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The Unstoppable Force, the Immovable Object: Challenges for Structuring a Cosmopolitan Legal Education in Brazil

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The Unstoppable Force, the Immovable Object: Challenges for Structuring a Cosmopolitan Legal Education in Brazil

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This Article discusses the challenges for structuring a more cosmopolitan legal education in the global South without falling in the traps of legal colonialism, academic solipsism and social elitism. It does so by examining the experience of FGV Direito SP, an attempt to create a global Law school in Brazil. The Article suggests that understanding the broad implications of a project for radically changing legal teaching in Brazil requires a nuanced reading of the encounter between the purportedly unstoppable force of globalization and the supposedly immovable object of traditional legal institutions.

This Article is organized in four sections. The first discusses how globalization and the return to democratic rule of law have created the need for a new model of legal education in Brazil. The second discusses the legal culture framework within which the new school appeared. The third overviews the main lines of FGV Direito SP global-oriented legal education. The fourth section presents the hurdles to offering a global-oriented legal education in an emerging country overwhelmed by deep and persistent social inequality and frames FGV's experience within the context of the ethical and political challenges for legal education in the global South.

I. GLOBALIZATION, RETURN TO DEMOCRATIC RULE AND THE NEED FOR INNOVATIVE LEGAL PROFESSIONALS IN BRAZIL

I had said, that some of our crew left their country on account of being ruined by law; that I had already explained the meaning of the word; but he was at a loss how it should come to pass, that the law, which was intended for every man's preservation, should be any man's ruin. Therefore he desired to be further satisfied what I meant by law, and the dispensers thereof, according to the present practice in my own country;

- Gulliver´s Travels, Book IV, chapter V[1]

Democratization and globalization have posed unique challenges for many emerging countries as they have pressed them to find suitable answers to competing imperatives. On the one hand, the fast-paced changes in the global economy have pushed them to rapidly adjust to a radically transformed international marketplace.[2] On the other, they have had to cope with mounting internal demands for broader individual rights and social equality.[3] Failure on the first task could mean falling even further behind developed countries; failure on the second could create the risk of grave social unrest. Balancing this dual constraint of economic efficiency and social fairness has proven a particularly difficult act to perform.

Law has played a major role in the effort by these countries to cope with this tension. This is hardly surprising. The faster patterns of social and economic

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1. JONATHAN SWIFT, GULLIVER'S TRAVELS 231 (Claude Rawson & Ian Higgins eds., Oxford Univ. Press 2005) (1726).

2. *See generally* SAMUEL P. HUNTINGTON, THE THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY (1993), which outlines the significance of a third wave of democratization to describe the global trend that has seen more than 60 countries throughout Europe, Latin America, Asia, and Africa undergo some form of democratic transitions since Portugal's "Carnation Revolution" in 1974 RAPHAEL KAPLINSKY, GLOBALIZATION, POVERTY AND INEQUALITY (2005), which provides a detailed explanation of the relationship between globalization processes and the global trends of poverty and inequality.".

3. Examples of this movement can be seen in the birth and rise of the Marcha Mundial das Mulheres ("MMM"), a social mobilization project formed by feminist NGOs, mixed committees and organizations, that fight politically to eradicate poverty, and also claim urban and rural land redistribution, equal payments and social rights. *See* Ilse Scherer-Warren, *Das mobilizações às redes de movimentos sociais* [*Mobilizations to Social Movements*], 21 SOCIEDADE E ESTADO BRASÍLIA [SOC. ESTADO] 109, 116-17 (2006) (Braz.), http://www.scielo.br/pdf/se/v21n1/v21n1a07.pdf. The recent social movements that struggle for agrarian reform through the discourse of land as a human right. Rossana Rocha Reis, *O Direito à Terra como um Direito Humano: a luta pela reforma agrária e o movimento de direitos humanos no Brasil* [*Land as a Human Right*], 86 LUA NOVA: REVISTA DE CULTURA E POLÍTICA [LUA NOVA] 89, 89-90 (2012) (Braz.), http://www.scielo.br/pdf/ln/n86/a04.pdf. The phenomenon of judicialization of the right to health, which puts into evidence the demands for access to justice when it comes to health, more specifically the access to medicine. Miriam Ventura et al., *Judicialização da saúde, acesso à justiça e a efetividade do direito à saúde* [Judicialization of the Right to Health], 20 PHYSIS: REVISTA DE SAÚDE COLETIVA [PHYSIS] 77, 78 (2010) (Braz.), http://www.scielo.br/pdf /physis/v20n1/a06v20n1.pdf.

interaction changed and diversified, the more legal institutions and norms appeared instrumental in the quest for some degree of certainty and standardization both for intra- and inter-national transactions.[4]

In fact, insofar the international arena is concerned, globalization has been largely perceived as being primarily a *globalization of legal rules and governance*, that is to say, as an attempt to establish a *global law* framework capable of sustaining and fostering the free flow of capital, goods, services (though not necessarily people) by which it has been characterized. As Halliday and Osinsky observe:

> Although often invisible and taken for granted, law is heavily implicated in the process of globalization. Economic globalization cannot be understood apart from global business regulation and the legal construction of the markets on which it increasingly depends. Cultural globalization cannot be explained without attention to intellectual property rights institutionalized in law and global governance regimes. The globalization of protections for vulnerable populations cannot be comprehended without tracing the impact of international criminal and humanitarian law or international tribunals. Global contestation over the institutions of democracy and state building cannot be meaningful unless considered in relation to constitutionalism.[5]

In what regards the national level, legal reform was at the heart of the attempt by many emerging countries to enlarge the political liberties of their citizens.[6] In Brazil, since the return to democratic rule and the enactment of the 1988 Constitution, the language of rights has become a chief vehicle in the struggle against social disparity.[7]

A vast array of new social, group, environment, and consumer rights, coupled with policies to increase access to Justice, has thus enhanced the relevance of law in everyday Brazilian life.[8] New institutions have been created or perfected (e.g., Public Defender's and Public Prosecutor's Offices) to give citizens more efficient legal means to demand the enforcement of rights and to oversee the conduct of public officials.[9] The explosion of litigation in areas as consumer law, the intensive use of strategic litigation for public interest causes, and even the recent trials for corruption of high-

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4. VOLKMAR GESSNER & ALI CEM BUDAK, EMERGING LEGAL CERTAINTY: EMPIRICAL STUDIES ON THE GLOBALIZATION OF LAW 5–6 (Volkmar Gessner & Ali Cem Budak eds., 1998).

5. Terence C. Halliday & Pavel Osinsky, *Globalization of Law*, 32 ANN. REV. SOC. 447 (2006).

6. *See* Nita Rudra, *Globalization and the Strengthening of Democracy in the Developing World*, 49 AM. J. POL. SCI. 704 (2005) (stating that "[p]articularly since the late 1980s, seventy percent of less developed countries (LDCs) made substantial efforts to expand political freedoms.").

7. *See id.* (illustrating a fact which has sometimes led to democratic regression and rise in repression.).

8. *See* Oscar Vilhena Vieira, *Public Interest Law: A Brazilian Perspective*, 13 UCLA J. INT'L L. & FOREIGN AFF. 219 (2008). "The article focuses on explaining the way the Brazilian legal community has structured the public interest law landscape in the field of human rights law over the last decade. The article also argues that current Brazilian public interest law initiatives and institutions are largely the result of the action of three major forces: (i) the existence of liberal and progressive segments of the legal community; (ii) the adoption of the 1988 Constitution and the ascension of public institutions representing the "public interest"; and (iii) the globalization process

9. *See id.*

profile public figures area testimony to the new centrality of legal institutions in Brazil over the last decades.[10]

Additionally, the transformed economic dynamics of the country in the 21st century further amplified the importance of law, as the new scenario both required and sprung from new legal institutes (e.g., regulatory agencies; new consumer code).[11] Courts have become key players in this process, frequently seeking to adjust, through innovative readings, old legal norms to new socio-political realities.[12] Similar stories could be told about other nations in the global South.[13]

Due to this vast and complex set of changes both within and without national borders, emerging countries have become hard-pressed to rapidly "import" or form law professionals capable of tackling and designing novel solutions to unprecedented, intricate problems. The first option consisted not only in opening the national market for international legal services, but also in sending a massive number of elite young lawyers to attend LL.M programs and enroll in some professional experience abroad.

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10. *See id.* at 260.

11. Grinover, Ada Pellegrini. "Brazil." The Annals of the American Academy of Political and Social Science, vol. 622, 2009, pp. 63–67. JSTOR, JSTOR, www.jstor.org/stable/40375851. ROSENN, KEITH S. "Procedural Protection of Constitutional Rights in Brazil." The American Journal of Comparative Law, vol. 59, no. 4, 2011, pp. 1009–1050. JSTOR, JSTOR, www.jstor.org/stable/23045695.

12. Making *judicial activism* one of the most contested topics in this century. In this sense, Oscar Vilhena Vieira points to the vast literature that investigate the advancement of law over politics and the consequent expansion of judicial review in detriment of parliaments. He also provides a definition to the phenomena in Brazil: *Supremocracy*. *See generally* Oscar Vilhena Vieira, *Supremocracia* [*Supremocracy*], 8 REVISTA DIREITO GV [REV. DIREITO GV] 441 (2008) Available at: http://www.scielo.br/pdf/rdgv/v4n2/a05v4n2.pdf. At the international level, Shapiro and Stone Sweet state that the "whole debate over judicial modesty versus judicial activism" consists, essentially, on an attempt to define the political role of the Court and its relations to other facets of politics and, additionally, they point out to the endless and unending controversy over judicial activism. MARTIN SHAPIRO & ALEC STONE SWEET, ON LAW, POLITICS & JUDICIALIZATION 22 (2002).

13. To illustrate, we can invoke the South African Constitutional Court decision in *Doctors for Life Int'l v. Speaker of the Nat'l Assembly* 2006 (6) SA 416 (CC) (S Afr.), "a case in which the Court found that the Constitution imposes an enforceable obligation on Parliament to facilitate public participation in the legislative process." The decision shows how the Court searched for imaginative solutions and perspectives, since the "judges found alternative interpretative possibilities that enabled them to look beyond the standard narratives about the ills of apartheid and the transition to democracy, and to detect forms of disadvantage that do not conform as readily to the stock stories in terms of which constitutional understanding tends to be structured." Henk Botha, *Of Selves and Others: A Reply to Conrado Hübner Mendes*, *in* TRANSFORMATIVE CONSTITUTIONALISM: COMPARING THE APEX COURTS OF BRAZIL, INDIA AND SOUTH AFRICA 68 (Oscar Vilhena Vieira et al. eds., 2013). We can also mention the decision of the Brazilian Supreme Court regarding same sex couples. "The [decision's] leading opinion states that in the twenty-first century family notion, affection prevails over biology. According to the Constitution, the family, which is the basis of society, has special protection from the state. Justice Britto continues to explain that the only non-homophobic interpretation, aligned with the constitutional principles, was the one that recognizes the equality of the families composed both by heteroaffective and homoaffective couples;" even though the Constitution mentions the "union of a man and a woman." Samuel Friedman & Thiago Amaparo, *On Pluralism and its Limits: The Constitutional Approach to Sexual Freedom in Brazil and the way Ahead*, *in* TRANSFORMATIVE CONSTITUTIONALISM: COMPARING THE APEX COURTS OF BRAZIL, INDIA AND SOUTH AFRICA 275 (Oscar Vilhena Vieira et al. eds., 2013).

The latter option imposed the necessity to start a debate over legal education. It gained momentum in some developing nations, generating a stream of academic writing on the topic.[14] Alongside this theoretical debate, a number of concrete attempts have been made to answer the need of educating global lawyers.[15]

In Brazil, a pioneer experience has been that of FGV Direito SP, founded in 2002.[16] Its story aptly illustrates the difficulties to implement a new paradigm for legal education in an emerging South. It also suggests that any successful attempt at reform in this area depends on the institution's ability to strike a politically workable, educationally sensible balance between global demands and local realities, between new and traditional paradigms.[17] Thus, FGV Direito SP's project can be understood only against the background of its relation to the traditional law schools and legal culture still hegemonic in the country.

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14. Harvard University's project on Globalization, Lawyers, and Emerging Economies is one example of the centrality of this topic for current legal education debates. It conducts research alongside scholars working in India, China and Brazil to examine "how globalization is reshaping the market for legal services in important emerging economies and the potential for these changes to affect the nature and role of the legal profession in these countries and throughout the world." *Globalization, Lawyers, and Emerging Economies (Glee)*, HARVARD LAW SCHOOL (Nov. 15, 2017, 2:30 PM), https://clp.law.harvard.edu/clp-research/globalization/#sthash.Dods5Ei2.dpuf.

15. For instance, India has been deeply engaged in producing more dynamic experiments in legal education, such as the establishment of The National Law School of India University ("NLSIU") in 1968 and, more recently, the private Jindal Global Law School ("JGLS") with the second imparting a "rigorous and multi-disciplinary legal education with a view to producing world-class legal professionals." Jonathan Gingerich et al., *The Anatomy of Legal Recruitment in India: Tracing the Tracks of Globalization*, *in* THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION 548-577 (David B. Wilkins et al. eds., 2017); *see also* JINDAL GLOBAL LAW SCHOOL, http://jgu.edu.in/aboutjgls (describing the aforementioned experiments in further detail). Furthermore, in 2005, the Prime Minister of India established the National Knowledge Commission ("NKC"), with a Working Group in legal education whose primary objective was to recommend and undertake reforms in the field. Their report indicated the pressing need to prepare students for global practice and, therefore, recommended a number of measures to be taken to address this challenge, such as evolving a transnational curriculum to be taught jointly by a global faculty and funding independent research centers focused on international law and globalization. *See* NATIONAL KNOWLEDGE CONVENTION, http://knowledgecommissionarchive.nic.in/focus/legal.asp (providing a general description of the NKC).

16. AMBROSINI, Diego Rafael. Construção de um sonho: Direito GV : inovação, métodos, pesquisa, docência. São Paulo: FGV-Direito Rio, 2010.

17. *See Luciana G.* Cunha & Jose J. Ghirardi, *Legal Education in Brazil: The Challenges and Opportunities of a Changing Context, in* THE BRAZILIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION: THE RISE OF THE CORPORATE LEGAL SECTOR AND ITS IMPACT ON LAWYERS AND SOCIETY 247 (Luciana Cunha et al. eds., 2018).

II. TRADITIONAL LEGAL EDUCATION AND POLITICAL PERSPECTIVES IN BRAZIL

A man slowly goes by. A dog slowly goes by.
A donkey slowly goes by. Slowly . . . the windows stare.
Gosh, what miserable life.
Any little town.
- Carlos Drummond de Andrade[18]

Attempts to alter the way law is taught and researched are, in any country, quite different a task from efforts to change, say, the teaching of engineering or medicine. Law is inextricably linked to political power: it is a prime tool for shaping and perpetuating social hierarchies and compromises; its workings affect every aspect of public and private life; it is the backbone of political societies, markets, and the foundation of political regimes.

Once proposals of new ways to teach law necessarily entail new ways of thinking about law, of understanding its social role and practical functioning, they represent a potential risk to the social settlements from which they arise. They are, hence, bound to be met with a type of resistance which, far from being merely academic or methodological, bespeaks deeply seated and profoundly consequential political disagreement.

Law schools are the key arena in which this political contest is fought. As Dezalay and Garth observe:

> [L]aw is at the core of the processes that structure, produce and reproduce the field of power. More concretely, the key to the position of law is its relationship to two sets of more or less closely connected institutions—the faculty of law and the state. The faculties of law serve central roles in the reproduction of knowledge, governing elites, and the hierarchies among elites and expertises. Efforts to transform the faculties of law . . . inevitably touch the relatively fragile fabric of power, legitimacy, and domination embedded in the basic structures of those faculties.[19]

Faculties of law are thus the loci where the crucially important social imaginary concerning law is primarily formed and reinforced. Law professors do not simply expose legal concepts: they define what law is or should be, they state the social purpose it serves or should serve. Curricula and teaching methodologies are not neutral elements, but ideological tools to naturalize some readings of norms, interpretation and legal institutions while silencing others.[20] Thus, any transformative project for

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18. "Cidadezinha Qualquer" [Original text: "Um homem vai devagar. / Um cachorro vai devagar. / Um burro vai devagar. / Devagar . . . as janelas olham. / Eta vida besta, meu Deus."] CARLOS D. DE ANDRADE, ALGUMA POESIA (Companhia Das Letras 2013).

19. YVEZ DEZALAY & BRYANT G. GARTH, THE INTERNATIONALIZATION OF PALACE WARS: LAWYERS, ECONOMISTS, AND THE CONTEST TO TRANSFORM LATIN AMERICAN STATES 5 (1st ed. 2002).

20. As Duncan Kennedy points out in a well-known piece: "much of what happens [in Law

legal education is a proposal to lay bare the non-neutral nature of traditional models and ultimately advocates changes in law itself. Innovative proposals for legal education represent, in critical ways, a challenge to the often unstated social arrangements implicit in the traditional teaching model. This is certainly true in Brazil, as a brief overview of the origins of its law schools will help understand.

The first Brazilian law schools were created in 1827 by imperial decree to provide the newly independent country with a much-needed legal bureaucracy.[21] It would indeed be awkward for the young nation to keep on having its Justices and government officials trained in Coimbra (as it had customarily been done) after having broken away from Portugal in 1822.[22] The State needed to prove capable of educating

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schools] is the inculcation through a formal curriculum and the classroom experience of a set of political attitudes toward the economy and society in general, toward law, and toward the possibilities of life in the profession. Duncan Kennedy, *Legal Education and the Reproductions of Hierarchy*, 32 J. LEGAL EDUC. 591, 595 (1982).

21. SÉRGIO ADORNO, OS APRENDIZES DO PODER: O BACHARELISMO LIBERAL NA POLÍTICA BRASILEIRA 77 (Paz e Terra ed., 1988) (Braz.) (stating that "[t]he creation and foundation of legal courses in Brazil, in the first half of the nineteenth century, nourished itself from the same mentality that guided the path of most social movements that resulted in the political autonomization of that Society: the political individualism and the economic liberalism. The constitution of the national state demanded both the cultural autonomization and the bureaucratization of the state apparatus." [Original text: "A criação e fundação dos cursos jurídicos no Brasil, na primeira metade do século XIX, nutriu-se da mesma mentalidade que norteou a trajetória dos principais movimentos sociais que resultaram na autonomização política dessa sociedade: o individualismo político e o liberalismo econômico. A constituição do Estado Nacional reclamou tanto a autonomização cultural quanto – e sobretudo – a burocratização do aparelho estatal."]). *See also* Maria de Lourdes de Albuquerque Fávero, *A Universidade no Brasil: das origens à Reforma Universitária de 1968*, *in*: EDUCAR EM REVISTA 17 (2006) (Braz.), available at: http://revistas.ufpr.br/educar/article/view/7609/5423.

22. The link between law schools and the need to provide the State with a new bureaucracy becomes clear when we observe that law schools were only created after independence, unlike those of medicine (1808) and engineering (1810). *See* Maria de Lourdes de Albuquerque Fávero, *A Universidade no Brasil: das origens à Reforma Universitária de 1968*, *in*: EDUCAR EM REVISTA 17, 20-21 (2006) (Braz.), available at http://revistas.ufpr.br/educar/article/view/7609/5423 (stating that "[i]n this context, in the year of the transmigration of the Royal Family to Brazil, the Medical Course of Surgery in Bahia was created by Decree on February 18, 1808, and on November 5, of the same year, it was instituted at the Military Hospital of Rio de Janeiro, a school of anatomy, surgery and medical studies. Other acts are sanctioned and contributed to the installation, in Rio de Janeiro and in Bahia, of two surgical medical centers, headquarters of the current Federal University of Medicine of Rio de Janeiro ("UFRJ") and the Federal University of Bahia ("UFBA") . . . . In 1810, through the Royal Charter of December 4th, the Royal Military Academy was inaugurated in April, of the following year. It was in this Academy that the first cell of what today is the School of Engineering of UFRJ was implanted. Some of the more significant modifications seem to have occurred with the creation of legal course in 1827, instituted in the following year: one on March 1, 1828, at the Convent of St. Francis in São Paulo, and one at the Monastery of St. Benedict in Olinda, on May 15 of that same year." [Original Text: "Nesse contexto, no ano da transmigração da Família Real para o Brasil é criado, por Decreto de 18 de fevereiro de 1808, o Curso Médico de Cirurgia na Bahia e, em 5 de novembro do mesmo ano, é instituída, no Hospital Militar do Rio de Janeiro, uma Escola Anatômica. Cirúrgica e Médica. Outros atos são sancionados e contribuem para a instalação, no Rio de Janeiro e na Bahia, de dois centros médico cirúrgicos, matrizes das atuais Faculdades de Medicina da Universidade Federal do Rio de Janeiro ("UFRJ") e da Universidade Federal da Bahia ("UFBA") . . . . Em 1810, por meio da Carta Régia de 4 de dezembro, é instituída a Academia Real Militar, inaugurada em abril do ano seguinte. Foi nessa Academia que se implantou o núcleo inicial da atual Escola de

its own legal and political elite.

These two components—dependence of the State, bureaucratic vocation—would have long-lasting effects on the way law would be taught in the country. As the prime necessity was that of forming personnel apt to perform various administrative tasks—not necessarily legal in nature—the initial curricula was rather extensive, including subjects such as economics and politics.[23] Law schools aimed at providing students with as much information as possible on every aspect of law in the hope that, later on, this vast amount of information would help them to sufficiently occupy different positions in government.

In spite of changes over the years,[24] this initial design imprinted on Brazilian legal education an enduring propensity to be encyclopedic, with courses usually closely following the structure of the major codes.[25] Typically, such courses were oblivious to practical applications as alumni were expected to learn to solve problems when they started practicing.[26] Almost two centuries later, both these aspects (all-encompassing curricula, internship as prime locus for practical knowledge) are still emblematic of mainstream Brazilian legal education.

Beyond the impact that the goal of forming State bureaucrats had on curricula and teaching priorities, the vicinity to power which characterized law schools also importantly affected their institutional dynamics. Not unlike the English Inns of

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Engenharia da UFRJ. Algumas modificações mais significativas parecem ocorrer com a criação dos cursos jurídicos, em 1827, instalados no ano seguinte: um em 1º de março de 1828, no Convento de São Francisco, em São Paulo, e outro no Mosteiro de São Bento, em Olinda, em 15 de maio daquele ano."]).

23. *See* Oscar Vilhena Vieira, *Desafios do ensino jurídico num mundo em transição: o projeto da Direito GV, in*: RDA – REVISTA DE DIREITO ADMINISTRATIVO, RIO DE JANEIRO 375, 375-407 (2012) (Braz.). p 380. (stating "Joaquim Falcão claims, however, that the establishment of legal courses in Brazil, in 1827, was more oriented to practice and directly conditioned to the training of professionals who could serve the state in formation and the business that promoted/boosted the economy. The law graduate was then prepared for the multiple roles other than lawyering. Hence the introduction of economic and political studies in the curriculum." [Original Text: "Joaquim Falcão reivindica, no entanto, que a criação dos cursos de direito no Brasil, em 1827, era mais orientada à prática e diretamente condicionada à formação de profissionais que pudessem servir ao Estado que se formava e aos negócios que impulsionavam a economia. O bacharel era preparado para múltiplas funções de poder que não apenas a de advogado. Daí a introdução do estudo de economia e política nos currículos."]).

24. *See Cunha,* supra note 17. p. 250 (stating "[m]ainly in São Paulo and Rio de Janeiro, new law schools have been created, with new curricula, materials and methodology have been created by prestigious educational institutions sensitive to the new role of Law in the development of the country.").

25. *See* Vieira, supra note 23, at 382 (providing that "[t]he encyclopedic and basic doctrinal education (in relation to the main law fields) take place in university, which lasts from 3 to four years, while the practice education is done through internships in law firms." [Original text: "O Ensino doutrinário e enciclopédico (em relação aos principais ramos do direito) tem lugar na faculdade, que dura entre três e quarto anos, enquanto o ensino prático de dois anos se dá por meio de estágio."]).

26. David M. Trubek *Reforming Legal Education in Brazil: From the Ceped Experiment to the Law Schools at the Getulio Vargas Foundation* (Univ. of Wis. Legal Stud. Research Paper No. 1180, 2011), available at SSRN: https://ssrn.com/abstract=1970244.

Court,[27] Brazilian law schools were primarily loci for networking and jockeying for advantageous positions in government. The classroom was understandably deemed secondary to the camaraderie in the school´s courtyard or in the nearby bars once allegiances thus formed were essential for future professional success.[28]

For the same reason, technical legal expertise was less important than political acumen, as the ability to ingratiate oneself to the right colleagues was key to success in a country where legal and political elites were virtually identical. Students who prioritized lessons and books over socializing were often ridiculed as *rábulas*, a derogatory term to design petty-minded lawyers.[29] The devaluation of the classroom and the primacy of social networking over academic debate became another hallmark of Brazilian legal education.

In this environment, professors were likewise praised according to their standing on the public stage. More often than not, it was their success outside the academy that validated their position as scholars. Higher court justices, state ministers, and secretaries, alongside the most successful and prestigious private lawyers of the day, were considered natural professors to an institution that aimed at preparing students for government office.[30] They were often worshipped by a crowd of students eager to obtain exactly the kind of successes these masters had achieved.

In line with this cult of personality, the glossing of canonical, authoritative authors was a popular everyday practice. In a markedly hierarchical society, *who* was saying it was frequently more important than *what* was being said. Not unusually, the *canonical author* being quoted was the very professor delivering the class, as the imperial decree which created the first law schools had encouraged professors to write the

27. José G. Ghirardi, *A Praça Pública, a Sala de Aula: Representações do Professor de Direito no Brasil, in*: EVANDRO M. DE CARVALHO & ROSA M. Z. BORGES ET AL.,, REPRESENTAÇÕES DO PROFESSOR DE DIREITO (CRV ed., 2012) (Braz.) (discussing that "[t]he university is, crucially, the place to nourish and strengthen the social and political bonds, which are going to be indispensable to the graduate's successful future. The exchange between the elite's member, the social relation's sedimentation of esteem and friendship (exactly in the perspective of Sergio Buarque de Holanda's friendly man) and the access that this open to a myriad of elite positions, jobs and opportunities, are central to the operation of this first universities . . . . In essence, the environment doesn't differ much from the Inn of Court of England . . . in which the law course was not much more than a waiting period for a placement in the Court, neither from the contemporary Coimbra University. [Original text: "A faculdade é, também, crucialmente, o lugar para criar e fortalecer os laços sociais e políticos que serão imprescindíveis par ao sucesso futuro. O intercâmbio com outros membros da elite, a sedimentação de relações pessoais de estima e amizade (exatamente na perspectiva do homem cordial de Sérgio Buarque de Holanda) e o acesso que isso possibilita a uma gama enorme de cargos, empregos, e possibilidades ocupam lugar central no funcionamento dessas primeiras academias . . . . Em linhas muito amplas, o ambiente não difere muito dos Inn of Court da Inglaterra dos séculos XVI e XVII, em que o curso de direito era pouco mais que um período de espera por uma colocação na Corte, nem da contemporânea Coimbra."]

28. JOHN GUY, TUDOR ENGLAND 19–20 (1988).

29. JOAQUIM FALCÃO, *LAWYERS IN BRAZIL IN* LAWYERS IN SOCIETY: THE CIVIL LAW WORLD 400–42 (Richard L. Abel & Philip S. C. Lewis, eds. 1988).

30. JAMES A. GARDNER, LEGAL IMPERIALISM: AMERICAN LAWYERS AND FOREIGN AID IN LATIN AMERICA 67 (1980).

textbooks for their own courses.[31] A *magister dixit* ethos became deeply entrenched in Brazilian law schools. The selection of new professors, in tandem with this practice, seemed to depend more on personal allegiances than on academic achievement.

Since those times, it has been customary for young scholars in Brazilian law schools to start their teaching careers in the same institution where they have graduated, a practice strongly discouraged in other countries. Needless to say, this greatly increases the risk of nepotism and endogeneity (formal selection processes notwithstanding) due to the personal links candidates and professors inevitably develop throughout the course. This personal dimension, in turn, has contributed to lessening the importance of technical legal mastery and academic skills as a means to gain access to a teaching career in law vis-à-vis the ability to build up useful political connections.

The working together of these elements—devaluation of classroom work and technical legal skills; prevalence of *magister dixit* over scholarly debates; political prestige as the basis for academic reputation—would become characteristic of Brazilian legal education. Over time, as the rise of industrialization and urbanization profoundly reshaped the agrarian society, and for which the first law schools emerged, these elements would come under increasing criticism. They started being seen as the source of what was more and more perceived as the dismal quality of legal education in the country. There was widespread consensus that the substantial changes in the social, political and economic matrices of the country had not affected the teaching of law in the now more numerous schools.[32]

As early as 1955, professor San Thiago Dantas delivered a caustic denunciation of the obsolescence of Brazilian legal education.[33] His commencement speech at the *Faculdade Nacional de Direito* is a shrewd critique of the disconnect between the training students received at university and the tasks they needed to perform.[34] In 1986, José

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31. "Art. 7 - The Lenses will choose the compendiums of their profession, or arrange them, not existing already, as long as the doctrines are in agreement with the system sworn by the Nation. These compendia, once approved by the Congregation, will serve interim; submitting to the approval of the General Assembly, and the Government will have them printed and supplied to the schools, and their authors will be given the exclusive privilege of the work for ten years."Art. 7 de Agosto 11, 1827, Collecçáo das leis do Imperio do Brazil, available at http://www2.camara.leg.br/atividade-legislative/legislacao/publicacoes/doimperio/colecao2.html (Braz.) (our translation) [Original text: "Art. 7.º - Os Lentes farão a escolha dos compêndios da sua profissão, ou os arranjarão, não existindo já feitos, contanto que as doutrinas estejam de acordo com o sistema jurado pela Nação. Estes compêndios, depois de aprovados pela Congregação, servirão interinamente; submetendo-se porém à aprovação da Assembléia Geral, e o Governo os fará imprimir e fornecer às escolas, competindo aos seus autores o privilégio exclusivo da obra, por dez anos."] (Rio de Janeiro, 21 de agosto de 1827. Foi publicada esta Carta de Lei nesta Chancelaria-mor do Império do Brasil.)

32. According to the National Institute of Educational Studies and Research ("INEP")'s data, in 2000 there were 442 graduate law courses. In 2015, this number raised to 1,172, considering both online and presential courses. INEP, SINOPSES ESTATÍSTICAS DA EDUCAÇÃO SUPERIOR – GRADUAÇÃO, http://portal.inep.gov.br/web/guest/sinopses-estatisticas-da-educacao-superior.

33. Oscar Vilhena, *Desafios do Ensino Jurídico Num Mundo em Transição: O Projeto da Direito FGV*, 261 Revista de Direito Administrativo, Rio de Janeiro [R.D.A.] 375, 382 (2012) (Braz.).

34. *Id.* (stating "The famous San Thiago Dantas's opening lecture, regarding legal education

Eduardo Faria, professor at one of the most prestigious law schools in the country, would take up and accentuate Dantas' criticism.[35] His *A Reforma do Ensino Jurídico* (The Reform of Legal Education)[36] deplores the gap between the traditional model—marked by emphasis on formalism, teacher-centered pedagogy, lecturing, and parochialism—and concludes that Brazilian legal education has become blatantly incompatible with the country´s new context, both in economic and political terms.[37]

Some attempts to modernize law schools appeared in the 1960s and 1970s—of which CEPED is the most emblematic example.[38] These attempts aimed at altering the paradigms for both the teaching and researching of law. These efforts were, however, incapable of understanding and dialoguing with the Brazilian legal community. Even some of the most preeminent participants of this movement believe it was misled in crucial ways, as David Trubek and Marc Galanter discuss in *Scholars in Self-Estrangement* (1974) and James A. Gardner in *Legal Imperialism* (1980).[39] These authors criticize, above all, what they saw as a noncritical, culturally blind effort to export those legal models deemed paradigmatic by powerful countries.[40]

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and the Brazilian crisis, reverberates in a dashing and tangential manner this debate that has been happening both in Europe and in the U.S, but that in Brazil hadn't echoed, in spite of Oliveira Viana's argument strength, and even of the necessities imposed by the economic and political model. To some extent, the resistance of law school to modernization put into motion a process of decadency of the law graduate's role in the Brazilian society, opening up space for new social engineering . . . . In this conference, San Thiago Dantas points, in the Brazilian context, to a crisis similar to the one experienced by the European legal education, which moved away from social reality, focusing on the production and diffusion of doctrinal knowledge . . . . In Brazil, as well as in the rest of Latin America, a dual education model was maintained, with the doctrinal education in school and the practical activities restricted to law firms and government department." [Original text: "A célebre aula inaugural de San Thiago Dantas, de 1955, sobre a Educação jurídica e a crise brasileira, repercute de uma maneira polida e tangencial esse acirrado debate que vinha ocorrendo tanto na Europa como nos Estados Unidos e que, no Brasil. Não havia encontrado tanto eco, apesar da força dos argumentos de Oliveira Vianna, e mesmo das necessidades colocadas pela mudança do nosso modelo econômico e político. Em alguma medida, a resistência das escolas de direito em se modernizar deu início a um processo de decadência do papel do bacharel na sociedade brasileira, abrindo espaço para novos engenheiros sociais . . . . Nessa conferência, San Thiago Dantas aponta, no contexto brasileiro, crise semelhante àquela experimentada pelo ensino jurídico europeu, que se deslocou na realidade social, concentrando-se na produção e difusão de conhecimento doutrinário . . . . No Brasil, assim como no restante da América Latina, manteve-se o modelo de educação dual, com ensino da doutrina na escola e da prática nos escritórios e repartições públicas."].).

35. José Eduardo Faria, *A Reforma do Ensino Jurídico in* 21 REVISTA CRÍTICA DE CIÊNCIAS SOCIAIS [R.C.C.S.] 45, 45–68 (1986) (Braz.).

36. *Id.*

37. *Id.*

38. JAMES A. GARDNER, LEGAL IMPERIALISM: AMERICAN LAWYERS AND FOREIGN AID IN LATIN AMERICA 62–63 (1980). The Center for Study and Research in Legal Education (Centro de Estudos e Pesquisas no Ensino do Direito), also known as CEPED, is a center of studies and research on law teaching opened to further American legal assistance in Brazil. Funded by the U.S. Agency for International Development ("USAID") and the Ford Foundation, CEPED sought to reform Brazilian law schools to transfer and reinforce American models of lawyers and the law.

39. *See id.*; *see also* David M. Trubek & Marc Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, 4 WIS. L. REV. 1062, 1078 (1974).

40. *See generally* GARDNER, *supra* note 38; *see also* Trubek & Galanter, supra.

A couple of more endogenous efforts to modernize legal education should also be mentioned. In the 1980s, Pontifical Catholic University of São Paulo School of Law reduced the number of students per class and introduced mandatory student-presented seminars with problem solving methods in most of its courses.[41] Around the same time, a number of key theoretical legal scholars started challenging legal formalism and the authoritarian legal system. This movement known as Alternative Law led by Roberto Lyra Filho in 1983 from the University of Brasilia Law School, resembles the origins of the Critical Legal Studies Movement in the U.S. Despite their undeniable relevance and the impact over legal thinking, these attempts at change remained, for the most part, peripheral to the everyday life of legal teaching. In most law schools, lecturing continued ruling absolute, as did the tacit understanding that the skills needed for actual, effective lawyering should be learned outside the university.[42]

To make matters worse, some governmental policies for higher education proved seriously ill-advised. In the 1990s, the (correct) diagnosis that access to Brazil's university system was all but impossible to a huge percentage of the population led the government to lessen the hurdles for opening new institutions. This resulted in an exponential growth in the number of institutions: from 165 law schools in 1995, to 505 in 2001, to 1,308 in 2015.[43] The government's expectation that a large number of schools would lead to competition, and competition, to better quality education, tragically never materialized.[44] The result of this uncontrolled massification process was a further downgrading of the already gravely dysfunctional legal education system in the country.

The fact that Dantas's main arguments could still be sensibly restated by Vieira many decades later bears testimony to the resistance of the traditional legal education model: "The longevity of the . . . traditional models, which have only partially been modernized, with the updating of curricula and acceptance of a handful methodological changes . . . is impressive. To a certain degree, they confirm Douglas North's contention that once an institution is established, it becomes very difficult to change its nature."[45]

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41. GARDNER, *supra* note 40, at 83– 84.

42. Vilhena, *supra* note 33, at 383.

43. INEP, *supra* note 32.

44. Vilhena, *supra* (discussing that "[the dismal quality of our educational system, for instance, which this survey made clear (Pisa, 2010), keeps us way behind OCDE countries. This factor not only limits the possibility of changing our development model but also generates perverse social consequences. [Original text:"A precariedade do sistema de educação, por exemplo, constatada pela pesquisa (Pisa, 2010), nos coloca a uma grande distância dos países da OCDE. Esse fator não apenas limita uma mudança de nosso modelo de desenvolvimento econômico, como tem nefastas consequências sociais."]).

45. Vilhena, *supra*. "The longevity of the two traditional models, which have been only partially modernized, updating curriculums, accepting some innovations in methodology and mutual fertilization, it is impressive. To some extent, they confirm Douglas North's proposition that, once established, it is incredibly hard to change their nature." [Original text: "A longevidade dos dois modelos tradicionais, que têm sido apenas relativamente modernizados, com atualização de currículos, aceitação de algumas inovações metodológicas e mútua fertilização, é impressionante. Em certa medida confirmam a proposição de Douglas North de que, uma vez estabelecidas as instituições,

Created to destabilize institutional inertia and to bridge the gap between legal research, the classroom, and Brazilian demands for updated legal thinking and legal expertise, FGV Direito SP has embraced the challenge to create a new law school in this congested market.[46] It has done so based, first, on the evidence that the country lacked both an autonomous legal academy, buffered from the interests of the legal profession, and a new generation of professionals capable of aptly responding to the needs arising from globalization and from the social changes which importantly transformed the country since the return to democratic rule.

In this new context, Brazil could no longer ignore the demand for an institution able to host independent legal research, open to empirical enquiry and to the designing of solutions to complex practical problems. There were new demands from a legal profession that had to respond to a more complex, globalized and entrepreneurial context, both in the private and public spheres.

Moreover, Brazil, at that time, made a bid to become a more active global player.[47] This entailed a demand for institutional protagonism, since globalization is also about institutional competition. A country aiming to play a larger role in the globalization process has to develop a legal culture and legal institutions apt represent such ambition. The process of implementing this ambitious project within a conservative educational system, a bureaucratic and traditional legal environment, and a deeply unequal society would necessarily have to face important challenges.

III. THREE MAIN CHALLENGES ATTACHED TO OFFERING GLOBAL-ORIENTED LEGAL EDUCATION IN BRAZIL

It was against this uninspiring background that the project of FGV Direito SP took shape. FGV Direito SP's new curriculum and novel methodology spring, thus, from this bold commitment to providing Brazil with the legal professionals it needs to grow and to overcome social disparity in the context of a globalized world.[48] As a result, a number of new subjects have been created and taught for the first time as mandatory undergraduate courses in Brazil.[49] Their names (e.g., Crime and Society, Regulation and Development, Corporate Procedural Law; Law and Economics; Global Law; Law and Development; Law and Arts) bespeak the determination to think and present law in its dynamic relationship with other areas of knowledge and practice.[50] Unlike the customary practice in Brazilian universities, FGV Direito SP does not see law as a more or less self-contained reality, to be learned in its entirety

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é muito difícil alterar a sua natureza."].

46. Luciana Gross Cunha & José Garcez Ghrardi, Legal Education in Brazil: The Challenges and Opportunities of a Changing Context 4, Conference, The Brazilian Legal Profession in the Age of Globalization, (Nov. 10, 2015) (unpublished conference paper) (found at http://clp.law.harvard.edu/assets/Panel-3-Legal-Education.pdf.)

47. *Id.* at 5.

48. *Id.* at 13.

49. *Id.*

50. *Id.*

and then applied to the world. It suggests that law is rather an ever-changing, conflictual object that is defined as it relates to other dimensions of social practice.

A new curriculum alone would do little to change legal education, however, if not coupled with a new methodological approach to the teaching of law. Therefore, apart from moving away from the letter-of-the law, statute-commentary syllabuses which characterize traditional legal teaching, FGV Direito SP implemented a student-centered methodology designed to foster problem-solving abilities and to lead students to think critically about law.[51] The reasons for adopting this new methodology, however, are well beyond sheer pedagogical concerns.

The traditional lecture method adopted in most Brazilian law schools deserves criticism not only because it presents the law as a somewhat static, fixed reality to be memorized and learned before it can be put to use. FGV Direito SP's opposition to it, as already pointed out, is rooted in the belief that it critically reinforces a hierarchical pattern of relationship which has been a long, problematic component of Brazilian society. It reinforces the notion that knowledge and truth are above, with those in the position of power and prestige. It implicitly requires from students an attitude of passive acceptance and silent obedience, as they are not proficient, nor educated enough, to have the right to genuinely question their masters.

The political innuendo of such a tradition, especially in a country like Brazil, is clear enough. It would be hard to overstate the impact on our national story of government practices that mirror exactly the concept of authority implicit in this form of teaching and of legal teaching, in particular, something which makes matters even more dangerous. It helps buttress a notion of law as a prerogative for a privileged few, something from which the ordinary person is understandably detached and ignorant of.

Therefore, the methodological changes advocated by and brought about by the School represent more than a new way of teaching the law. Together with the efforts to become an international reference in legal research, these changes embody a new way of thinking about the law, about the country and about each citizen's right and duty to make their voice heard and to contribute to creating a more just Brazilian society. They reflect the core mission of the Getulio Vargas Foundation, which is "to contribute to the social and economic development of the country, to the enhancement of national ethical standards, to a shared and responsible governance and to the strengthening of Brazil's international position."[52]

This new approach to law has been hailed, in Brazil and Latin America, as a much-needed break with the past and as a blueprint for future projects. FGV Direito SP and a few other Latin America law schools are engaged in educating a distinct intellectual new generation of lawyers and legal scholars capable of effectively taking part in designing complex business models, in solving social inequality problems, and in

51. *See id.* at 12.

52. *About FGV*, FUNDAÇÃO GETULIO VARGAS, http://www.cies-uni.org/en/brazil/about (last visited Nov. 16, 2017)

improving government practices.

And this is for good reason. Legal professionals in Brazil are today much more exposed to the impact of a globalized world than they were just ten years ago. They will probably be even more exposed a decade from today. Globalization is becoming increasingly complex, blurring traditional frontiers in the way it reshuffles global and local realities. Brazil has been acutely affected by this process.

The country's main trading partner is no longer North America.[53] More intense, commercially meaningful relations with China, Arab countries, and Latin American neighbors have entailed changes that command a renewing of the way Brazilian legal professionals shape their professional practice.[54] More and more, it is paramount that they understand law's intricate connections with areas such as the economy, the corporate world, and international politics. Nor can they any longer avoid a deep understanding of the relationship between different legal regimes, their norms and practices.

The country has become more active in the discussion of themes impacting global issues—e.g., international trade, environmental regulation, global warming, and human rights. This requires both the capacity to understand the intricacies of international regulation and the skills to design and analyze legally effective proposals. This holds true both for the broader international arena and for the more specific context of Latin American realities.

As already mentioned, globalized-capitalism today is not a system of free competition among corporations in the international arena. States and, therefore, law are an integral part of this competition for development. They are partners of (or obstacles to) entrepreneurs, since they regulate activities, offer incentives, or put up barriers to their activities. This can only be achieved if adequate legal tools are in place and if they are effective in implementing policies. The need for a body of legal professionals capable of designing and operating such tools is, thus, of prime strategic importance.

Besides adopting a new curriculum, as research and teaching methodologies, FGV Direito SP develops four specific strategies to structure a more cosmopolitan environment for legal research and education:

a) The first strategy, in place since the foundation of the School, was the decision to attract professors and researchers with some international experience. Today, all members of the full time faculty have concluded their LL.M.s, PhDs, or post-PhDs abroad. Faculty selection processes are open to foreign academics. A recent junior faculty initiative, combined with a post-PhD program, was launched in 2016 to attract foreign academics to São Paulo. These initiatives aim to provide both comparative and global legal perspectives as an ordinary element of

53. Ministry of Industry, Foreign Trade and Services http://www.mdic.gov.br/index.php /comercio-exterior/estatisticas-de-comercio-exterior.

54. Cunha & Ghirardi, *supra* note 46.

teaching and research;

b) The second initiative is the Global Law Program, by which the School receives international senior scholars for short periods to offer one credit courses both to Brazilian students and exchange program students. Courses are normally offered in English and accompanied by a faculty member. This program has received seventy-six professors since 2009. Besides amplifying the exposure of students to global and comparative law teaching experiences, the Global Law Program was also designed to foment academic encounters that are fructifying in joint research projects.

   The Global Law Program is also engaged in promoting the exchange of students. Since 2009, the School has sent 159 students abroad, which means around twenty percent student body, and has hosted 137 foreign students. This movement occurred mostly within the network of schools with which we have agreements or with Law School Global League affiliates. At this moment a major fundraising effort is being done to permit students with different economic backgrounds to take part on the exchange program;

c) The Law School Global League is a result of an original joint effort between FGV Direito SP and Tilburg University Law School. The primary objective, since the beginning, has to aggregate law schools around the globe that were strongly committed to globalize their programs and initiatives. The idea was to structure a more horizontal arena to discuss the challenges to promote legal education in a more connected and globalized world. Today, the Global League counts twenty-four members, distributed among all continents. The League carries out its mission by promoting four main activities: an annual dean´s meeting, a summer course, and an academic conference; and the hosting of four research groups, in the fields of human rights, new technologies and the law, business and anti-corruption;

d) A fourth strategy is directed to improve legal research in a context of expansion of global scholarship. Legal research in emerging academic communities can become influenced and even captured by theoretical lineages, subjects, interests, and questions formulated mostly in the global north academia. The aim to engage in a more cosmopolitan academic dialogue requires not just openness, but also knowledge, excellence, and specific training to participate in global research networks and research agendas. The challenge is to engage in this global debate without losing the perspective from where you are and the issues you are supposed to confront.[55]

In addition to the initiatives above mentioned, which have by themselves

55. *Id.*

strongly impacted the capacitation of our academic community, the School is profoundly committed to fomenting research driven to address complex institutional, social, and economic issues that affect not only the Brazilian society but also emerging countries. The FGV Fund for Applied Research, and the several centers focused on applied research, are an institutional effort to produce research that dialogues with the international debate without losing sight of local challenges. In this vein, the School also created a specific seminar to support its professors' efforts to publish and engage in international academic dialogue.

IV. THREE TRAPS: LEGAL COLONIALISM, ACADEMIC SOLIPSISM, AND ELITISM

[W]hat happens when a new work of art is created is something that happens simultaneously to all the works of art which preceded it. [. . .] The existing order is complete before the new work arrives; for order to persist after the supervention of novelty, the whole existing order must be, if ever so slightly, altered; and so the relations, proportions, values of each work of art toward the whole are readjusted; and this is conformity between the old and the new.

- T.S.Eliot – Tradition and the Individual Talent[56]

T.S. Eliot's remarks on innovation in literature have become famous as they seemed to felicitously synthesize the broader dynamics of innovation and tradition. They seem to suggest that any new social practice or institution depends, for being conceivable and becoming viable, on a meaningful dialogue with the order it purports to transform. This dialogue is indeed inevitable, for the very assessment that things need to be changed, discarded, or preserved is founded on a shared understanding of what is at stake.[57]

That is why sharp divides between *traditional* and *innovative* tend to be misleading and, often, counterproductive. Misleading because they hint at an absolute break not observable in social practices, where a substantial degree of continuity is a condition, not an impairment, to change.[58] Even extraordinary revolutionary break-ups could not have been successful without resource to many elements of the order they openly contested.

In more ordinary social change, what occurs is a dialectic clash between rival or contesting viewpoints and attitudes which keep on sharing, nevertheless, a good amount of common ground. That is why the result of such transition processes is usually not an *all or nothing, old or new* affair but, as Eliot points out, a broad readjustment of practices and a resignifying of the social institutions disputed.

Proposals for innovating law schools fall into this category of social contention and must, therefore, find a way to negotiate their way with the tradition it wills to alter and with the social groups which act as its gatekeepers. This general trend gets

56. T. S. ELIOT, THE SACRED WOOD: ESSAYS ON POETRY AND CRITICISM 49–50 (6th ed., reprt. 1960).

57. CHARLES TAYLOR, MODERN SOCIAL IMAGINARIES 23–30 (Dilip Gaonkar et al. eds., 2004).

58. *Cf.* ALASDAIR MACINTYRE, AFTER VIRTUE: A STUDY IN MORAL THEORY 204–225 (3rd ed. 2007).

complicated when translated to the specific setting of the global South. In these countries, a project aimed at offering global-oriented legal education in an emerging power, apart from negotiating with traditional competitors, has to attempt to avoid falling into the traps of *legal colonialism*, *academic solipsism,* and *social elitism*. Each of them represents one aspect of the challenge of building a positive dialogue between the global and the local in the global South.

Legal Colonialism.

Legal colonialism is a chapter in the much broader debate on cultural exchanges and ideological imperialism.[59] From this perspective, the creation of a less parochial legal education experience in the global South runs the permanent risk of being seen, at best, as an attempt to merely transplant U.S./European models to a regional context.[60] At worst, it may be perceived as a spearhead to the agenda of North cultural dominance.

In different degrees and at different times, both types of criticism have emerged in Brazil. The latter arose mainly in the 1960s, when pioneer efforts to renew Brazilian legal education, sponsored by American agencies, had as a background a climate of violent political polarization between left and right-wing groups.[61] The former was noticeable at the beginning of this century, and was linked to the legal community's reaction to FGV Direito SP's project.[62] With varying levels of cogency, these arguments still represent a powerful rhetorical strategy in a country again bitterly politically divided and severely split over the desirable national attitude in face of globalization.[63]

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59. *See* LINDA TUHIWAI SMITH, DECOLONIZING METHODOLOGIES: RESEARCH AND INDIGENOUS PEOPLES 21–23 (2008) (se quiser colocar um trecho: "The concepts of imperialism are crucial ones which are used across a range of disciplines, often with meanings which are taken for granted. The two terms are interconnected and what is generally agreed upon is that colonialism is but one expression of imperialism. Imperialism tends to be used in at least four different ways when describing the form of European imperialism which 'started' in the fifteenth century: (1) imperialism as economic expansion; (2) imperialism as subjugation of 'others'; (3) imperialism as an idea or spirit with many forms of realization; (4) imperialism as a discursive field of knowledge . . . . Colonialism became imperialism outpost, the fort and the port of imperial outreach . . . . Colonialism was, in part, as image of imperialism, a particular realization of the imperial imagination.").

60. *Cf.* Daniel Berkowitz, Katharina Pistor & Jean-Francois Richard, *The Transplant Effect*, 51 AM. J. COMP. L. 163 (2003).

61. To illustrate this state of affairs, we can mention two events: (1) At least 150 thousand people attended the "Central do Brasil" rally, in which the then-president João Goulart called for political and social reforms, including: rent control, nationalization of oil refineries, and re-distribution of lands; (2) in response, six days after the rally and indicating the polarized political atmosphere, the "Marcha da Família com Deus pela Liberdade (March of the Family with God for Liberty) was organized. This event represented the conservative interests and sectors of society. *See* BANDEIRA, LUIZ & MONIZ, ALBERTO, *O GOVERNO JOÂ GOULART: AS LUTAS SOCIAIS NO BRASIL* (8th ed. 2010).

62. AMBROSINI, Diego Rafael. Construção de um sonho: Direito GV : inovação, métodos, pesquisa, docência. São Paulo: FGV-Direito Rio, 2010.

63. The World Social Forum held its three first meetings in Brazil (2001-2003). The diverse responses it prompted from social and political groups is representative of how antagonistic

Proposals for renewing legal education have to take this criticism seriously. New forms of lawyering and new understandings of law are indices of broader ideological constructs and, therefore, not value-neutral.[64] A-critically and naively incorporating them to the curricula would indeed risk just replicating, in the country, models hegemonic in the global North. Ignoring or denying such risk would be foolish and dangerous.

The antidote to that is not, however, ignoring the emergence of a new global dynamics for law and shutting oneself in some imaginary form of legal nationalism. Refusing to consider changes is as deleterious as accepting them unquestioningly. Critics of the *ideological bias* of new forms of legal education in a global context are often slower to recognize their own ideological biases. If it is true that all educational change is ideologically motivated, so is educational conservatism.

In Brazil, these ideological confrontations over legal institutions are set in a very peculiar social framework, which Roberto Schwarz has discussed in detail. According to Schwarz, Brazilian 19th century elite found a way to create a compromise between bourgeois liberalism, in discourse, and slave work, in practice which had profound effects in the social functioning of the country:

> The same occurs with institutions, bureaucracy and justice, for example, which, though being governed by patronage, proclaimed the forms and theories of the modern bourgeois State . . . . This is what is new: once adopted, European ideas and reasons could serve, and often served, to justify, nominally objectively, the moment of arbitrariness which is constitutive of the favor.[65]

The debate over innovation in legal education must then strive to avoid the twin snares of naïve transplanting and naïve preserving and face the difficulties attached to producing a much-needed institutional *aggiornamento* in a large country in the global South.

The best path to take seems that of being clear about the choices one is making and explicit about the reasons for making them. The workings of international financial markets, organizations and agencies, the problems of refugees, environmental

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assessments of globalization are in the country.

64. DEZALAY & GARTH, *supra* note 19 at 81; *see also* Lucille A. Jewell, *Bourdieu and American Legal Education: How Law Schools Reproduce Social Stratification and Class Hierarchy*, 56 BUFFALO L.R. 1155 (2008)*; see also* Gerald Turkel, *Michael Foucault: Law, Power, and Knowledge*, 17 CARDIFF J.L. & SOC. 170 (1990).

65. ROBERTO SCHWARZ, AS IDEIAS FORA DO LUGAR 6 (2014). (stating that: "the same happens on the institution sphere. For instance, with bureaucracy and justice, which, although dictated by clientelism, proclaimed the forms and theories of the modern bourgeois state . . . . Hence the news: adopting European ideas and reasonings, they could serve, and many times they did, as justification, objectively nominated, for the moment of discretion which is the nature of favoring." [Original text: "O mesmo se passa no plano das instituições, por exemplo com burocracia e justiça, que embora regidas pelo clientelismo, proclamavam as formas e teorias do estado burguês moderno . . . . Aí a novidade: adotadas as ideias e razões europeias, elas podiam servir e muitas vezes serviram de justificação, nominalmente objetiva , para o momento de arbítrio que é da natureza do favor."]).

hazards and terrorism affect the country and pressure its legal and political institutions to become able to respond to them. These problems will not go away simply by being ignored, nor will Brazil's capacity to handle them be improved if no action is taken.

In the international arena, these problems have been shaped and dealt with, from a legal viewpoint, by instruments and dynamics mirroring, unsurprisingly, those of the global North powers leading the globalization process.[66] This hegemony is hardly surprising and has been described and discussed at length.[67] Acknowledging that this is so does not signify automatically subscribing to this model. On the contrary, playing a relevant role in this scenario without passively submitting to it or accepting it requires mastering such viewpoints and instruments.

A proposal for positively changing legal education in Brazil needs, therefore, to reorient legal research to be at the same time more empirical and critical than traditional formalist scholarship, and to educate students to be capable of critically reading the new *global law* scenario. They have to be taught the rules currently shaping the game so that they can, operate, question, and eventually contribute to shaping these rules. A refusal to learn or teach the grammar in which global transactions are made denies the country the much-needed skills of being able to question it.

This critical stance coupled with in-depth understanding of the working of the system and its implications is the best method to correct the danger of legal colonialism. By bringing to the open the inextricable connections between legal education and political and ideological allegiances, the creation of a new model of thinking about law burdens both its supporters and critics with the responsibility of offering clear arguments in defense of their respective positions. And this is, in itself, a major contribution to improving the quality of legal education in the country.

Academic Solipsism

The second trap to be avoided is that of *academic solipsism*, that is to say, that of becoming isolated in one's own institutional culture. By adopting distinct research and teaching methodologies, which challenge established patterns, the new educational experience may lack the capacity to insert itself as an effectively innovative force in a more traditional national legal setting. As many of its key features (e.g., curriculum, methodologies, institutional design) do not find counterparts in the existing law schools, there is the real risk of this type of academic isolationism.

The critical stance exposed above is a powerful factor in avoiding this trap. FGV's project was that of creating *a new law school in Brazil*, a formula in which both the novelty (*new* law school) and the place (*in Brazil*) are equally important.[68] That is to say,

66. ELEONORE KOFMAN & GILLIAN YOUNGS, GLOBALIZATION: THEORY AND PRACTICE 3–10 (2008).

67. *Cf.* DAVID HELD & ANTHONY MCGREW, GLOBALIZATION; ANTI-GLOBALIZATION: BEYOND THE GREAT DIVIDE (2007); KOFMAN & YOUNGS, *supra*; WILLIAM I. ROBINSON, PROMOTING POLYARCHY: GLOBALIZATION, US INTERVENTION AND HEGEMONY (1996).

68. LAWYERS AND THE CONSTRUCTION OF TRANSNATIONAL JUSTICE 178–79 (Yves Dezalay and Bryant G. Garth eds., 2012).

the reform proposed is one that wishes to make sense within the legal culture of the country, a goal that cannot be achieved without permanent dialogue with existing models.

As suggested above, the critical approach to the new methodologies and perspectives necessarily involves an understanding of their points of contact with all the elements of the hegemonic forms of legal education. In fact, by identifying such points of convergence the new project helpfully makes explicit the points of divergence and allows for a very profitable debate on the rationale underneath both proposals.

The new perspective embodied by FGV Direito SP, and the estrangement it caused, represents an opportunity for a highly desirable plurality in Brazilian legal education. It brings to light the fact that in a healthy democracy, Law will and should be perceived differently by different groups. The alternatives the new curriculum and methodology bring forth offer a prime opportunity for traditional practices to make their case anew. It allows for advocates of traditional methods explain more clearly why, in their view, such methods still make sense in changed national and international contexts.

FGV Direito SP's experience has shown that this dialogue starts to take place in Brazil and that methodological solipsism is being slowly overcome. Even though there are numerous examples of resistance, and criticism against a more problem oriented, interdisciplinary, and globalized approach to law, a new dialogue has begun. The academic exchange with more progressive sectors of traditional law schools has increased, mostly in the fields of teaching methodologies and curriculum reforms.[69] The awareness of the divergence between models, and of the reasons for it, has meant that Brazilian students interested in law, for the first time, have a real option when deciding which university to apply for. It is no longer, as before, a choice between good quality and bad quality law schools (which is not a choice at all), but between competing ways of conceptualizing law and its institutions.

The dialogue with the profession, and society at large, has been easier. Both public and private practices are more open to innovation, since they daily have to face the challenges coming from the processes of democratization and globalization, which are difficult to respond with the traditional legal tool box. Evidence of this kind of dialogue is the large number of research and courses done in partnership between FGV and the public sector. It is also important to mention the growing competition

69. In this sense, FGV has been deeply engaged, offering winter and summer courses on teacher training on active and student-centered methodologies and online courses. FGV DIREITO SP, http://direitosp.fgv.br/sites/direitosp.fgv.br/files/arquivos/edital-curso_de_inverno_de_formacao_docente_em_ensino_juridico_0.pdf. In addition, FGV has been organizing events and seminars on the topic, such as the lecture "Do we still need the classroom?" *Ainda precisamos da sala de aula?*, FGV DIREITO SP, http://direitosp.fgv.br/evento/ainda-precisamos-sala-de-aula; as well as the event "Legal Education on debate: initiatives that make a difference." *Ensino Jurídico em debate: iniciativas que fazem a diferença*, FGV DIREITO SP, http://direitosp.fgv.br/evento/ensino-juridico-debate-iniciativas-fazem-diferenca.

for FGV´s students by law firms.[70] Finally, it is worth pointing a disproportional presence of FGV presence in the public debate. The risk of solipsism has therefore been softened by the commitment of the school and its community to focus on issues of pressing importance for the Brazilian society at large, and not only for the economic sector that are beneficiaries of the globalization process.

Elitism

Social elitism is perhaps the most difficult trap to be overcome by any law school offering global-oriented sophisticated legal education anywhere. In face of the country's deep and widespread inequality, there is a danger that educational experiences aiming at global excellence may contribute, in spite of their original aims and potential merits, to deepen the gap between those who have and those who do not have the means to access such experiences, as the gap between those who have acquired and have not acquired this global legal oriented education.

This risk becomes greater given the high costs involved in any project promising prime-quality education. Top quality research and teaching are known to demand substantial funding as they involve, apart from stipends apt to attract talented faculty, significant resources to support core academic activities (e.g., updating of library, sponsoring of international events, modernizing of equipment). If this is true in any country, it becomes much more problematic in Brazil, where around 97 percent of the population earns no more than five times the meager minimum wage.[71]

This problem of exclusionary costs has remained less visible for a long time in Brazilian higher education, including law schools. It has, however, always existed. The most prestigious universities in the country are, with a handful of exceptions, public institutions with tuition being paid for by all taxpayers, not by the students who attend them. Historically, access to these institutions has been possible almost exclusively to top-middle and upper class families, who could afford to send their children to expensive private primary and secondary schools.[72] Less fortunate students had to attend private institutions, mostly low-priced and very low quality. By this regressive model of public university "free" education, the country has been able to promote and protect one of the most persistent and profound levels of inequality, among democracies. In the last decade, several programs of affirmative action are repositioning, for the good, the role of public universities.[73]

Thus, a project that intends to offer top quality education which lessens, instead

70. DEZALAY & GARTH, *supra* note 68, at 183.

71. According to the Brazilian Institute of Geography and Statistics ("IBGE"), around twenty-two percent of the Brazilian population earns a maximum of two times the minimum wage, and seventy-five percent earns between two to three times the minimum wage. *Vamos conhecer o Brasil*, INSTITUTO BRASILEIRO DE GEOGRAFIA E ESTATISTICA, https://7a12.ibge.gov.br/vamos-conhecer-o-brasil/nosso-povo/trabalho-e-rendimento.html.

72. Dezalay and Garth, *supra* note 70, at 293.

73. Sales Augusto Dos Santos & Laurence Hallewell, *Affirmative Action and Political Dispute in Today's Brazilian Academe*, 41 LATIN AM. PERSP. 141 (2014), available at: www.jstor.org/stable/24573904.

of widens, the gap between haves and have-nots has a formidable problem in its hands. In the case of FGV Direito SP, efforts have been made to create a system of scholarships, loans, and private donations, unfamiliar to Brazilian universities, to become a more inclusive environment. Grants from private donors and a pioneer program of endowment (spontaneously funded by alumni, students, faculty and staff) have made the school slightly more accessible to talented students regardless of their income.[74] It was also necessary to make adjustment on the selection process, so it became less elitist. A program of active search for students form diverse backgrounds, mostly at public high schools, was implemented to achieve a more diverse public. The efforts are obviously insufficient to overcome the structural inequalities that forged Brazilian society for centuries, needing therefore to be constantly reviewed and enlarged, so to open space for a larger audience.

The importance of these strategies surpasses its financial dimension. They bring to the fore the thorny issue of how to allocate resources for higher education in a country where access even to lower levels of schooling is still problematic. An alternative selection and financing model implemented by a private institution makes more urgent the need for debating the matter and requires more sophisticated arguments from critics and supporters alike.

V. CONCLUSION

Seen from a comprehensive viewpoint, the challenges of avoiding *legal colonialism*, *academic solipsism* and *social elitism* discussed in this section, point to a varied set of problems (e.g., social and economic disparities, State inefficiency, scarcity of credit) which are characteristic of societies in the global South, their national individual traits notwithstanding. They also suggest that any relevant legal education project entails ruptures and new ways of thinking and acting which go way beyond the educational field. These ruptures and new ways embody complex ethical and political choices.

The way a law school responds to such challenges and choices is what ultimately defines it as an institution. Legal education, as already pointed out, is far from neutral. It directly, crucially impacts the idea and practice of Justice in any country, the possibilities of and they are elemental to sustaining and perfecting democracy and of designing a fairer social landscape.

That is why, all the important innovations it brought about notwithstanding, one trait of FGV Direito SP's project stands out as radically novel in the Brazilian

74. According to the FGV website, around thirty percent of students benefit from refundable scholarships programs, *Bolsas de* Estudos, FGV DIREITO SP, http://direitosp.fgv.br/bolsas-de-estudo. Further, ten students benefit from a non-refundable scholarship "Bolsas de Estudos da Presidência," which fully or partially exempts the student from paying tuition fees. In addition, there has been an increasing number of students that benefit from the Program Endowment Direito GV, funded by legal and natural persons. The program started in 2012, with just one student receiving a R$1000,00 monthly scholarship to cover indirect student and living costs. In 2014, the number had jumped to twelve scholarships. *Resultados*, ENDOWMENT DIREITOGV, http://edireitogv.com.br/transparencia/resultados.

landscape; its courage to make explicit the political nature of legal debates. The teaching and researching of law, as well as the methodologies used to carry out these tasks, are inevitably linked to specific agendas. This fact is not a problem for serious academic work; it is the very condition for it.

By boldly bringing this dimension to the fore, FGV Direito SP has made it very difficult for traditional discourses on the neutrality of legal teaching to remain credible. Traditional and new law schools are now pressed—by their students, faculty and professionals—to justify their own options, to clarify their goals, to explain the rationale underneath their functioning. This is a major contribution which, arguably, will help change much more than legal education. The School's project and social policies demand and foster, within and without its walls, an ethic of debate and dialogue elemental to building up a better country.