

Chapter 2

Internationalisation, Globalisation and the Effect on Legal Education in Argentina

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Introduction

Law is generally deemed to be local, as it reflects the values and principles of the society it governs. However, the phenomenon known as globalisation has radically changed the way in which legal systems evolve and relate to one another; as interactions between nations increase and issues arise on a more local scale, the comparative and international legal fields gain ever increasing relevance to even domestic fora of law. As a result, university and academia have a new role to play in this regard; they must ensure that students, as future graduates and lawyers, are prepared to face a globalised world, and as such must offer students more than the traditional subjects taught in a traditional method. This chapter addresses the changing nature of legal systems and as such, legal education in general. Then, this chapter turns specifically to Argentina's legal education system, with a case study on the University of Buenos Aires, looking at how globalisation has resulted in, and calls for more, internationalisation. Globalisation provides the context for a wider and enriched comprehension of the law environment and it makes room for different types of legal training. It is up to us to decide in which way we will contribute to a more *pro persona* approach.

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Trends of Globalisation: Background and History

Law can be deemed to be local, as it expresses the common understandings of a given society relating to that society's values and institutions. The human groups and communities that constitute each respective society, may be vastly different. However, this local nature of law has never excluded an international element, which has been a permanent feature of jurisdictions throughout history. In recent times however, the new element is the incidence of the international within the local; this is the changing factor changing the legal field.

Legal authorities assume that international law emerged at the end of the Middle Ages, with the Peace of Westphalia treaty in 1648, when the existing political territories were consolidated into a small group of States. This trend, which was essentially horizontal, saw the creation of States that were generally independent from any multilateral associative links, and which enjoyed somewhat equal sovereignty and immunity from foreign jurisdiction. This, however, ended drastically after World War II.

The Westphalia model was replaced by a multilateral scheme, which was characterized with an enlarged agenda of 'common interest goals', evincing the need for co-operation, first as a policy and, later, as a legal rule. This new structure continued to rely on sovereign States, which increased from 51 in 1945 – when the United Nations was created – to 125 in 1970, after the first wave of decolonization, and 193 in 2012. However, this new, expanded agenda called for the assistance of international organisations, considered international legal persons, and incorporated individuals into the concerns of international law as international human rights rules and principles were established. This brought about new legal challenges – namely the protection of human rights and the environment, the regulation of international trade and finance, and the prosecution and sanction of international crimes. These issues cannot be adequately dealt with without international law and its legal structure and mechanisms.

Multilateralism takes time to accomplish, while, in that period, strong forces result in a global world coming into being; a world where countries and jurisdictions are increasingly inter-connected. Goods and services produced in one part of the world are progressively more readily available to other parts of the world and foreign markets. International travel is more frequent. International communication is commonplace. This phenomenon has been named 'globalisation'. New actors emerge in the global context, such as transnational corporations and non-governmental organisations. There are new conflicts to be resolved, which require creativity and the co-ordination of international efforts. The solutions are no longer available exclusively in domestic systems, and not all issues that affect a nation's citizens can be dealt with within a country's borders.

Globalisation poses transnational challenges, which are dealt with by politicians, state and international agents, corporations, and universities. Academia also has a role to play in this context, and legal education has been transformed as a result.

The Traditionally Local Nature of Legal Education

For many years, the study of the law was deemed to be essentially local in nature. However, local law regimes have always looked to each other. In fact, two ideas come together in this area: the unity and the diversity of legal orders. Diversity of legal orders is a fact; every national law is a system in itself. However, the identification of certain commonalities, both legal and non-legal, leads to the notion of 'systems of law' or 'law families' (David 1985; Rodiere 1979) through the application of the comparative technique (Winizky 1962). The idea of a unit of national legal orders, on the grounds of which such a grouping is possible, is again fractioned because of a new application of the comparative technique, one which stresses the divergence among the different parties of the national system. This revolving mechanism, from diversity to unity and from unity to diversity, is a reasoning procedure used in order to comprehend a legal environment that goes beyond national borders.

The idea of local legal orders as separate units was built upon the grounds of the local nature of transactions, personal relationships, etc. However, the international element was always present in trade matters as well as in family matters. Foreign law, foreigners, refugees, displaced persons, migrants, transnational corporations, and international legal regimes are among the many different factors, which contribute to a new approach that takes into account transnational challenges.

The Procedure, Institutions and Curriculum of Legal Education in Argentina

Legal education in Argentina begins after the completion of a 12 year elementary and high school education. Law school takes an average of 5 years to conclude. There are 24 public law schools, each of them depending upon a different national university, all over the country. All of them are tuition free and only few fees have to be satisfied by students. This is a common feature of education in Argentina and has been the pivotal factor of the dynamics of social mobility and of the establishment of a professional middle-class.

National public schools have autonomy; they have their own elected authorities and the vast majority have a Board as the main organ of government, which approves the curriculum. These Boards are usually composed of faculty, alumni, students and, in some cases, staff. Deans and Boards share some capacities and individually exercise others in order to manage the different schools; Deans keep discipline and management control and the right to submit proposals on other subjects to the Board. Deans are crucial in proposing an educational policy. For instance, they can submit educational programs or changes in the law curriculum that will then be considered and ultimately approved by the Boards.

In the late 1950s, private schools were authorised and a few confessional universities began to operate. In 1957, the Universidad del Salvador, an institution managed and supported by the Jesuit Congregation, and in 1958, the Catholic University of Argentina, were established. More recently, in 1995, the Austral University, an *Opus Dei* supported institution, was set up. In the 1990s there was a revival in the establishment of new institutions that imported and adapted the model of foreign universities, mostly American.

At present, there are 40 private law schools in the country, some of them with particular orientations (e.g. confessional, business-oriented, etc.).¹ Private institutions need approval from a State agency to function as law schools. Curriculum, facilities, requirements for faculty members, among other things, have to be approved by the accreditation agency. Private law schools in Argentina have either a Board or a President who, with the assistance of Deans or Directors, approves the curricula. In recent years, some private law schools have adapted their curricula so as to make room for the student's choice of some courses. Some also offer the possibility to pursue a given concentration during the last part of their study.

With some nuances, most public and private law schools in Argentina have adopted a one-cycle curriculum, integrated by 26–35 mandatory courses. Teaching is scheduled in years according to a progressive vision of law. That being so, the starting point is usually an 'Introduction to Law' or 'General Theory of Law (Jurisprudence)' course, assorted with courses in 'Theory of State', 'Constitutional Law' (usually in two or three parts so as to cover general principles and main institutions, National and Local Constitution, Comparative Law), 'Civil Law' (General Institutions, Obligations, Contracts, Property and Real Law, Family Law, Inheritance Law), 'Criminal Law', 'Commercial Law' (Commercial Obligations and Contracts, Corporations), 'Labor Law and Social Security', 'Administrative Law', 'Procedure (Civil and Criminal)', 'Public International Law', 'Conflict of Laws', 'Economy and Financial Analysis', 'Sociology', 'History', 'Natural Resources and Environmental Law'.

Students either have to attend classes (generally a 75 % attendance rate is required) and pass exams during the course, or study on a free basis and pass exams outside the course system. Evaluations are both written and oral.

Three of the main law schools in the country serve as good examples:

- The Universidad Nacional de La Plata has approved a curriculum of 5 years study with 31 obligatory courses. There is a mixed system of classes and the law school namely offers courses for those students who will pass their full and final examination with a three-member jury; special performance courses for those

¹ The Argentine Catholic University (Universidad Católica Argentina) is established in many of the 24 territorial divisions of the country; the Universidad del Salvador; the Universidad Austral; the Universidad Champagnat are the main expressions of the confession-oriented private universities; the first two are the pioneers and started covering those careers that were not offered by national public universities. Others are Universidad de Belgrano, Universidad de Palermo, Universidad de Flores, Universidad Argentina de la Empresa, Universidad de Ciencias Empresariales y Sociales, Universidad Di Tella, Universidad San Andrés, among many others.

students that qualify in the light of the grades they have already obtained and who pass the course because of their participation in class and their satisfaction of written tests; and a practical litigation course. Students are evaluated by written and oral examinations. A few courses are structured on the grounds of a practical approach through cases and other materials.

- The Universidad de Rosario Law School has structured 6 years of studies with four courses of 1 year and 26 courses distributed on a semester basis. The subjects' denomination corresponds to the main branches of law. There is also a course on general litigation. It shares a common approach with the Universidad del Litoral Law School from which it was separated some years ago.
- The Universidad Nacional de Córdoba Law School has recently introduced amendments to its curriculum. At present, throughout 6 years of studies, the students have to pass 31 mandatory courses corresponding to a total of 1770 h of classes.

There are no additional academic requirements for students seeking admission to the profession. Law school graduates are only expected to join a bar association (by means of monthly contributions) in the jurisdiction where they will be practicing law, but they do not sit for bar exams. There are no different training tracks for the different parts of the profession; all students receive the same legal education before entering the different parts of the profession, nor is there any legal training oriented towards ensuring or facilitating admission in other jurisdictions.

The Role of Law Schools in a Global World

The university is a center for the production of knowledge and a center for reflection; it is also a place where new conceptions of the world are built, and where strong efforts should be made for a better understanding of what happens, and what should happen, in our societies.

In Latin America, and in Argentina specifically, we need universities and law schools to be able to contribute to democratic life, to the observance of diversity and pluralism, to the promotion of solidarity and co-operation, to helping the construction of a continental identity, and to generating opportunities for those lacking them and contributing. Universities can do this through the creation and dissemination of knowledge, which socially and productively transforms societies.

In this context, universities and law schools have to promote the respect for human rights, the struggle against discrimination, the quest for equality, social justice and gender equity, and the defence and enrichment of our cultural and environmental heritage. These learning institutions must help establish conditions under which security and hunger eradication can be reached, poverty can be overcome, and an intercultural dialogue with full respect for different identities and a culture of peace can be agreed upon. Thus, a university's approach to globalisation should always be *pro persona*.

Argentina's Internationalisation of Legal Education

The debate regarding the internationalisation of legal education is not explicit in Argentina. However, almost every law school tries to include international elements to its curriculum and, generally speaking, to its academic offering. For example, the majority of public schools have incorporated a compulsory course on Public International Law. These courses are generally offered at the end of introductory classes and before the beginning of a specialisation. Moot courts and exchange programmes involve the treatment of the so-called 'global commons', there is a *de facto* approach to transnational challenges.

During the 1990s, the legal profession in Argentina, mainly in the capital city, Buenos Aires, started changing its profile. This supposed an accommodation to contextual changes and was also possible because of the legal degrees that many attorneys got in foreign universities, mainly LL.M degrees at US universities. Accordingly, the legal profession's new profile geared focus towards big law firms, instead of at individual offices as was traditional, and required transnationally trained lawyers to deal adequately with important issues of everyday life having international elements.

The re-establishment of democracy in Argentina in 1983 resulted in anew approach to international legal issues and new understanding as to the place of international treaties in the legal hierarchy. As well, there was a change in the appreciation of the constitutional status of some human rights treaties, the entering into force of integration treaties and the celebration of bilateral treaties on foreign private investment. Environmental issues played a great role as well. The great majority of these questions started permeating law schools' curricula.

Legal training is not oriented towards ensuring or facilitating admission in other jurisdictions. Although exchange programs are very common in Argentina (there are a number of programmes available for students seeking to study a semester abroad) only one private law school offers a double degree with a foreign faculty, namely the Universidad del Salvador teamed with the Université Panthéon-Sorbonne Paris I.²

There are many exchange programs in force in law schools. Exchange experiences allow participants to grasp the core of legal profession in a given system and to familiarise themselves with the places of overlap and the sites of divergence between the legal system and culture of the host country and those of their homeland. They can also acknowledge the differences in learning and working and communication styles.

Students can thus acquire expertise related to problem-solving, critical thinking, legal research, negotiation, oral and written advocacy, team work and also leadership skills. Exchanges can include a practical component, be it an internship or a clinical experience. In fact, every law system has a somewhat different starting point in approaching teaching the law. For students coming from a continental law system, global programs and common law programs have the added value of getting into a different law system.

²For more information see <http://juri.usal.edu.ar/carrera/abogacia-plan-franco-argentino>

At the University of Buenos Aires Law School, students are required to pass exams on a foreign language. This language requirement aims to ensure that students are better capable to understand judicial decisions and legal authorities written in a foreign language.

Engagement Towards Global Approaches

As legal educators, we have a primary responsibility to educate students as future law graduates, so that they are able to develop their abilities in the world where we live, as it currently is and as it will evolve. As such, we are actors in this phenomenon known as globalisation. This same force has seen that poverty – the lack of social citizenship – has become a major challenge, that diseases are globalised, that ethnic problems have experienced a revival, and that religion has become the target of political struggles. Academics are able to influence and are influenced by the same force that allows businesses, diseases, and inter-ethnic conflicts to operate as if national borders did not exist. This same force also requires law graduates to be able to work on a global stage. At the same time, borders are stronger than ever for people migrating, at the risk of their lives, because of war, hunger, poverty, discrimination.

This global context requires people trained to face diversity, sensitive to local particularities while at the same time not losing theirs and that global perspective. People trained in learning from others' experience, from others' legal system, people ready to implement cross-fertilization of jurisprudence and practice in general.

The market – in the broadest sense of the word, that is, all the area demanding for legal services – requires attorneys with experience both in common law and in continental law. This demand asks for institutions capable of building bridges and offering legal education updated not only as to its contents, but as to its approach as well. Legal education and research should also address these issues.

As stated in the Universal Declaration of Human Rights, '[e]ducation shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.'

A Case Study: The University of Buenos Aires

The University of Buenos Aires ('UBA') was established in 1821, but legal teaching started in 1814, at the Academy on Jurisprudence, which later became the UBA Law School in 1874.³ Legal education and legal operators have been crucial in the

³For more information, see the University of Buenos Aires website: <http://www.uba.ar/ingles/about/briefhistory.php>

construction of the State (Böhmer). Those who provided the political and economic arguments which were evoked throughout the process of gaining independence, and which laid the grounds for the legal system of the nineteenth century had been educated and trained under a system very similar to that of the United States today. After high school, the university started with the study of Rhetoric, Latin, Mathematics, Geometry and Religion. The post-graduate legal studies, either in Bolivia (Universidad de Chuquisaca) or in Spain, included Canonical Law and Civil Law, followed by 2 years in the Academy of Jurisprudence and two more years working at a law firm, through an apprenticeship. In 1870 there was a radical change in the way in which legal studies were conducted. The adoption by Congress of the Civil Code in 1868, led to a new approach. The Academy of Jurisprudence was closed, a chair on procedure was created and the UBA Law School started awarding diplomas, which allowed the practice of legal profession.

UBA is a major Argentinean law school, in part because of its large student population and in part because of the leverage it exercises in law practice in the country through its graduates. In fact, UBA Law School graduates include 15 Presidents and 5 of the 7 current members of the Supreme Court of Justice.

Undergraduate university education is free. Not unlike other national law schools, UBA is a public institution but autonomous from the government. This status has received constitutional support in the new Constitution, in force since August 24, 1994. Autonomy means that national universities have their own elected authorities and manage their own budget, approve their curricula and award their degrees.

Most UBA Law School faculty members are part time because salaries are not high enough to be their main source of income. At present, the Law School has almost 1000 faculty members and 400 assistants in order to provide instruction to 24,200 students. In order to provide opportunities for all those students, courses are offered from 7:00 am to 11:00 pm, twice a week. Almost 1900 courses are offered each semester.

In 1985, after the restoration of democracy in the country, public universities reassumed their government and reviewed their curricula. UBA Law School adopted a new curriculum organised in two cycles. In the first cycle, the Common Professional Cycle, the main contents of almost all traditional branches of law are taught in 14 mandatory courses. In the second cycle, the Professional Oriented Cycle, five courses (Public International Law, Corporations, Family Law, Tax Law and Conflict of Laws) are mandatory and students have the right to select an area of expertise (for instance: Family Law, Administrative Law, International Law) and so, they may take elective courses in such area. In the Professional Oriented Cycle, students must earn at least 64 credits, of which 20 must be in the student's chosen area of expertise, as well as 4 credits in Law of Integration courses, 4 credits in Constitutional Law, 4 credits in Social Sciences, 4 credits in Jurisprudence, 6 credits in Litigation and Procedure and 14 in Law Clinics. Students then have eight free credits.

Students are also required to pass exams on a foreign language. This language requirement aims to ensure that students are better capable of understanding judicial decisions and legal authorities written in a foreign language.

UBA prepares its law graduates for different activities, including the three branches of government, non-governmental organisations, intergovernmental organisations, private corporations and law firms. We are well aware that the Law School must produce technically competent and ethically minded graduates who can pursue successful careers in a variety of occupations, so we structure the curriculum in order to produce such graduates. Our society, as many others in Latin America and other parts of the world, is unequal in income and in access to rights, and we should empower and motivate our graduates to engage pressing issues of social justice, legal reform, and the struggle against poverty.

UBA graduates should be prepared to face a world whose legal order is undergoing significant change. To prepare them for this reality, we provide them with both a sound grasp of general legal principles and the nuances of particular branches of law. Practical knowledge and training are enforced through a course on practical litigation, internships in law firms and government agencies, and clinics established together with specialized NGOs.

Moot courts and other pedagogical resources are also promoted. UBA students can also apply to the following Moot Court programs, in order to be part of the school representative teams: World Human Rights Moot Court Competition organised by the University of Pretoria (South Africa), Philip C. Jessup International Law Moot Court Competition organised by ILSA; Concurso Interamericano de Derechos Humanos organised by the American University Washington College of Law, Foreign Direct Investment Moot Court Competition, Concurso CPI – Simulación Judicial ante la Corte Penal Internacional, Concurso Nacional Universitario de Litigación Penal, Willem C. Vis International Arbitration Moot organised by Pace University, Concours d'Arbitrage International de Paris organised by Sciences-Po, International Humanitarian Law Concours Jean Pictet, Competencia Internacional de Arbitraje organised by ourselves and the Universidad del Rosario in Colombia.

Student Exchange Programs are in place with partner law school abroad, and the grades obtained in such programs are included on transcripts at the home institution. At UBA Law School, 12 exchange programs are managed with partner universities on the grounds of agreements negotiated by our institution as well as other programs in the context of broader agreements negotiated by the University. In 2013 we have UBA Law School students participating in exchange programs at Columbia Law School, New York University, Boston University, University of Texas at Austin, University of Tulane, all of them at the USA; Université Panthéon-Assas Paris II (France), Université Catholique de Louvain (Belgium), Universidad Autónoma de Barcelona (Spain), Bucerius Law School (Germany), Università degli studi di Milano (Italy), Université Paris-Ouest Nanterre-La Défense Paris X (France), Universidad Diego Portales (Chile); as well as at the Universidad Autónoma de Madrid (Spain), Universidade de Sao Paulo (Brazil), Universidad de la República (Uruguay), Universidade Federal de Rio Grande do Sul (Brazil), Universidad Veracruzana (México), Universidad de Porto (Portugal), Universidad de Valencia (Spain), Universidade Federal de Santa Maria (Brazil), Universidad Autónoma Metropolitana (México).

Concluding Remarks

UBA Law School does not fit in the standard models of teaching law because of its heterodox way of combining elements got from different experiences, namely the European organization of chairs, the American system of credits, the *lectio magistralis*, and the workshop format. This university has the responsibility of providing men and women with law degrees for the great majority of positions at the Executive and the Legislative and, together with other law schools in the country, we hold the monopoly of the provision of lawyers to fill Judiciary's positions. These are challenges that should enlighten our decisions on the way in which law is taught and on what is taught.

Globalisation provides the context for a wider and enriched comprehension of the law environment and it makes room to different trainings. It is up to us to decide in which way we will contribute to a more *pro persona* approach.

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