has failed to properly integrate the teaching and learning of the law with skills development. As a result, some students regard skills courses as "empty" of content.

While Universidad Metropolitana stands out from its peer public and private Venezuelan institutions, the most peculiar law schools in the nation at this moment are those developed and controlled by the socialist government. These schools include, Romulo Gallegos, which emphasizes socio-legal community service projects, legal clinics, and Bolivarian political doctrine as the key educational aspects of its curriculum.³⁶ The socialist government schools are less concerned with the regional push for legal educational reform than with the Venezuelan regime's ideological agenda. For that reason, I have chosen not to discuss these schools.

Universidad Torcuato Di Tella (Argentina)

The law school at the Universidad Torcuato Di Tella began in 1996 and three features distinguish this school, which is path-breaking not only among its Argentinean peers but also among similar Latin American institutions. Inspired by top U.S. research universities, Di Tella has introduced interdisciplinary research and scholarship into its legal education. That is accompanied by a

32. Rogelio Pérez Perdomo, *Innovación en la educación jurídica en la Universidad Metropolitana de Caracas*, in *Derecho y Democracia*, *supra* note 24, at 179-180.

33. *Id.* at 179.

34. *Id.* at 186-187.

35. *Id.* at 187.

36. *Id.* at 194.

rigorous system for recruiting full-time faculty and a curriculum combining general education, interdisciplinary and professional training, and an emphasis on strong academics.³⁷ Di Tella substitutes “a theoretically minded, interdisciplinary conception of legal studies for the traditional doctrinal approach.”³⁸

The Di Tella faculty teach by mixing the case method, traditional approaches like lectures, and practical work in discussions of judicial opinions and case hypotheticals.³⁹ For students, the school is among the toughest because they are tested and graded on a curve, meaning there also is a high failure and drop-out rate.⁴⁰

And while Di Tella’s educational approach is truly innovative by Latin American standards, it retains a major feature deeply embedded from the civil law and present in traditional institutions, namely an encyclopedic curriculum overloaded with traditional doctrinal as well as interdisciplinary instruction. Di Tella, in pedagogical terms, allows a mixed teaching method that pays tribute to the transmission of the “legal science.” This, unfortunately, leaves room for traditional and often ineffective teaching that is ill suited to developing students’ cognitive and practical skills.

Finally, Di Tella introduces as an innovation, a U.S. assessment system that has been highly criticized in the educational literature because it only serves a classificatory purpose but does not give information about individual performance, and hence does not stimulate improvement.

Universidad Diego Portales (Chile)

Diego Portales Law School was founded in 1982, but toward the end of the 1990s, it began a major curriculum reform that took effect in 2000.⁴¹ One of its most salient features was that, at the outset, it correctly defined reform educationally, not legally. As Andrés Cuneo noted,

It seems necessary by all means, to place the discussion about the reform of teaching methods and assessment procedures in different terms from those that have been traditionally used when discussing reforms: we need to take it into the context of the educational objectives of the program and the professional profile of the graduates. Here is where you will find the true reasons for change and not within the discussion about the concept of law.⁴²

37. Horacio Spector, The Academic Study of Law in Argentina, *in* *Derecho y Democracia*, *supra* note 24, at 6-15.

38. *Id.* at 7.

39. *Id.* at 14.

40. *Id.* at 15.

41. Andrés Cuneo, Una experiencia de reforma curricular: El plan de estudios de Derecho de la Universidad Diego Portales, *in* *Derecho y Democracia*, *supra* note 24, at 34-35.

42. *Id.* at 43.

From this starting point, this school redesigned its curriculum, teaching methods, and assessment system to better align itself with its educational objectives in two areas: general academic skills and general professional skills. By focusing on skills development, professors are forced to think about which teaching and learning methods are best suited to develop these attributes and then design the best ways to assess student mastery. Students also demand that their professors get the training they need to prepare them to succeed in examinations.

Among its other assessments, the school requires that students take a comprehensive examination, and the use of such objective tests is an innovation. But this test alone is not necessarily an improvement as it is not the best tool to assess the kind of skills the school stresses in its program. The school does balance this test with a case exam followed by an oral examination. But I wonder how objective the tests are and how they contribute to getting both students and professors away from the tired pedagogical path of lectures and memorization. I'm also concerned here with how students regard elective versus "traditional" courses. My guess would be that as long as evaluation drives education, what does or does not appear on the comprehensive exam will do the most to drive students' mind-set about crucial aspects of their academic life.

Universidad de Sonora (México)

The University of Sonora Law School was founded in 1938 and had a formal curriculum in force from 1978 until 2004, when it undertook a profound reform, adopting a competencies-based curriculum. That meant it discarded the traditional emphasis on teaching major legal disciplines and codes in favor of a curriculum organized around five professional "functions."⁴³

All teaching and learning activities reinforce the acquisition and development of these professional competencies. Educators at the school constantly ask themselves several questions. What must graduates know? Why? How do they learn to be competent, if not accomplished, at specific legal functions or activities?⁴⁴

Competencies-based curricula, from an educational perspective, have advantages over their traditional counterparts in that they increase students' motivation, giving a sense of purpose and a relevance to their studies. This approach also emphasizes the practical aspects of the law that the logic of the discipline often omits. Because they build lessons and learning step by step, mastering one before progressing to the next, the competencies-based curriculum reduces the number of students who fail. Finally, this approach is more akin to how professionals master materials in real life practice.

43. C. H. Arvizu Ibarra, M. Martínez García, & J. Romero Ochoa, *Experiencia de innovación en la educación jurídica de la Universidad de Sonora*, in *Derecho y Democracia*, *supra* note 24, at 157-159.

44. *Id.* at 156.

On the other hand, faculties can struggle to determine which competencies the profession truly demands; they may take too narrow a view of which techniques and skills must be taught, thereby substituting training for education in a broader sense. Moreover, because the competencies also must be spelled out in advance, a curriculum built around them tends to leave too little room for individual needs and choices. This also can make it tough to educate students so they can adapt to workplaces as they are now instead of helping them to develop alternatives.⁴⁵

In the case of the Sonora school, it initially listed seven areas for professional performance: legal counseling, litigation, legislative technician, legal adjudication, notary, research, and teaching.⁴⁶ However, the components of the curriculum devoted to the “function of legal intervention” focus on procedural courses (one for each traditional legal discipline).⁴⁷ So, in practice, the school’s curriculum seems to actually define the scope of professional performance for lawyers in narrow terms, despite a wide array of specialty courses that allows room for training in the seven areas mentioned above.⁴⁸

Universidad de Los Andes (Colombia)

The Universidad de Los Andes Law School started in 1968 and has since presented itself as an innovator among its peers in Colombia. Between 1995 and 1997, the school planned and implemented an ambitious reform covering curriculum, teaching, and assessment to try to restore its original innovative character.⁴⁹ The curriculum reform was organized around three cycles: a first year called contextualization; two subsequent years devoted to basic legal knowledge; and the two final years for specialization.⁵⁰

The first cycle presents law in a broad context by allowing students to take courses in different disciplines. The second cycle, focused on the main legal disciplines, aims to integrate such subjects as private and public law, and substantive and procedural law. It also strives to overthrow the traditional hierarchy of subject matter that gives more value to doctrinal than theoretical courses. The third cycle allows for electives in one of three possible specializations: private law, public law, and legal theory. This curriculum seeks to make room for student choices and specialization, while also providing a general and interdisciplinary education as well as professional training. To do

45. George J. Posner, *Analyzing the Curriculum* (McGraw-Hill 1995).

46. Arvizu et al., *supra* note 43, at 157-59.

47. *Id.* at 159.

48. *Id.* at 160-161.

49. Juny Montoya, *La reforma a la enseñanza del derecho en la Universidad de los Andes*, in *Derecho y Democracia*, *supra* note 24, at 65.

50. *Id.* at 75.

all this, the school was forced to abandon the broad, encyclopedic approach that is so deeply embedded in traditional legal education in the region.⁵¹

The reform in teaching and learning employs strategies focused on students. It makes problem-based learning the main strategy for basic courses such as the law of obligations, contracts, and constitutional and administrative law. This approach seems well suited to the school's attempt to integrate subjects and to try interdisciplinary approaches.⁵²

Under the reform plan, the school has designed three comprehensive faculty exams for students on each of the three cycles of the curriculum. To assess skills and not just memorized knowledge, the school designed different types of tests: an essay in the first cycle; an objective test, complemented by a case and an oral examination in the second cycle; and a real case in the third cycle.⁵³

As a participant in this reform, I can attest that the school encountered problems that aren't apparent just by looking at the official curriculum. They included a lack of consensus for change in a conservative, institutional culture; the absence of a thorough design for change; and the absence of policy continuity allowing the school to rigorously evaluate its achievements and pitfalls before reintroducing its old ways.⁵⁴ The actual reform has been marked strongly by these and other challenges.

Universidad Nacional de Córdoba (Argentina)

The Universidad Nacional de Córdoba Law School is both one of the most historic and one of the most innovative institutions. The university itself was one of the first established on the continent, founded in 1614 during the Spanish Colonial era, and has long been one of the most influential regional educational institutions. For instance, the notable university reforms of 1918 originated in Cordoba and spread across the subcontinent. But this school, unlike private institutions that could stay small as they rose in prominence, also suffered as it became a mega-university with more than 107,000 students and 12,000 law students. Cordoba's law school reforms, thus, are all the more impressive because this is a big and tradition-bound public institution that must win a consensus from such a huge and varied group of stakeholders. School officials offer an exemplary model for managing change while allowing for needed participation, discussion, and deliberation.

The old, status quo curriculum that the school tossed out had been encyclopedic and fragmented; it sharply separated legal and extralegal matters, gave predominance to private patrimonial law, and was highly regimented.⁵⁵

51. *Id.*

52. *Id.* at 82-90.

53. *Id.* at 77.

54. *Id.* at 77-82.

55. Carlos Alberto Lista, *Una experiencia de innovación: la reforma del plan de estudio y el*

Students were drilled in legal rules and doctrine, and professors emphasized cognitive-technical skills (knowing, understanding, analyzing) over critical and expressive ones. As a result, instruction was scarce on professional practice and the development of professional skills.⁵⁶

The school has since updated the total number of teaching hours in the program, substituting semester for year-long courses. New subjects were added, including four electives. Some existing courses were renamed and others were eliminated. The rules for student practices and promotion have been improved and teaching hours are now limited to thirty per semester. The number of courses students can take is capped at three per semester and the maximum number of students per class is eighty. The curriculum now allows students to progress step by step and integrates and correlates the subjects they study. The result is more room for professional training and practice with five mandatory workshops that progress from simple to more complex, building students' skills, starting with researching and critical reading and finishing with participation in legal clinics.⁵⁷

How are the reforms working? The school acknowledges that change occurs more easily for students than their professors. Some on the faculty have balked at changing their courses to meet the new semester schedule; some are uncomfortably giving up lectures in favor of a more conversational approach to teaching; some aren't ready to give young people more autonomy or help them develop skills for practice; and the new academic promotion system has proved unpopular with some. "In summary, the major difficulty faced by the reform process is professors' attachment to traditional practices from which some can't and others don't want to...depart..."⁵⁸

How Innovative Are Innovative Law Curricula?

Based on theory,⁵⁹ reforms of legal education and law school curricula demand consideration of several questions: What is the purpose of legal education? Which content, teaching, and learning activities are needed to achieve those educational purposes? How to assess the achievement of educational purposes? And what structure is required to support all the above?

If reformers truly considered such issues and acted on their answers, I contend, they quickly would get to an innovative legal curricula that would reject the traditional approach of just teaching the major subjects and existing codes. Instead, professors would be forced to discard the lists of rules they feel compelled to cover now in favor of clearer thinking about their real educational

régimen de enseñanza de la carrera de abogacía de la Universidad Nacional de Córdoba, *in* *Derecho y Democracia*, *supra* note 24, at 198.

56. *Id.* at 200-203.

57. *Id.* at 208-213

58. *Id.* at 212.

59. Ralph W. Tyler, *Basic Principles of Curriculum and Instruction* 1 (Univ. of Chicago Press 1949).

goals, means, and objectives. In traditional legal education, pedagogy does not play a role in the design of the curriculum. However, by considering questions like those I have posed, educators would be forced to plan their teaching and learning activities and choose those approaches best suited to accomplish their objectives. The answers they derive, of course, would determine the degree of their innovation. But just asking the questions would, in themselves, be innovative.

Let's now apply the questions and use them as a framework to assess the curriculum innovations, their structure, and the teaching methods at the seven institutions just described. Because the information sources available have their limits, it is impossible to exhaustively explore all these questions; so my analysis here will necessarily be based on the "official curriculum" described in formal documents.⁶⁰ I underscore that this approach has important limitations. I will make inferences based on documents, but these could be truer if I could observe the curriculum in operation or "the curriculum embodied in the actual teaching practices and tests."⁶¹ That qualitative inquiry would better show just how truly innovative the schools are. Still, my own experience with the tradition-bound nature of legal education and its institutions—and not just in this region—tells me that reformers can design curricula that look more innovative in print than they are in practice. Still, if law schools do not commit to change and reform, at least in writing, how else will it occur on a broad basis?

Curriculum Structure

Based on the curricula included in the articles mentioned above or downloaded from the schools' web pages,⁶² I have classified the courses taught in each institution into five categories (see Table 1): doctrine, theory, practice, interdisciplinary, and elective courses.

Courses in the "doctrine" category cover enacted laws, that is, codes, statutes or "black letter law" as is taught in "Administrative Law" or "Civil Procedure Law." Courses in the "theory" column offer a broader view of the law and seek to put it in a wider context, including such offerings as "Introduction to Law," "Philosophy of Law," and "Legal Sociology." Courses in the "practice" column, at least by title, emphasize hands-on, practical skills training, an

60. Posner, *supra* note 45, at 12.

61. *Id.*

62. FGV Curriculum, in Hubner Mendes, *supra* note 27, at 32; UDP Curriculum, *available at*: <http://www.udp.cl/admision/pdf/2009/fd.pdf> (last visited Dec. 30, 2009); UNIMET Curriculum, *available at*: <http://www.unimet.edu.ve/escuelas/derecho-plan.html>; UTDT Curriculum, *available at*: http://www.utdt.edu/ver_contenido.php?id_contenido=280&id_item_menu=1045 (last visited Dec. 30, 2009); UDS Curriculum, *available at*: http://www.derecho.uson.mx/wb2/Derecho/Dere_plandeestudios (last visited Dec. 30, 2009); UALS Curriculum, *available at*: http://derecho.uniandes.edu.co/derecho_uniandes/export/derecho_uniandes/programas/pregrado/estructura/esquema.html (last visited Dec. 30, 2009); See UDC Curriculum in Lista, *supra* note 55, at 214.

experiential approach, and in my study, include workshops and clinics.⁶³ I also have placed in this category such courses as “Argumentation,” “Seminar of Jurisprudence,” “Written Communication,” “Research Methods,” and “Legal Analysis.” Courses in the “interdisciplinary” column cover “law and...” and include offering such as “economics,” “history,” “political philosophy,” “statistics,” “public policies,” and “informatics.” The last column, “elective,” includes all courses that students may choose. Some institutions allow students to pick classes not just in the law school but their universities as a whole. In most schools, the options are restricted to “packages” of legal courses, allowing students to specialize in an area by emphasizing doctrinal courses such as in “public law” and “international law.” Some schools combine both elective options.

Table 1

Law School	Doctrine	Theory	Practice	Interdisciplinary	Elective	Total
Getulio Vargas	16	3	28	9	8	64
Metropolitana	19	6	9	5	6	45
Di Tella	14	6	9	6	4	39
Diego Portales	30	9	3	5	13	60
Sonora	24	3	20	4	6	57
Andes	16	5	9	5	16	51
Córdoba	27	6	6	1	4	44

By depicting the curricula in this fashion, the first thing to note is the huge number of courses that each study plan contains, ranging from thirty-nine to sixty-four. Even in innovative schools, this indicates an adherence to the Latin American tradition of giving students an encyclopedic view of the law, whether this is workable or sensible. It shows that a conventional wisdom still holds sway in the region: To be a lawyer means you must be familiar with many legal subjects, even if you do not master any of them.

Further, the data show just how strait-jacketed most curricula remain for students, who have room for only a small percentage of electives out of the total courses they must complete (see Table 2). With the exception of Universidad Diego Portales and Universidad de Los Andes, where electives exceed 20 percent, law schools show they are convinced that all lawyers need to know basically the same material, even as they expressly deny this belief.⁶⁴

63. Henry P.A. Boshuizen, Rainer Bromme & Hans Gruber, *Professional Learning: Gaps and Transitions on the Way from Novice to Expert* (Kluwer Academic Publishers 2004).

64. Pérez Perdomo, *supra* note 32, at 187.

Table 2

Law School	% Elective courses
Córdoba	9
Di Tella	10
Sonora	11
Getulio Vargas	12
Metropolitana	13
Diego Portales	22
Andes	31

The data also reveal the disconnect between the innovative schools’ talk about developing students’ practical skills and professional competencies, and the scant room these institutions make for this training in their curricula.⁶⁵ Again, when comparing the percentage that these courses represent of the total (see Table 3), only Fundación Getulio Vargas and Universidad de Sonora build into their curricula the time and courses for students to develop their professional practice skills and competencies.

Table 3

Law School	% Practice-Oriented Courses
Diego Portales	5
Córdoba	14
Andes	18
Metropolitana	20
Di Tella	23
Sonora	35
Getulio Vargas	44

While reformers stress the importance of teaching students the broader context of the law, there are few differences among the innovative schools as to the number of interdisciplinary offerings in their curricula. The two extremes are Fundación Getulio Vargas with nine courses and Universidad Nacional de Córdoba with one. What varies the most is the portion of the curriculum these interdisciplinary offerings represent. In this sense, Fundación Getulio Vargas and Universidad Torcuato Di Tella have the highest percentage of courses devoted either to the study of other disciplines or to “law and...” courses.

65. Please note that this assertion is made based on the titles of courses indicating that their aim is to develop practical skills. The reality on the ground might differ greatly, depending on the actual course content and how it is taught.

In sum, even the innovative schools still offer relatively little—at least from a progressive educator’s point of view—to help students understand the broader historical and philosophical context of the law, as opposed to how the law exists, here and now (see Table 4).

Table 4

Law School	% Doctrinal Courses	% Interdisciplinary Courses
Córdoba	61	2
Sonora	42	7
Diego Portales	50	8
Andes	31	10
Metropolitana	42	11
Getulio Vargas	25	14
Di Tella	36	15

The data derived here could prove helpful in rebutting a criticism that legal education has veered into theoretical excess. Courses offering a theoretical understanding of the law and legal institutions, including Legal Theory, Ethics, Philosophy of Law, or Sociology of Law, make up a minimal portion of the innovative schools’ curricula. This is especially true if these offerings are compared to the numbers for doctrinal courses (see Table 5).

Why, then, is legal education so often accused of displaying “theoretical” excesses and of being too removed from real life and real professional practice? The answer is not that the curricula are overloaded with theoretical courses; even in these innovative schools, there is greater concern with legal scholarship and knowledge generation than in traditional schools. My argument is not with the theory classes but with the approach and content of doctrinal courses. Because teachers in these doctrinal courses focus on drilling students on enacted laws, codes, and statutes, often relying on rote memorization, these classes are poor preparation for the actual practice of law. The absence of practicality in doctrinal courses drives the perception that law schools have become too theoretical in their teaching and has given rise to the axiomatic view that Argentinean “law students receive neither enough practical training nor real theoretical education.”⁶⁶ The real issue for reformers may be that, in reflexive answer to the criticism about theory, schools toss out one valid such course in favor of another, less so on the doctrinal side.

66. Spector, *supra* note 37.

Table 5

Law School	# Doctrine Courses	# Theory Courses
Getulio Vargas	16	3
Metropolitana	19	6
Di Tella	14	6
Diego Portales	30	9
Sonora	24	3
Andes	16	5
Córdoba	27	6

My analysis of the data displayed indicates that what is occurring in leading Latin American law schools is likely not true innovation but something more akin to modernization. The schools are updating their curricula rather than engaging in thoroughgoing reform. The changes, a long time coming and badly needed, bring to Latin American education features that are common in other programs and other universities. This is especially true for the changes mentioned above including, substituting semester for year-long courses, assigning credit units to each course, adding a few electives, making room for some specialization, and including workshops for skills development. That these steps can be hailed as “innovations” indicates, ultimately, just how tradition-bound legal education remains, since these features have become common in other university programs since the early 19th century. Indeed, they have even been common practice at several Latin American universities, at least since the 1950s, such as Universidad de Los Andes.

As for the “innovation” of adding “law and...” courses—such as classes on law and society, law and philosophy, law and economics, law and political process—the main idea here had been to help students understand that the law they read about in their textbooks differs from the law in practice. Reformers hoped to employ techniques from other social sciences to illuminate relationships between law and society in a way textbooks could not.⁶⁷ These courses have been common in American law schools since the 1960s with their roots running back to the 1930s, a legacy of progressive educators as well as the so-called U.S. legal “realists.”

Progressive educators wanted the legal curriculum to emphasize how the law developed based on lived experiences, not in the re-creation of material by textbook writers.⁶⁸ If those real experiences are not compartmentalized by

67. Duncan Kennedy, *The Political Significance of the Structure of the Law School Curriculum*, 14 *Seton Hall L. Rev.* 1 (1983).

68. John Dewey, *The Child and the Curriculum*, in *John Dewey: The Middle Works 271-292* (J. A. Boydston eds., Southern Illinois Univ. Press 1902).

subject, the progressive curriculum tends to be integrated and interdisciplinary. The ideal such curriculum also avoids disciplinary divisions of private versus public or theory versus practice.

The realists, in contrast, criticized the traditional law curriculum as “too academic and too unrelated to practice.”⁶⁹ They took a broad view of both the practice of law and its context, scrutinizing not just the application of legal rules to particular cases but considering, as well, the social, economic, political, and psychological factors of a given situation. Their influence clearly can be felt in the different “cases and materials” books that include perspectives from philosophy, sociology, and economics, and in the “law and...” movements of the 1960s.

Although the integrated, multidisciplinary curriculum is a legacy from the progressive impetus present in education since the first decades of the 20th century, the conservative approach dominant in legal education still sees those courses as “accessory” and “peripheral” in the teaching and learning of the “real” law. As a result, they are not always offered.⁷⁰

Indeed, as I already have argued, Latin American law school curricula are now so jammed with courses that the real risk for reformers comes from conservatives pushing back for old-style doctrinal offerings, prompting faculties to drop the few new interdisciplinary classes. The other troubling option might see those law schools adding interdisciplinary courses but also forcing their students into longer or more intensive terms of study. They could end up with a six-year curriculum, as is the case at Universidad Nacional de Córdoba, or retain a five-year curriculum crammed with six or seven courses per semester, as occurs at Universidad Diego Portales and Fundación Getulio Vargas. Is it fair to students for educators to pile on classes rather than abandon their encyclopedic approach to the law school curriculum? Faculties must stop equating volume with the best approach and deal with what true interdisciplinary legal education means. It is wrong for faculties to talk about “Contracts Law” as a separate course from teaching students how to do an “economic analysis of contracts law.” By applying current constructivist theories, legal educators could discover that students cannot really understand⁷¹ the “law of contracts” until they grasp the socioeconomic meaning of such regulations. As for the encyclopedic approach, I say it is unrealistic and promotes a superficial approach to learning.⁷² What’s the point of knowledge that is a mile wide and an inch deep?

69. Robert Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* (Univ. of North Carolina Press 1983).

70. Juny Montoya Vargas, *The Case For Active Learning in Legal Education* (VDM Verlag 2008).

71. See David Perkins, What is Understanding?, in *Teaching for Understanding, Linking Research with Practice* 42 (Martha Stone Wiske eds., Jossey-Bass 1998).

72. See John Biggs, *Teaching for Quality Learning at University: What the Student Does* (Soc. for Res. into High. Educ. 1999).

Teaching Methods

When it comes to reforms and innovations, should not great consideration be given to the central activities of a law school, or any school for that matter, namely, teaching and learning? Alas, the discussions here of these topics will be spare, even as we study notable institutions. Teaching and learning, it seems, are neither of primary importance for traditional legal educators nor for reformers. Although the latter often launch their presentations declaring a preference for active learning, cases, real problems, workshops, clinics, and other such means, very often they end up by proclaiming “pluralism” as the way to allow room in the curriculum for faculty who refuse to abandon old-fashioned lectures.

Latin American law teachers do not seem to understand that tapping different teaching methods is not just a matter of procedural preference. To effectively attain educational objectives, goals must be aligned with teaching and learning activities, as well as with the assessment process.⁷³ The choice of lectures, cases, or problems is not just a procedural decision, student learning depends on it.⁷⁴ If we want students to be able to apply legal principles and rules to real cases, we cannot do it through lectures alone. We must also somehow give them the time and opportunity to apply legal principles and rules to real cases. A demonstration by the professor does not substitute for students’ personal experience in developing skills and competencies. Lectures, at a minimum, must become “interactive” through questions, discussion, or group work.

By the same token, let’s not create workshops to teach theory, adding yet more duplicative time to students’ loads. Abundant evidence already exists in the educational canon on how people learn, and legal theories that are worthy of mastery have practical consequences, as they allow us to better understand the world. Students can learn those theories at the same time they learn to make use of them. Law schools need an educational approach that helps professors focus on learning instead of teaching, and, by doing so, lets them develop the best educational experiences for students to learn the law by making use of it.

Conclusion: What Needs to Be Done?

Because law schools seem to lack the capacity for reflection and deep understanding about educational issues, discussions about teaching and learning or curricula too often turn on legal issues, instead of research into how students learn or broader concerns such as identifying the goals of legal education and the best ways to achieve them. Law schools that have asked the right educational questions are those that have put in place truly innovative reforms.

73. Posner, *supra* note 45.

74. Cynthia Weston & P.A. Cranton, Selecting Instructional Strategies, 57 J. of High. Educ. 3, 259-288 (1986).

I will conclude by briefly pointing to some questions that should have been asked in planning curriculum reform. These queries are standard in curriculum design but difficult to find in practice.

What is the purpose of legal education? This question is related but not limited to the question about the concept of law. To answer it properly, faculty must delve deep into several practical questions. For instance, what do we expect a law school graduate to know and be able to do? What should be the role of lawyers in society? What possibilities should legal education open for building a better society?

Which content, teaching, and learning activities are necessary to achieve the educational goals? The planning of content, teaching, and learning activities must be taken seriously as a basic principle for curriculum development. The educational objectives should be the organizing principles for the entire curriculum. Schools, based on their derived expectations for their graduates, then may decide what content, teaching, and learning activities are required. This approach gets them away from just adding new courses and practices to the old curriculum.

How to assess learning? This topic deserves special consideration because it can drive exactly what and how students learn. Schools can determine if their students have mastered the skills, materials, and qualities that prepare them in an authentic way for professional life or they can just measure how well young people can take tests, guess, and memorize.

What structure is required to support all the above? Innovative legal education requires full time professors appointed to teach and research. They must be well acquainted with educational theories and practices, and display intellectual stimulus in their teaching and research.

To those who seek to improve the legal Academy, especially in Latin America, I encourage you to answer these questions as you redesign your school's curriculum and instructional practice. Unfortunately, these questions are rarely put to paper or discussed when reforms are proposed. This all may be too hard for people to talk about, much less to put into practice as our answers likely put us in a place of running against the status quo. Instead, we get stuck in a vicious circle: Our thinking is traditional and traditional thinking deters real reforms. We cannot, for example, recognize the disconnect between our curriculum and the way our students actually learn so we turn away from the disappointing results. These are bad traditions in our thinking about legal education. Here's hoping these burdensome approaches give way in the future to the realities of learning.