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THE REFORM OF LEGAL EDUCATION IN BRAZIL

KEITH S. ROSENN *

INTRODUCTION

BRAZIL can be viewed as a country oscillating between the less developed and the developed worlds. Occupying nearly half the continent of South America, Brazil is a land of enormous potential which it has only recently begun to exploit. Brazil entered the twentieth century as an essentially agrarian, semi-feudal, patriarchal society, dominated by a small group of interrelated families who owned the large cotton, cocoa, sugar, rubber and coffee plantations. The Brazilian economy was based upon the export of minerals and the products of these plantations. Almost all manufactured goods were imported from Europe and were well beyond the reach of the great mass of the population, who eked out meager livings as agricultural laborers or tenant farmers.¹

Industrialism developed quite late, initially due to Portugal's mercantilist policies and later because of discouragement by the large landholders. Not until World War I, when importation became quite difficult, did a serious effort at industrialization begin. The depression of international coffee prices during the 1930's deprived Brazil of most of its foreign exchange and led to a sharp curtailment of imports. However, the government's coffee support program provided the coffee sector with sufficient income to keep demand for imports high, thus boosting the price of imports and making investment in industries producing import substitutes quite attractive. World War II caused further shortages of manufactured goods, and in the post war years, aided

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¹ See generally, Wagley, *The Brazilian Revolution: Social Changes Since 1930*, in *Social Change in Latin America Today* 177-230 (pub. by Council on Foreign Relations 1960).

by protective tariffs and selective currency exchange controls, industrialization shifted into high gear. The contribution of agriculture to the Gross National Product from 1947 to 1961 fell from 27% to 22%, while industry's contribution rose from 21% to 34%. During this same period real Gross National Product grew an average of 5.8% a year, the great bulk of which can be attributed to the striking growth of the industrial sector.²

Today Brazil, with a population estimated at 90 million and growing at the rate of 3% per year, is well on its way to becoming one of the world's heavily industrialized nations. It manufactures a great variety of products, including steel, home appliances, chemicals, television sets, and automobiles. In 1966 Brazil manufactured 224,575 cars and trucks, making it the world's 11th largest producer of motor vehicles. This rapid industrialization has profoundly altered Brazil's political, social, and economic climate. Huge numbers of agricultural workers have migrated to the large industrial centers of the South, swelling the urban population from 31% of the total in 1940 to 46% by 1960.³ In the South's large cities of São Paulo, Rio de Janeiro, and Belo Horizonte, whose combined populations are presently estimated at more than 11 million, a middle class of skilled workers, managers, and professionals has emerged. Concomitant with this urbanization has been a substantial shift of political power from the old landed aristocracy to the new more broadly based urban industrial classes, and the steady replacement of traditional values by the all encompassing goal value of speedy economic development.

In short, Brazil is presently in the process of transforming itself into a modern, industrial, and urbanized society. Unfortunately, industrialization and its accompanying rapid economic growth have not been spread equally over the countryside. Rather it has been concentrated in the South, particularly in the state of São Paulo, which alone accounted for 58% of Brazil's industrial production in 1965. Other parts of the country, particularly the drought plagued Northeast, have been left with much the same semi-feudalistic society and low yield agriculture economy which they had at the turn of the century.⁴ Brazil is

² See generally, Baer, *Industrialization and Economic Development in Brazil* (1965); Furtado, *The Economic Growth of Brazil* (1963).

³ The source of the statistical data for this paragraph, as well as much of that found in later paragraphs, is the *Anuário Estatístico do Brasil* (1967), published annually by the Brazilian Institute of Geography and Statistics (IBGE). While it is among the best available sources, like all statistical information from Brazil, it should be taken with some caution. For a useful introduction to the limitations of available statistical data, see Baer, *supra* note 2 at 209-223.

⁴ See Poser, *Securities Regulation in Developing Countries: The Brazilian Experience*, 52 Va.L.Rev. 1283, 1285 (1966).

being forced to come to grips with the host of difficult problems normally associated with rapid economic development, such as: How much of the costs of industrialization should be borne by the agricultural sector? How should the scarce resources available for development be allocated between and within the industrial and agricultural sectors? How should regional imbalances be corrected? How can some measure of social justice be achieved for the landless agricultural worker? What should be the role of foreign capital? How much inflation should be tolerated? How should income be redistributed via tax, welfare, and wage policies?

The rapid modernization of certain aspects of Brazilian society has dramatically highlighted the backwardness of many parts of the infrastructure necessary to sustain development. Housing, transportation, electric power, communications, capital markets and education have been woefully inadequate to cope with the needs of a modern Brazil. Most serious of all has been the society's failure to develop the political and legal institutions and processes necessary to channel and control this rapid social, economic, and political change. To a large extent this failure led to the sharp decline in economic growth after 1961, an uncontrolled inflation that pushed the cost of living up almost 92% in 1964, and the overthrow of President João Goulart on April 1, 1964.⁵

Goulart was replaced by a military regime headed by Marechal Castello Branco, who set about the unpleasant task of putting Brazil's house in order. A stabilization program was launched, large numbers of public officials were dismissed for corruption, and a large amount of foreign capital was obtained to revitalize economic growth. And, as the start of an imaginative effort to revise basic laws and institutions to stimulate development, the Brazilian legislature and executive have produced a flood of new legislation that has sent lawyers' heads swimming.

In the past four years sweeping changes have been made in crucial areas of the legal system. The entire tax system has been revamped; substantial banking, housing, and agrarian reforms have been enacted; and traditional concepts of corporation and securities law have been dramatically altered by a far-ranging Capital Markets Law. Traditional nominalist notions have been shattered by the insertion of complex monetary correction measures in a wide variety of laws.⁶ Even

⁵ An intriguing analysis of the events and forces leading to the overthrow of Goulart can be found in Skidmore, *Politics in Brazil 1930-1964* (1967).

⁶ *E. g.*, Law No. 4.357 of July 16, 1964; Law No. 4.864 of Nov. 29, 1965. Law No. 5.172 of October 25, 1966 and Amendment No. 18 to the 1946 Constitution overhauled the tax system. Law No. 4.595 of December 31, 1964 substantially modified the banking system. A national housing plan and a system to finance it were established by Law No. 4.380 of August 21, 1964. An ambitious but yet unexecuted

the Constitution has been profoundly altered by a series of amendments, with the process of rapid constitutional change culminating in the adoption of a new constitution in March of 1967.

Brazil, like most Latin American countries, has generally looked towards European sources for the development of its legal system. Traditionally, the architect of this system has been the eminent lawyer or jurist. Seldom, if ever, has a fact finding inquiry been directed towards the nature of the peculiar Brazilian social, economic, political or administrative problems involved. Consequently, laws were frequently imported from foreign legal systems without consideration of their appropriateness to Brazilian society, and in a good many areas, laws are so out of touch with social reality that the society is able to function at all only by ignoring the law or on the basis of the *jeito*, a highly prized national institution for bypassing the formal legal structure.⁷ To the chagrin and dismay of many lawyers, much of the post 1963 legislation has been drafted by the "technocrats"—economists or engineers whose primary concern was directed towards finding new and imaginative solutions to many of Brazil's most pressing economic and social problems rather than continuity with the principles and concepts of existing systems or for precise legal draftsmanship. Concurrent with this rapid transformation in the old legal order and the accompanying shift in the conception of law from an abstract conceptual system to a positive and creative instrument of social control and change, has come a decided decline in the enormous prestige and influence the lawyer once enjoyed in Brazil. This is partly due to the rise in other professions, such as economics and engineering, which have naturally come to play an increasingly important role in a society steadily utilizing more and more modern technology. But it is also partly due to an overwhelming formalism of the legal profession, which all too commonly conceives of the lawyer's role as the ferreting out of a law that might be interpreted as a bar to the activity in which his client would like to engage and writing a long formal opinion as to why that activity cannot be done. Indeed, it is not uncommon to hear the lawyer characterized as a negative force in Brazilian economic development.

Lawyers are increasingly coming to regard themselves as a "displaced elite," and a number are placing a good part of the blame squarely on the law schools. It is widely admitted that the law schools are no longer

agrarian reform program was set out in Law No. 4504 of November 30, 1964. And the key measure in the development of capital markets has been Law No. 4728 of July 14, 1965, known as The Capital Markets Law.

⁷ For a perceptive explanation of the Brazilians' frequent resort to the "paralegal" *jeito*, see Roberto Campos, *A Sociologia do "Jeito"*, 2 Filme Cultura 16 (Nov.-Dec. 1966).

attracting the best students and that the type of legal education offered by the law schools neither prepares the student to practice law, nor to deal imaginatively with existing social and economic problems. Worse yet, present legal education does not prepare the student to adapt himself to a changing legal environment or to play an important role in adapting that legal structure to the needs of a developing society. Indeed, this observation could also be made with respect to a number of other Brazilian "professional faculties."

There have been some indications of serious interest in the reform of Brazilian legal education over the past decade. A group of Brazilian lawyers and educators has recently started CEPED, a center of studies and research on law teaching,⁸ and a group at the São Paulo Law School has manifested interest in reform. The Brazilian Bar Association sponsored a seminar in Rio de Janeiro in 1967 to discuss reforming Brazilian legal education. But despite this growing interest and the dire need for change, few meaningful reforms are likely to occur unless some of the formidable obstacles inherent in the structure of Brazilian law schools are surmounted. The purpose of this paper is to sketch the structure and functioning of the Brazilian law school, and to assess the possibilities for reform against the background of this structure. It should be borne in mind, however, that the problems described below are not peculiar to the law schools but also reflect structural features common to most parts of the university scene. It should also be borne in mind that the obstacles to the reform legal education inherent in the Brazilian university structure are by no means the only obstacles to reform.⁹

I. *The University Setting.* The law schools are Brazil's oldest higher educational institutions, dating back to 1827 when law faculties were started at São Paulo and Olinda (which moved to Recife in 1854). These independent autonomous institutions predated the Brazilian universities by almost a century. Not until 1920 was the first Brazilian university, the University of Rio de Janeiro, formed through the process of consolidating a polytechnical school, a medical school, and a private law school.¹⁰ This pattern of merging existing independent schools to form a university has been followed often. Indeed, Brazilian law presently provides that a university is constituted by the joining of

⁸ See Section VIII *infra*.

⁹ Also important are inherited Brazilian attitudes towards law and the role of the lawyer, and the institutionalization of the *jeito*. It may be that something akin to American legal realism cannot thrive in a society where so many disputes are resolved by extra-legal measures, or where those charged with enforcing the law are accustomed to reinterpret it without particular regard to statutory language.

¹⁰ Benjamin, *Higher Education in the American Republics* 33 (1965).

five or more establishments of higher education under a common administration.¹¹

One important consequence of this formative manner is that the Brazilian university is really a federation of individual faculties rather than a university as we know it in the United States. There is no university tradition, and the great majority of Brazilian universities have been functioning only a short time. Though the individual faculties are nominally integrated into a university, the tradition of autonomous, isolated faculties persists.¹² For the most part, these faculties go their separate ways, duplicating libraries, courses, and other facilities.

This lack of integration would not be quite so serious if the student entered the university with a good liberal arts background, which, unfortunately, is not the case. The Brazilian student enters the university at age 17 or 18 directly from high school, and that high school education leaves a great deal to be desired. It consists of a wide variety of general subjects taught by requiring the student to memorize the textbook. It is not aimed at teaching a student to think on his own, nor does it expose him to general culture in the modern sense of the term.¹³

As the first institutions of higher learning in Brazil, the law schools have historically assumed many of the functions of a general liberal arts education.¹⁴ Teaching of philosophy and social sciences was the exclusive province of the law schools until the 1930's, when separate

¹¹ Lei de Diretrizes e Bases da Educação Nacional, Law No. 4.024, of December 20, 1961, Art. 79. Prior law required a university to congregate at least three of the following four faculties: law; medicine; engineering; or education, sciences, and letters. Decree No. 19.851 of April 11, 1931, Art. 5.

¹² Attempts are being made at universities like Ceará and São Paulo to integrate the teaching of mathematics and chemistry in central institutes. But potentially the most significant development is the enactment of two laws, Decree-Law No. 53 of November 18, 1966 and Decree-Law No. 252 of February 28, 1967, which require all federal universities to restructure themselves into functional teaching or research units called departments. All basic teaching and research for course areas such as mathematics, physics, chemistry, biology, geology, humanities, philosophy, literature, and the arts are to be concentrated in common units for the entire university, thereby avoiding senseless duplication of facilities and personnel. Article 8, § 2 of Decree-Law No. 252 provides for the possibility of a cycle of basic courses within the university prior to opting for a professional school, which may eventually lead to the restructuring of legal education along the lines of the University of Brasília. See notes 21-23 and the text thereto, *infra*. It is too early to tell whether any significant restructuring of Brazilian federal universities will result from this legislation.

¹³ Benjamin, *supra*, note 10, at 155. See also, Escritório de Pesquisa Econômica Aplicada, Educação (II), Diagnóstico Preliminar 109 (1966) [hereafter cited as EPEA]. The great majority of Brazilian students who wish to enter a university spend time studying at privately run cram schools (*cursinhos*) before attempting the university entrance examinations.

¹⁴ Fernando De Azevedo, *A Cultura Brasileira—13 Obras Completas 287-288* (4th ed. 1964).

faculties of philosophy, sociology, and politics, and economics and administration came into their own.¹⁵ The law schools still retain three or four general social science courses, such as general theory of the state, political economy, and financial sciences, and much non-legal background material is commonly given in other courses.¹⁶ These courses are a poor substitute for a solid cultural background, but they are generally the law student's only contacts with the social sciences.

The failure of the system to provide the law students with a solid cultural background exacerbates the tendency to view legal rules as totally abstract propositions. The student who has little or no acquaintance with economics, sociology, political science, or psychology can hardly be expected to consider the implications of insights derived from these disciplines upon the legal rules being studied. Another vice of this system is that it forces a badly educated student to choose his profession at age 17 or 18, when the great majority have no idea what they want to do. There is no opportunity to sample several different areas before choosing a career. The Brazilian law school has long been the place for the student who does not know what he wants to do upon graduation,¹⁷ and it is not surprising that only a small percentage of all law school graduates practice law.¹⁸

¹⁵ See *id.* at 287. The law schools still loom large on the university scene, though they no longer dominate it. Even though it appears to be easier to manufacture instant law schools than instant coffee in present day Brazil (the number of law schools jumped from 62 in 1965 to 70 in 1966), the percentage of university students enrolled in the law schools has noticeably declined. In 1966 there were 36,363 law students matriculating, comprising about 20% of all university students. See Ibge, *Anuário Estatístico do Brasil* 693 (1967). In 1956 approximately 28% of all university students were enrolled in the law schools. EPEA (II) Quadro I-60 at 165 (1966). Not only have the law schools been losing ground to other faculties in terms of the percentage of the total student population enrolled, but they have also been losing prestige to the engineering and medical schools in terms of the caliber of student they are attracting.

¹⁶ Luiz Delgado, *Uma Experiência Secular de Ensino Superior no Brasil*, in *Universidade do Recife, Simpósio Sobre Problemática Universitária* 159, 162 (1965).

¹⁷ See Boaventura, *A Reforma do Ensino Jurídico e a Colaboração das Instituições*, 34 *Rev.Fac. de Dir. Bahia* 120, 121 (1959-61).

¹⁸ There is unfortunately, no statistical evidence, but the estimate most commonly given by law school deans, professors, and practicing attorneys is that roughly 20% of those who receive their law degrees become practicing lawyers. The law degree has traditionally been the stepping stone to a career in government, public administration, or business, as well as law. The ring and title of "Doctor" that go with the law degree have long been regarded as the marks of an educated man, and even today are widely pursued as status symbols. See EPEA (II) 202-3 (1966). A Brazilian law teacher recently suggested, only partly in jest, "We should pass a law saying that everyone born in Brazil is entitled to wear the ring of an attorney and use the title of 'doctor'. Perhaps then we could get down to the serious business of educating lawyers." A commonly heard complaint in Brazil is: "We are a nation of *vachareis*. We have far too many lawyers." Yet the United States, with roughly double Brazil's population, had 65,058 law students registered, roughly double Brazil's 1965 enrollment. See 19 *Leg.Ed.* 206 (1966). But a very large percentage of Brazil's population is effectively outside the market for lawyers.

Some Brazilian law professors recommend that the cultural gap in the Brazilian law student's education be bridged by the inclusion in the law school curriculum of more courses designed to impart general background information.¹⁹ However, such an approach would perpetuate the traditional isolation of faculties at the Brazilian university and may not be the most efficient method to teach general cultural material. If one's goal is the professionalization of Brazilian law schools, it is important to find an alternative institution to assume the burden of imparting a general background. The most obvious method to do this would be to create a general humanities or liberal arts program within the university and make successful completion of this program a pre-requisite to entrance into the professional faculties. However, past attempts to achieve this solution have not been notably successful. When in 1934 it created the first Faculty of Philosophy, Sciences and Letters, the University of São Paulo planned to make it into a center where all university students could obtain a general cultural background. But the faculties of law, medicine, and engineering killed the plan by refusing to permit their students to take basic courses in the new school.²⁰

The University of Brasília, which began to function in late 1961 and early 1962, was designed to create a rather different type of university in Brazil. Students are required to spend two years studying basic courses at one of eight central institutes. At the end of that period, the student may transfer to a professional faculty for three additional years of work leading to a professional degree.²¹ Or he may continue to work in the same institute for specialized work leading to a bachelor's degree in one additional year, a master's degree in three years, or to a doctorate in five years.

Law students spend their first two years in the Institute of Human Sciences. With the exception of two introductory courses (introduction to the science of law and general theory of public law), the prospective law student takes only liberal arts courses during those first two years.²² The last three years are spent at the law school, and in his

¹⁹ See, e. g., Clovis do Couto e Silva, paper submitted to the Seminar on Law Teaching of the Instituto dos Advogados Brasileiros at Rio de Janeiro, August 5-10, 1967, at 6-8. The 7th Resolution adopted by the Instituto dos Advogados after the Rio Conference called for expansion of the curriculum to require courses in general theory of the state, legal philosophy, and professional ethics, plus two complementary courses from the social sciences.

²⁰ Benjamin, *supra*, note 10, at 154.

²¹ Central institutes have been established in mathematics, physics, chemistry, geosciences, biology, human sciences, letters, and arts, while professional faculties have been established in architecture and urbanism, engineering, education, law-economics-administration-diplomacy, agrarian sciences, and medicine.

²² During his first semester, the prospective law student takes: theory of science, history of philosophic and scientific thought, methods and techniques of social

last year the law student must specialize in one particular area or discipline. In the last semester of the fifth year, the law student must take a nonlegal course to complement his field of specialization.²³

The University of Brasilia's approach represents a thoughtful and sensible attempt to combine a general liberal arts education with professional training without departing from the tradition of a five-year course. It is not as flexible as might be desired, for a student who has not decided on law as a career until the end of his second year must acquire other credits if he has entered the Institute of Human Sciences or repeat the entire two years if he has entered another institute. Brasilia also represents an attempt to function without the traditional *catedrático* system (described in Section III *infra*). The innovative spirit in university structure carried over into teaching methods, and the law school began to experiment in a rudimentary fashion with the preparation of teaching materials and with different teaching techniques. Unfortunately, the experiment was all but destroyed in the wake of the military takeover in 1964. There were wholesale arrests and dismissals of professors and mass resignations of others. Student enrollment in the law school dropped from 234 in 1965 to 86 in 1966. The university continues to function, and is starting to recuperate, but much of the life has gone out of the experiment.

II. *Graduate Degrees.* The graduate legal education presently being offered at Brazilian law schools unfortunately adds little to the undergraduate law school experience. Eight Brazilian law schools now offer a two-year graduate program leading to a doctorate.²⁴ Generally, the doctoral candidate specializes in a field such as civil or criminal procedure, public law, criminal law, or civil law. Classes typically operate on the basis of two hours of lecture per week, but the student must write and defend a thesis on some particular topic within his discipline at the end of his second year in the program.

Although there were 884 students enrolled in doctoral programs in Brazilian law schools in 1965,²⁵ the percentage of those who complete

research, and an elective like music or art; in the second semester: history of social thought, history of economic thought, history of institutions, and another elective; during the third semester: introduction to political science, introduction to sociology, and introduction to the science of law; during the fourth semester: history of general economics and the economic formation of Brazil; social, political, and administrative history of Brazil; human geography with special emphasis on Brazil; and general theory of public law.

²³ These nonlegal complementary courses are usually given at other faculties. Thus, if a student wishes to study economics, he would take a course at the economics faculty rather than within the law school.

²⁴ Ministério da Educação e Cultura, Sinopse Estatística do Ensino Superior 79 (1965).

²⁵ *Ibid.*

their theses and actually receive their degrees is small. There appears to be little interest in the doctoral programs, and the Federal University of Bahia has already decided to abandon its program next year.²⁶ The degree has value only if one intends to rise in the academic hierarchy. However, many people bent on an academic career prefer to compete directly for the *docência-livre*, another more useful graduate degree or title, without spending two years to earn a doctorate.²⁷

To become a *livre-docente*, any person who holds a bachelor's degree enters a *concurso* within a single *cátedra* or discipline. There are four parts to the *concurso*: (1) *prova de títulos*, in which points are awarded according to the candidate's academic credentials, such as degrees, publications, titles, and experience; (2) *prova escrita*, a written examination to test the candidate's knowledge of the subject matter of the *cátedra*; (3) *prova da aula*, which tests the candidate's ability to give a class; and (4) *defesa de tese*, which requires each candidate to present and defend a thesis on some topic within the material covered by the *cátedra*. The panel which judges the *concurso* is chosen from among the law school's own professors, and there is no limit on the number of *livres-docentes* that may be approved during a single *concurso*. It may be that all or none of the candidates will be approved.

Every *livre-docente* has the theoretical right to give a *curso equiparado*, an equivalent to the course given by the *catedrático* (the senior professor described in detail in Section III below), with the students having the right to choose between the courses of the *catedrático* and the *livre-docente*.²⁸ However, such courses are rarely given, for the law schools usually have neither the funds nor the classrooms available to duplicate courses. In some law schools which have morning and evening sessions, the *catedrático* will permit the senior *livre-docente*, if there is one in the *cátedra*, to give the official course to one of the sections.

III. *The catedrático system.* A basic characteristic of the university structure with which any reform movement must reckon is the *catedrático* system of academic tenure.²⁹

²⁶ Nelson de Sousa Sampaio, paper submitted to the Seminar on Law Teaching of the Instituto dos Advogados Brasileiros at Rio de Janeiro, August 5-10, 1967, p. 7.

²⁷ The São Paulo Law School has made the doctorate degree a prerequisite for entering the *concurso* for the *docência-livre*. Estatutos da Univ. de S.P., Art. 98 § 1 (1964).

²⁸ Decree No. 19.851 of April 11, 1931, Art. 35(b).

²⁹ The model for the description in the above and following sections is derived from the federal law schools. State and private law schools may differ in certain aspects but this model is, on the whole, fairly typical for Brazilian law schools. Although they have not adopted the *catedrático* system, private law schools nonetheless share most of the characteristics of the structure of the federal schools.

The *catedrático*, the senior professor responsible for the teaching of a particular subject, is the effective center of power in the Brazilian university. But this power is so absolute that he does not simply give a course; he is the course. Once selected, the *catedrático* holds his position for life, though he now must retire at age 65.³⁰ However, the date of this compulsory retirement can be moved up to age 70 if two-thirds of the *congregação*, a faculty council, concur.³¹ Until the adoption of a new Constitution in 1967, life tenure of the *catedrático* was guaranteed by a constitutional provision,³² and the present Constitution still contains a provision guaranteeing the freedom of the *cátedra*.³³

All important decisions about the actual functioning of a faculty take place in the *congregação*, which is composed of all the *catedráticos* or acting *catedráticos*, a representative of the *livres-docentes*, and one or more voting representatives of the present student body. The *congregação* makes all the crucial decisions about spending funds, adopting different teaching methods, creating new courses, subdividing *cátedras*, etc. It also chooses a list of three *catedráticos* for dean of the faculty, and in the Federal law schools the President of the Republic selects one from this list.³⁴ But little power over the *catedráticos* stems from the position of dean. Though United States law school deans normally wield influence by virtue of their power to recommend promotions, salaries, and appointments, Brazilian deans have no such institutional power base.

The *catedrático* is selected through a *concurso*, normally held when a *catedrático* retires, resigns, or dies. The form of the *concurso* for *catedrático* is the same as for the *livre-docente*, but there are two important differences. Only one candidate can be chosen, and the five-judge panel must include at least three *catedráticos* from other law schools.³⁵

Not anyone can compete for the position of *catedrático*. The *concurso* is restricted to adjunct professors, *livres-docentes*, and *catedráticos* or substitute *catedráticos* of the same or related discipline.³⁶ The only way someone who is not a member of this select club can enter the lists is to

³⁰ Law No. 4.881-A of Dec. 6, 1965, Art. 53.

³¹ *Id.* at Art. 53, § 1.

³² Constituição da República dos Estados Unidos do Brasil 1946, Art. 168(VI).

³³ Constituição do Brasil 1967, Art. 168(VI).

³⁴ Law No. 4.881-A of Dec. 6, 1965, Art. 43.

³⁵ *Id.* at Art. 19, Sole Paragraph, incorporating by reference Art. 16 § 3. *Id.* at Art. 20 § 2. The decision of the panel can still be rejected by the *congregação*, but only after a two-thirds vote.

³⁶ *Id.* at Art. 19.

secure certification from the *congregação* that he is a person of "notorious wisdom," a practically impossible task.³⁷

The number of *cátedras* is fixed by the *congregação*, and it is not uncommon to find more than one *cátedra* in the same subject. Sometimes a *cátedra* will be subdivided because it is taught over a period of more than a single year, like civil law, (which includes torts, contracts, property, estates, and family law) and other times a *cátedra* is subdivided primarily because of faculty politics.

The teaching faculty for federal universities is now divided into three groups: (a) teaching assistants (*auxiliares de ensino*); (b) contract professor (*professôres contratados*); and (c) regular professor (*magistério superior*), which is subdivided into *professor catedrático*, adjunct professor and assistant professor.³⁸ Each course is theoretically taught by a team headed up by a *catedrático* and consists of a combination of an adjunct professor, assistant professors, and teaching assistants. Each member of the team is assigned and has responsibility for giving a certain part of the course. However, this theoretical picture bears little resemblance to what is now done. The actual composition of a team varies a great deal from law school to law school and from *cátedra* to *cátedra*. In some schools one *catedrático* gives the course all by himself, while another *catedrático*, teaching the same subject, has a team of five. Some schools have budgeted only enough funds to pay the *catedrático*, or to supply each *catedrático* with one or two assistants. In most *cátedras* there are no young men who have gone through the long drawn out *concursos* to become assistant and adjunct professors.

One generally starts his teaching career as a teaching assistant, appointed by a particular *catedrático*. The law now says that the teaching assistant, who must be a university graduate, shall be appointed for a renewable two-year term and that his work plan shall be approved by the *congregação*.³⁹ In practice, he does what the *catedrático* asks him to do. Typically, the assistant will give a lecture when the *catedrático* finds it inconvenient to do so, and in some law schools the assistants are supposed to teach practical seminars.

Under the 1946 Constitution the teaching assistant received tenure after five years of service and could not be dismissed unless there was

³⁷ *Ibid.*

³⁸ Law No. 4.881-A of Dec. 6, 1965. A state university like São Paulo uses the titles of *catedrático*, associate professor, professor of a discipline (*professor de disciplina*), assistant professor, and instructor to subdivide its teaching faculty. Estatutos da Univ. de S.P., Art. 78 (1964).

³⁹ Law No. 4.881-A of Dec. 6, 1965, Art. 11 § 2.

"grave fault."⁴⁰ Under the 1967 Constitution tenure is granted only to those who have been nominated to their posts on the basis of a public *concurso*,⁴¹ and they receive tenure after two years of service.

The next rung on the academic ladder is assistant professor. One is nominated only after a public *concurso* similar to that held for the *catedrático*.⁴² But the panel is less elaborate, consisting of only three *catedráticos* or adjunct professors. If scores are more or less or equal, the teaching assistant is entitled to a preference, but there are no prerequisites other than holding a bachelor of laws degree. A *concurso* is held only when a vacancy occurs in the position.

The third step in the academic hierarchy is adjunct professor, who has the preferential right to be designated acting *catedrático* whenever there is a vacancy of the *cátedra*, provided he also holds the title of *livre-docente*.⁴³ There are alternative procedures for selecting an adjunct professor. He may be chosen by selecting the person with the best academic credentials from among the assistant professors who are holders of the doctorate or *livre-docente* degrees. Or there may be a *concurso*, just as there is for *catedrático*, but the competition is limited to assistant professors, *livres-docentes*, or holders of the doctorate degree in that particular *cátedra*.⁴⁴ One who has only a bachelor's degree can also compete if he can secure from the *congregação* a certificate that he is a person of "notorious wisdom." The panel is the same as that used to select a *catedrático*.⁴⁵

Standing apart from this academic hierarchy is the contracted professor. When there is no one within the hierarchy to give a course,

⁴⁰ Art. 188(II), complemented by Law No. 1.711 of October 28, 1952, Art. 82(II). What constitutes "grave fault" has been rather unclear, but not setting foot in the law school for years does not seem to be enough. Faculty at private schools normally do not receive tenure until they have had 10 years of service. The teaching assistant was legally obligated to become a *livre-docente* within two years or lose his position. Decree No. 19.851 of April 11, 1931, Art. 70. However, this provision was seldom, if ever, enforced.

⁴¹ Art. 99 § 1.

⁴² Law No. 4.881-A of December 6, 1965, Art. 13. This law represents an attempt to impose a unified career system for university professors. It has not yet really caught on. Hence, very few, if any, assistant professors have been chosen by a public *concurso*.

⁴³ *Id.* at Art. 22.

⁴⁴ *Id.* at Art. 14.

⁴⁵ This system of *concursos* for professorial posts has been enshrined in Article 168 § 4 of the 1967 Constitution, which provides:

Legislation with respect to teaching shall adopt the following principles and norms:

— V. appointment to the initial and final positions of professorships in secondary and higher education shall always be made by means of an examination, consisting of a public competition based on tests and academic credentials, in cases involving official teaching.

the faculty normally hires someone to do so. The law requires that he be a specialist, which is sometimes loosely interpreted, and he can either fulfill the functions of a *catedrático* should there be a vacancy, assist in giving the regular course, do research, or give a specialized course of his own.⁴⁶ His contract, though renewable, may not run more than 3 years at a time, and he acquires no tenure. Such professors are normally contracted on an annual basis and paid a standard rate per class given.

There are some rather obvious disadvantages to this system of professorial organization. Once chosen as a *catedrático*, further research and scholarship ceases for a number of professors. This is particularly serious in the case of a busy practitioner who looks on the title of *catedrático* as a symbol of prestige with which to cap a distinguished career at the bar. Although federal law forbids a professor to miss more than 25% of his scheduled classes without good reason, upon pain of being temporarily suspended from his position,⁴⁷ discipline of a law professor for absenteeism or his teaching performance does not happen. If a *catedrático* does not wish to write another article or is content to read the same lecture notes for the next twenty years, that is his prerogative.

Young talented would-be teachers are discouraged, for they cannot give their own courses until they become *catedráticos*, and they cannot become *catedráticos* until the present titleholders die or retire. Even then, they will have to go through a series of arduous competitions, often against *catedráticos* from other law schools. It is not at all rare to find one person holding the position of *catedrático* at two or three different law schools.⁴⁸ The rules of the *concurso* definitely favor the senior men with multiple positions. If a Holmes or Brandeis were living in Brazil, no Brazilian law school could hire him with the rank and prestige of a *catedrático*. Instead, he would have to await a vacancy and compete along with all the other candidates.

Moreover, the *catedrático* system discourages experimentation, for the younger men on the teaching team must follow the directions of the *catedrático*. New material cannot be added or substituted without the permission of the *congregação*. A young man who wants to teach must elect at the start of his career a *cátedra* in which to work, and it is very difficult to change fields. Teaching in more than one *cátedra* at the same university is forbidden.

⁴⁶ Law No. 4.881-A of Dec. 6, 1965, Art. 12.

⁴⁷ *Id.* at Art. 55 § 1.

⁴⁸ Federal law prohibits professors from holding posts at more than two public universities at the same time, *id.* at Art. 26 § 3, but one can take on additional positions at private law schools with impunity.

Nevertheless a number of knowledgeable Brazilians are convinced that the caliber of university teaching would be much worse without the system of *concurros*, voicing the fear that in its absence many professors would be selected by nepotism.⁴⁹ In fact, the charge of nepotism in the selection process is often made under the existing system.

The present government has come to view the *catedrático* system as a serious impediment to necessary university reform. As an opening gambit, The Costa de Silva regime issued a decree suspending all *concurros* until the federal universities restructured themselves.⁵⁰ Recently, the regime followed up with a law prohibiting the creation of new *catedráticos*.⁵¹ It is too early to tell whether this legislation will eventually lead to the extinction of the *catedrático* system, or whether the present system will simply be perpetuated under another label.

IV. *Part-time Nature of the Law School.* Like the great majority of Brazilian university professors, the law school professor is part-time. Part-time should by no means be confused with half-time or preferential time. Though the law requires a *catedrático* to give three one-hour lectures a week and to spend at least 18 hours a week connected with his teaching duties,⁵² the *catedrático* can usually be expected to arrive five minutes before the lecture commences and to leave immediately thereafter. Some *catedráticos* notoriously fail to show up for a large number of their classes. Practically none of the law schools provide even the *catedráticos* with offices. Though some professors may hold open an hour a week at their home or office for consultations, normally the opportunity for student contact with the faculty is practically nil. The amount of time spent preparing the lecture varies greatly, but often it is very little.

There are a number of disadvantages to the part-time law teacher in Brazil. Some are obvious, such as the inability to devote much time to classroom preparation, research and consultation with students. Some are less obvious such as inbreeding. A professor's chief source of income is usually his practice, and he cannot take that with him if he moves to

⁴⁹ See, e. g., Luiz Rodolfo de Araujo Junior, O Método de Ensino das Faculdades de Direito, paper submitted to Seminar on Law Teaching of the Instituto dos Advogados Brasileiros at Rio de Janeiro, August 5-10, 1967, at pp. 2-3: "One must make the *cátedra* and its respective *concurso* more valuable, for this *concurso* is still, in Brazil, the safest, most honest, and most rigorous method of selection, and no matter what other experiments have been successfully tried, we cannot conceive of any system, within the Brazilian reality, other than a system of *cátedras* with life tenure based upon a *concurso*. If here and there a different kind of experience has produced positive results the generalization of such a rule will inevitably tend to produce nepotism"

⁵⁰ Decree No. 60.684 of May 5, 1967. Such restructuring was to comply with the guidelines of Decree-Laws No. 53 and 252, described in note 12 *supra*.

⁵¹ Law No. 5.540 of Nov. 28, 1968, Art. 38 § 3.

⁵² Law No. 4.881-A of Dec. 6, 1965, Art. 37.

another city. And while it is theoretically possible to transfer your rank from one law school to another, a *congregação* will seldom accept a professor from another faculty unless he wins a *concurso*.

The legal scholarship that goes on is primarily done in the professor's law office or home.⁵³ Most law professors try to build up their own law libraries, which are oftentimes superior to the law school's own library. Since they do not work at the law school, most law professors have little interest in building up the school's law library. Hence, there is a great deal of duplication of law books owned by individual professors, each professor is his own librarian, and both students and professors are deprived of access to a large number of books that would be available if resources were pooled.⁵⁴

Another unfortunate aspect of the part-time teacher is the lack of any *esprit de corps*. Each *cátedra* is isolated from the others. There is little chance for the exchange of ideas that occurs when professors are constantly together. No one seems terribly concerned about the law school as an institution. Horizons tended to be limited to the *cátedra*, and the unwritten law seems to be—don't meddle with what goes on in my *cátedra* and I won't meddle with what goes on in yours.

A good part of the reason for the part-time nature of Brazilian law school teaching is economic. In August of 1967 a *catedrático* at federal universities was being paid only about \$200 a month, and lower ranking professors received correspondingly less, with a teaching assistant receiving about $\frac{3}{4}$ of the *catedrático's* salary. Salaries are fixed by federal law, and one receives the same amount whether he devotes a great deal of time or very little time to his teaching duties. Nothing in the

⁵³ The great bulk of this scholarship tends to be in the scissors and paste style—back-to-back quotations from German, French, and Italian authors. There is very little space devoted to an examination of the Brazilian experience, and seldom is there an appraisal of a particular norm against the background of the Brazilian social and economic scene.

⁵⁴ The library facilities of the bulk of Brazilian law schools are extremely poor, in large part due to faculty apathy, lack of funds, and the failure to appreciate the importance of research facilities to legal education. In one private law school in the Northeast an inquiry to a group of law students about the whereabouts of the library produced a heated debate as to whether the law school had a library. In another law school a professor not long ago startled his students by suggesting they all go into the library and help catalogue books. São Paulo, with about 122,000 volumes, and Recife with about 78,000 volumes have the best law libraries of all the Brazilian law schools, and even these are of limited utility.

The deficiencies of Brazilian law libraries are not simply due to a lack of books. Useful aids to legal research do not exist. Books are not always catalogued, and when listed, are not always listed correctly nor logically. There is no index to legal periodicals. There is no digest system, West key number system, COH service, or Shephard's. Digging out cases, laws, and articles involves the use of a series of indexes and a good deal of luck. Regulations and opinions are not always published, and the best research aid is a friend in the right governmental office.

system gives any financial incentive for good teaching. One can become a full-time professor and receive up to 100% more of his basic salary, provided the *congregação* approves and the law school has sufficient funds,⁵⁵ but that would give a *catedrático* only \$400 a month. And he would be forbidden from holding any other job, including other teaching jobs.⁵⁶

Brazilian law professors are part-time not only because of economic reasons. The problem is much more complex. There is such a dearth of well-trained, competent lawyers in Brazil that the few that exist are performing three or four full-time jobs. While these functions are assumed partly to earn money, they are also assumed partly out of a sense of duty or social obligation, partly because of the power that goes with them, and partly because there is no one else to perform them. It is not uncommon in Brazil to hear the occasional full-time law professor belittled as a person who lacks ability or personality to succeed as a practicing lawyer. While paying realistic salaries would certainly increase the amount of time professors spend at the law school, a large number of able professors who are also competent lawyers would probably continue to desire to devote much time to law practice. For a number of reasons, full time law professors are probably not a realistic nor even a desirable solution to Brazil's present legal educational problems.

Use of full-time professors may also make legal education even less practical. In Brazil, to a greater degree than in many countries, much of the "living law" bears little resemblance to the law on the books. Often it consists primarily of unpublished administrative opinions or rulings, and custom. Cutting the law teacher off from his law practice may permanently deprive him of his best source of information about Brazilian law.

⁵⁵ Law No. 4.881-A of Dec. 6, 1965, Art. 41 § 2.

⁵⁶ *Id.* at Art. 26 § 2. São Paulo, as a state university in Brazil's richest state, is far ahead of other law schools, having instituted a salary increase in 1966 that enables *catedráticos* to receive about \$550 a month if they teach a graduate course in addition to an undergraduate course. If there is no *livre-docente* within a *cátedra* at São Paulo, the *catedrático* can teach an evening and morning course of three hours each, as well as a graduate course, thereby bringing his monthly earnings to about \$850. If there is a *livre-docente*, the *catedrático* has the right to give only one section of the undergraduate course. Interview with Dr. Alfredo Buzaid, Dean of the Law School of the University of São Paulo, in São Paulo on Aug. 4, 1967. Brazil's pay scale is also better than the federal universities. Full-time titular professors receive about \$470 a month while full-time professors who exclusively dedicate themselves to the law school receive an additional 50% of their regular salary. Interview with Dr. Aderson de Menezes, Dean of the Law School of the University of Brasilia, in Brasilia on December 6, 1967. Most law school professors are not so fortunate, and the financial straits of some of the private law schools result in some professors being paid as little as two dollars per class.

Like other university students (with the possible exception of some of the medical students), the Brazilian law student is part-time. The overwhelming majority of students spend their nonclass time working at part-time jobs.

And it is fair to say that many students do not conceive of law school as a "professional school" in the American sense, and hence do not devote to their studies nearly the energy characteristic of the full time American student preparing for a professional career. Absenteeism from the lectures is high, and some students, when their professors permit it, appear only for examinations. Students generally live at home and very few universities have any kind of campus.

By no means all of the large number of law students who work while going to school do so because they need the money. With the exception of the few private law schools, tuition is nominal. But though university education in Brazil is, in general, free, the structure of Brazilian secondary school education, which is dominated by private schools, funnels out the children of poorer families and strongly favors the chances of wealthier children to gain admittance to the universities.⁵⁷ A study made in 1960 by Bertram Hutchinson of 500 students in their first year at the University of São Paulo, showed that 38% came from the upper economic class, 36% from the upper middle, 16% from the lower middle, 8% from the upper working class, and 2% from the lower working class.⁵⁸

Many law students work not because they have to, but because they receive little challenge from law schools. All that is asked of the law student is that he take notes and regurgitate his professor's lectures. Despite the fact that few Brazilian law students study, the number that actually flunk out is quite small.⁵⁹ Though it is theoretically possible to flunk out, few students appear to be capable of the concentrated effort necessary to do so, for each student has several opportunities to pass an exam.

More significant is the almost complete unconcern of the Brazilian law student about his grades. Those who apply for admission to United States graduate law programs are astounded that United States law

⁵⁷ EPEA (I) at 66.

⁵⁸ Benjamin, *supra* note 10, at 150. However, São Paulo is somewhat atypical, and in the past seven years more and more middle class students are attending universities. Unfortunately, a meaningful scholarship system still does not exist. See EPEA (I) at 66-67.

⁵⁹ It has been estimated that in 1964 a little over 11% of all first-year law students failed to enter the second year. EPEA (I) at 124. However, this figure must be sharply discounted for dropouts and does not indicate how many students, if any, were actually eliminated from law schools for repeated failures.

schools consider their law school grades important. Unlike the United States, there is no relationship between a student's law school grades and his employment opportunities. What counts are personal and family contacts, initiative, experience, and luck. A large percentage of the Brazilian law school graduates who ultimately practice law are able to do so because they worked in a law office at a nominal salary while going through law school, and their contacts and experience opened the door to a permanent association upon graduation.

More than scholarships are necessary to induce law students to study full time. They must be provided with an intellectual challenge and a feeling that what they are learning will be useful to them in their careers.

V. *Curriculum*. The present Brazilian Constitution, like its predecessors, reserves to the federal government the right to legislate with respect to the directives and bases of national education.⁶⁰ This power has been exercised unsparingly. In perhaps no other country are there so many federal laws, decrees, and regulations involving education. The number of class days, salaries, selection of professors, and a host of other topics are all regulated by federal law. Each year the Brazilian courts, including the Supreme Court, dutifully decide cases dealing with such questions as whether a particular *concurso* was properly held⁶¹ or whether a particular student can be dropped from a faculty for failure to attend classes.⁶²

Every professor who gives a course is required to prepare a syllabus of the course he intends to teach and submit it to the *congregação* for approval.⁶³ The law further requires him to teach at least $\frac{3}{4}$ of this syllabus during the term,⁶⁴ a law which is, like a number of Brazilian laws, more honored in the breach.

The Federal Council of Education, a large body of educators appointed by the President of the Republic, has been charged with the responsibility for prescribing a minimum curriculum for all higher education.⁶⁵ A resolution of this council has prescribed a five-year course for the bachelor of laws with the following minimum curriculum:

1. Introduction to the Science of Law
2. Civil Law

⁶⁰ Art. 8(XVII) (q).

⁶¹ *E. g.*, União Federal v. Camin, Recurso Extraordinário No. 56.595, 33 Revista Trimestral de Jurisprudência [R.T.J.] 738 (Supremo Tribunal Federal [S.T.F.] 1965).

⁶² *E. g.*, União Federal v. Rocha Castro, Recurso Extraordinário No. 59.496, 40 R.T.J. 492 (S.T.F.1966).

⁶³ Law No. 4.024 of Dec. 20, 1961, Art. 71.

⁶⁴ *Id.* at Art. 73 § 2.

⁶⁵ *Id.* at Art. 70.

3. Commercial Law
4. Civil Procedure (with forensic practice)
5. Private International Law
6. Constitutional Law (including notions of the Theory of the State)
7. Public International Law
8. Administrative Law
9. Labor Law
10. Criminal Law
11. Legal Medicine
12. Criminal Procedure (with forensic practice)
13. Tax and Financial Law
14. Political Economics⁶⁶

It is often said that this is a maximum as well as minimum curriculum. This requires a word of explanation. A typical curriculum differs very little from this prescribed minimum.⁶⁷

⁶⁶ Documentos Nos. 10 and 11 of the Ministério da Educação e Cultura, p. 9 (1962).

⁶⁷ Compare the curriculum of the Law School of the University of Guanabara:

First Year

1. Introduction to the Science of Law
2. Political Economics
3. Constitutional Law (General Theory of the State)
4. Civil Law I

Second Year

1. Constitutional Law II
2. Civil Law II
3. Public Finance
4. Criminal Law I
5. Commercial Law I

Third Year

1. Civil Law III
2. Criminal Law II
3. Commercial Law II
4. Tax and Financial Law
5. Public International Law

Fourth Year

1. Civil Law IV
2. Civil Procedure I
3. Administrative Law
4. Labor Law

Fifth Year

1. Civil Law V
2. Civil Procedure II
3. Criminal Procedure
4. Private International Law
5. Legal Medicine.

Some of the law schools have *cátedras* of Roman Law or philosophy of law, some give four years of civil law instead of five, and the Catholic law schools usually have *cátedras* of canon law, and of religious culture, but, in general, the above curriculum is fairly representative.

These courses are usually taught by three or four hourly lectures per week over the course of the year. Some law schools theoretically offer one or two practical classes a week per subject, but in practice these so-called practical sessions not infrequently turn into lectures.

With only 14 courses over a five-year period being required by law, there would seem to be a fair amount of room to experiment with different courses and teaching methods. Nothing in the law says that there has to be four or five years of civil law, nor is there anything that says any one of these required courses must be a whole year's course. Nor does the Federal Council of Education say how a course should be taught or what points need be covered. Hence, if a *congregação* were to approve a curriculum that had only one year of civil procedure and condensed the course in civil law to two years, or experimented with a mixture of economics and commercial law, there would appear to be nothing in the law nor in the regulations of the Federal Education Council that would prohibit such experimentation.⁶⁸ The real obstacle lies in the traditional notions of course content and teaching methods, which dominate meetings of the *congregação*.

Traditionally, a particular course consists of x number of points, and a professor feels obligated to cover as many of these points as possible.

VI. *Teaching Methods.* Courses are generally taught by fifty-minute formal lectures. Casebooks or other forms of teaching materials do not exist, and almost never is any student required to spend any time preparing for class. In the law schools located in the larger urban centers, classes tend to be quite large, often containing more than 100 students.

A few professors permit students to interrupt with questions, but very rare is the professor who asks a question of a student. In general, the student sits passively taking notes or otherwise amusing himself during the lectures.

These lectures usually define, explain, and expound legal concepts. There is little concern with techniques of problem solving, or with the evaluation of the function or purpose of the distinctions which are drawn. Usually the professor is not concerned with analyzing factual situations but with conceptual classification and rules of law, which are typically legislative norms. From these classifications and rules of law he attempts to abstract general principles and to arrange them in a systematic fashion.

⁶⁸ In fact the Law School of the University of Brasilia has done just that. In order to make room for two years of liberal arts courses and to permit specialization, it condensed introduction to the science of law, constitutional law, public finance, international public law, international private law, labor law, tax law, and legal medicine into one semester courses. Criminal law, administrative law, and civil and criminal procedure (combined into a general procedure course) have been squeezed into two semesters. Civil law has been compacted into just three semesters. Some of this greater flexibility may be attributed to Law No. 3.998 of December 15, 1961, art. 14, which authorized greater curricular experimentation for the University of Brasilia.

One starts from the postulate that the study of law is a science, and that one studies law much as one would study any other natural phenomenon, searching for ultimate scientific truths and propositions. The raw data for the legal scientist are his codes and statutes, and his task is to analyze and elaborate the principles which can be drawn from these legislative norms into a systematic structure. The components of this system are thought to be purely legal, a set of ultimate truths related by rigorous deductive logical analysis. The intrusion of non-legal facts, such as may be gleaned from sociology, psychology, social anthropology, political science, or economics, tends to detract from this search for absolute principles and the true nature of legal institutions. Though lip service is often paid to the relevance or utility of such non-legal disciplines, in practice there is a bias against the study of these other disciplines in anything but a superficial manner and an almost total unconcern for evaluating the functioning of legal norms against the economic, political, or cultural aspects of Brazilian society.⁶⁹

This is not meant to suggest that *all* Brazilian law professors use only a straight lecture technique or that *all* construct their lectures in the above fashion. Some professors do require the student to write papers on selected topics, show their students what courts or prisons are like, permit debate, or occasionally break the class up into groups for an examination of real cases, but these are a small minority. And to be sure, some professors never arrive at a critical analysis or a higher state of abstraction, but are content simply to describe black letter rules of law.

But this prevailing attitude towards law and law study—that it comes hermetically packed like tennis balls and that deductive analysis is the key to open the can—is at least partly responsible for the great disparity between law and practice in Brazil. The difficulty with this approach is, as Santiago Dantas, one of the outstanding Brazilian jurists, pointed out:

“In the study of abstract legal rules presented as a system one can easily lose the sense of the social, economic, or political relationships the law is intended to control. The legal system has a logical and rational value, autonomous, so to speak. The study we make of this system, with strictly deductive and *a priori* methods, leads to a condition of self-sufficiency which enables the jurist to turn his back on the society and lose interest in the matter regulated as well as in the practical significance of the legal solution.”⁷⁰

⁶⁹ There is, of course, no single conceptual approach to law study, and there are probably a good many Brazilian law professors who would not subscribe to this generalization. This composite closely follows the fine description of Italian legal science, which has heavily influenced Brazilian legal thinking, in Cappelletti, Merryman & Perillo, *The Italian Legal System: An Introduction* 1966–175 (1967).

⁷⁰ Santiago Dantas, *A Educação Jurídica e a Crise Brasileira*, 13–14 *Revista Jurídica* 7, 18 (1955).

In a good many areas of Brazilian law this is precisely what has happened, and one of the central tasks of reform efforts in Brazilian legal education is to redirect the jurist's attention to the practical significance of proffered legal solutions.

VII. *Development of Interest in Reform.* In 1955 Santiago Dantas, then *Catedrático* of Civil Law at the National University and later Minister of Foreign Relations and of Finance, delivered a seminal address calling for a revitalization and professionalization of education in Brazil.⁷¹ Dantas noted that the influence of law, as a technique of social control, has been declining as greater importance has been given to more pragmatically oriented disciplines like economics and public administration. Because legal norms have been much more concerned with ethical principles than with practical solutions to acute social problems, law has assumed "the role of a reactionary force, a resisting element, which governmental agencies would like to circumvent in order to promote, by more immediate and direct means, what seems to them to be in the public interest."⁷² Dantas suggested that the way to restore law to its former primacy is to reorient the existing aim of law school teaching toward "the development of legal reasoning instead of the mere systematic knowledge of abstract rules . . ." The way one does this, according to Dantas, is by introduction of the "case method" with a Socratic dialogue between student and teacher to develop a student's ability to resolve controversies. Dantas also advocated a more flexible curriculum that would permit students to specialize in general areas like commercial law, criminal law, administrative law, or economic and social sciences. For the latter area of specialization, he proposed that law students be able to take courses for credit in economics or philosophy faculties rather than attempt to import social science teaching directly into the law school.⁷³

Dantas' speech is a remarkable document, expressing eloquently many of the ideas at the heart of the legal education in the United States today. Yet, in many ways, the Dantas speech is remarkable for what it did not advocate. From the searing indictment of the Brazilian system of legal education, one would have expected a condemnation of the

⁷¹ *Id.*

⁷² *Id.* at 13.

⁷³ He suggested requiring eight of the fourteen courses which today constitute the minimum curriculum. Rather than depart from the *cátedra* as the teaching unit, Dantas would have increased the number of *cátedras* to 30. The traditional expository lecture would be retained for at least some of the classes in every course, and seven courses would be taught only by straight lecture. Other courses would be taught by a combination of lecture and work sessions. Only during the work sessions would the student be expected to participate actively in the discussion of cases, and the usual ratio of work sessions to lectures was 1 work session to 3 hours of lecture.

catedrático system and the part-time nature of the law school. But Dantas had a shrewd sense of the possible. Though he recognized that introduction of the case system would require the student to spend more time at the law school, he visualized this time as four to five hours a day. He said nothing about requiring students or professors to devote full time to the law school, nor did he attack the *catedrático* system.

When one examines the concrete proposal put forth by Dantas, one is surprised at its modesty. Far from being a radical assault on the citadel of the law school, Dantas' proposal represented an attempt to change the orientation of legal education by working within the established structure. He did juggle the curriculum about somewhat to permit students to specialize, but essentially he juggled the old curriculum.⁷⁴

Despite the persuasive case Santiago Dantas made for the reform of legal education and the essentially modest nature of his specific proposals, few practical consequences followed his address.⁷⁵ The University of Brasilia did adopt his suggestion of permitting the law student to specialize and to take courses in other faculties to compliment his special interests, but the structural innovations there went far beyond anything Santiago Dantas had suggested. Brasilia is, however, a special case, involving the setting up of a new form of university in Brazil. Reform of the existing law schools is a very different story.

Nevertheless, a few of the law schools sensed the need to offer some practical aspects of legal training in addition to highly theoretical lectures. Brazil has long required that indigents be afforded the assistance of counsel in both civil and criminal cases,⁷⁶ and fourth and fifth year law students may be designated to render such assistance.⁷⁷ The

⁷⁴ The only curricular innovations Dantas suggested were courses in aerial and maritime law, general accounting for the commercial law specialist, and permitting the specialist in economics and social sciences to take for credit courses in sociology, economics, history of economic doctrines, and politics outside the law school.

⁷⁵ However, several law professors and lawyers have publicly acknowledged the validity of his criticisms and the value of his program. *E. g.*, Orlando Gomes, *Reestruturação do Curso Jurídico*, 33 *Rev. de Fac. Dir. Bahia* 7 (1958); Moraes Filho, *A Transformação do Direito e a Renovação do Ensino Jurídico*, 17 *Revista Jurídica* 9 (1959); Boaventura, *supra* note 17.

⁷⁶ Law No. 1060 of Feb. 5, 1950; Code of Criminal Procedure, Art. 263. See generally, Bezerra Câmara, *Justiça Gratuita*, in 31 Carvalho Santos (ed.) *Repertório Enciclopédico do Direito Brasileiro* 1-3.

⁷⁷ Law No. 1060 of Feb. 5, 1950, Art. 18. It has become relatively common for fourth and fifth year law students in the larger cities to work part-time with state legal aid programs. For example, there are presently about 800 law students serving as clerks to Public Ministry of the State of Guanabara. Sérgio de Andréa Ferreira, *O Estágio e o Ensino da Prática Forense*, paper submitted to Seminar on Law Teaching of the Instituto dos Advogados Brasileiros at Rio de Janeiro, Aug. 5-10, 1967, p. 3.

Law School of the Federal University of Minas Gerais sometime about 1958 decided to create a legal aid clinic where fourth and fifth year students would have the opportunity to proffer legal advice, draft pleadings, and litigate cases under faculty supervision.⁷⁸ The Law School of the Federal University of Pará instituted a similar program in 1961.⁷⁹

An enormous impetus to providing practical orientation in the law schools was given by a 1963 federal statute restricting entrance to the bar to law school graduates who had either passed a bar examination or had served a two year clerkship.⁸⁰ Though the Bar Association has not yet instituted a bar examination program, the clerkship requirement is being insisted upon. A law student may serve his clerkship during his last two years in law school, either by working in a law office, a legal aid program, or the legal department of a company. He may also satisfy it by matriculation in a course of professional orientation administered by a law school or the Bar Association.⁸¹ A number of law schools have responded to this statute by grafting professional orientation programs on to existing *cátedras*.⁸²

Another type of response by a few law schools to the charge that they have not been teaching their students how to practice law has been supplementation of theoretical lecture courses with seminars dealing with the practical aspects of the subject. The Law School of the Federal University of Pernambuco started a program five years ago under which each *cátedra* was to have one class per week in the form of a seminar devoted to a discussion of the practical implications of the lectures.⁸³ The Law School of the University of São Paulo recently inaugurated a similar reform.⁸⁴ However, in practice these seminars quite often become theoretical lectures, and in some *cátedras* they function not at all.

⁷⁸ Alberto Deodato, A Faculdade de Direito e o D.A.J., Estado de Minas, Jan. 23, 1968.

⁷⁹ Aloysio da Costa Chaves, O Estágio e o Ensino da Prática Forense, paper submitted to Seminar on Law Teaching of the Instituto dos Advogados Brasileiros at Rio de Janeiro, Aug. 5-10, 1967.

⁸⁰ Law No. 4.215 of April 27, 1963, Art. 48(III). This requirement became effective as of 1966.

⁸¹ *Id.* at Art. 50(III) and (IV).

⁸² For example, the State University of Guanabara has recently organized a Service of Legal Assistance annexed to the *cátedras* of civil procedure, labor law, and administrative law. This service will offer a course in professional practice as well as legal aid to indigents.

⁸³ Interview with Dr. Lourival Villanova, Dean of the Law School of the Federal University of Pernambuco, in Recife, May 24, 1967.

⁸⁴ Interview with Dr. Alfredo Buzaid, Dean of the Law School of the University of São Paulo, in São Paulo, Aug. 4, 1967.

VIII. *Organization of CEPED.* Probably the most important program in terms of its potential effect on Brazilian legal education, is the *Center of Studies and Research on Law Teaching* (CEPED), created in 1966 by a resolution of the Law School of the State University of Guanabara. For all practical purposes, CEPED operates autonomously, even though the Dean of the Law School and the Director of CEPED are now one and the same. The resolution creating CEPED is dexterously vague about its long term relationship with the Law School. CEPED's faculty is drawn from several different law schools in Rio de Janeiro, and a conscious effort has been made to avoid giving it the character of a branch of a single law school. The faculty also includes several members of the economics faculty of the Getúlio Vargas Foundation, a distinguished center of advanced economics and social science studies where CEPED is physically located.

CEPED's primary task involves giving a one-year post-graduate course for young lawyers in private practice or in the legal departments of government agencies or private corporations. This course is designed to perform several functions: (1) to experiment with different teaching methods involving active student participation in the classroom; (2) to develop the first set of teaching materials for Brazilian legal institutions; (3) to combine the teaching of law with enough economics and accounting to enable lawyers to understand recent complex legislation; (4) to teach topics in the broad field of economic regulation that have become of critical importance to Brazilian firms but which have not yet figured in the law schools' curriculum; (5) to develop from among its students a group of potential teachers and importantly placed lawyers who can serve the cause of the reform of legal education; and (6) to provoke more fundamental thought and active debate over the role of law and of lawyers in a developing society.

CEPED also has the task of developing a research program that will produce publishable monographs on legal topics of current interest by CEPED personnel and by visiting scholars. To some extent this research program should dovetail with the research necessary to produce adequate teaching materials. CEPED has started to assemble a library of foreign and Brazilian legal materials, but as yet the staff has been too busy with the preparation and teaching of the course to devote much time to the research program.

Another of CEPED's programs is to stimulate interest in current legal problems by holding conferences or seminars. CEPED has already sponsored a 5-day conference on "Problems of Urban Law," bringing together experts from the United States, Chile, and Brazil.

Eight of CEPED's senior faculty members spent a month visiting U. S. law schools, discussing teaching methods with U. S. law school professors and participating in a seminar on law teaching methods at the Harvard Law School. They brought back to Brazil the conviction that some of the teaching techniques presently employed in U.S. law schools could be profitably adapted to the Brazilian scene.

A variety of different teaching techniques have been employed thus far in CEPED, depending on the professor and the material. Basic background in taxation, corporate law, economics, accounting, monetary correction, arbitration, and international contracts have been given by a combination of lecture and room discussion of materials distributed in advance of class. After a year of experimentation, CEPED has started to develop the type of dialogue that occurs between professors and students in the better American law schools. The class is thought of not as occasion for the systematic presentation of doctrine, but as the occasion for debate in which the students are forced to think hard about the problems put to them. The professor is the first to admit that there may be no "clear answer" to a given problem, and that the purpose of the discussion is to compare the possible answers and to develop criteria for selecting one among them. Classes often stress the dated character of a particular law or regulatory scheme and the need for its reform before it can adequately serve the needs of a modern industrial society.

A balance is being achieved between the cross-examination-like approach that prevails in the American law school, particularly in the first year, and the expository approach traditional to Brazilian law teaching. An attempt is being made to combine the functions of imparting information and developing the ability to reason and to criticize. Thus, professors are calling attention to the ambiguities of opinions and statutes, examining legal norms in terms of social or economic policy and showing a concern for the rightness or justice of a particular result. And students are being forced to think critically about what they are reading and to try to invent solutions for legal and financial problems. Unlike most interdisciplinary efforts, the economists and lawyers have worked well as a team on the legal planning that went into the organization of business enterprise.

The teaching materials naturally still require considerable improvement. A series of small problems was used to introduce the principal problems of the two semesters. Considerable time was devoted to the economic and financial implications of a detailed feasibility study of the first semester's problem—a joint mining venture, with the participation of several Brazilian firms and a foreign firm. This study served

to integrate quite successfully the early classes on economics and accounting with the more traditionally legal aspects of the course. At one stage the class was divided into law firms for the negotiation of the form of the venture. During its second semester CEPED focused on the problems of a medium sized enterprise, with special emphasis given to organizational problems, housing legislation, and monetary correction. Students were also required to write papers discussing various aspects of corporate law that were touched on during the first part of the course.

In the first term of its second year, CEPED built upon its experience to start improving the materials and to restructure the course. A series of subjects was taught through the problem and discussion method, and the faculty tried to "integrate" these subjects through a complex problem cutting across all these fields at the end of the semester. In the second semester, students will continue in a general course and select among several options for smaller courses which again may require the writing of papers.

As might be expected, CEPED has some serious problems. Many stem from its part-time character and from the ambitious nature of its undertaking. The preparation of the first set of teaching materials for Brazilian legal institutions, added to the day-to-day preparation for class, entails the sacrifice of an enormous block of time from the lives of busy practitioners. CEPED's position outside existing law schools frees it from a good deal of bureaucratic red tape and the Byzantine politics of the *catedrático* system, but unfortunately exposes it to other hazards, largely financial.

Nevertheless, CEPED's first year was by any standard successful, and its second year has already begun to build upon the substantial accomplishments of the first year. That success stems in large part from the great prestige enjoyed by its director, Dr. Caio Tácito, and from the high ability, dedication, and idealism of the law teachers and economists who constituted CEPED's teaching staff. And a great deal of credit should be given to Professor David Trubek, now of Yale Law School, and Professor Henry Steiner of Harvard Law School, who, as advisors to USAID and the Ford Foundation, worked imaginatively with Dr. Tácito in formulating the plans for what has become a peculiarly Brazilian project, even though initially nourished by comparative experience.

IX. *Reform within the Brazilian Law School.* It has long been assumed that ultimately any serious renovation of Brazilian legal education must occur directly within the Brazilian law school. Even experiments such as CEPED assume potential significance within Brazil only

insofar as they can communicate their methods and goals to the university law schools. Whether this will actually happen is, of course, open to doubt. But any attempt to carry CEPED-like reforms directly within the law school must consider the obstacles to reform within the existing structural framework of the Brazilian law school and evaluate the extent to which experiments such as CEPED or the United States law school can serve as a model for undergraduate legal education in Brazil.

Though there is still widespread use of the "case method" in United States law schools, particularly in the first year, a wide variety of teaching methods and techniques are actually employed. But to the great majority of Brazilian law professors, United States law teaching and the "case method" are identical. Many quickly reject the United States experience as inapplicable to a codified civil law jurisdiction in which cases are not a particularly important source of law. But this too facile dismissal loses sight of the fundamental difference between the kind of teaching which predominates in United States law schools and Brazilian law schools—the extent of active involvement of the student in the teaching process. In United States law schools the student tends to be actively engaged in learning, while his Brazilian counterpart tends to sit passively absorbing the wisdom of his professor. It is on this crucial point that CEPED has most sharply departed from Brazilian tradition. Both students and faculty at CEPED have been impressed with the tremendous pedagogical advantages of teaching law with classroom discussions, with teaching materials distributed in advance of each class, with highly motivated students, and with simulated legal problems. CEPED's approach is frankly experimental. No one feels very confident that he has discovered the "best" way to teach law to Brazilian students. Experimentation with teaching methods and revisions of teaching materials will undoubtedly continue for a long time in the future. But both the faculty and the students are convinced that what is being done is a significant improvement over the legal education presently being offered in the best Brazilian law schools.

CEPED and the better American law school have a number of factors in common which permit the functioning of discussion teaching methods. First of all, they have selected, highly motivated student bodies. American law students are motivated by the career opportunities that come with high class rank, by the knowledge they may flunk out unless they do a fair amount of work, by the fear of being embarrassed in front of their classmates if they arrive in class unprepared, and, in some cases, by the desire to get their money's worth out of a legal education. CEPED students are also motivated by career opportunities.

Roughly half the students have their tuition paid for by their employers and know that doing well will probably enhance their positions. Those that are paying their own tuition do not want to waste their time and money. CEPED students are also extremely concerned about being embarrassed in front of their classmates. Being older and already in practice of law, CEPED students are able to appreciate the value of the course to their professional lives. And probably the most important motivation comes from a feeling they are learning something—from the intrinsic challenge of the course itself.

Secondly, CEPED students and American law students both receive teaching materials in advance of class which enable them to participate in the discussion. To be sure, some of the CEPED materials are still in a rough state, but they at least serve to give the students a background for the class and stimulate an interest in the problems.

Thirdly, both CEPED students and faculty, like their American counterparts, spend a great deal of time preparing for each class. Some of the CEPED faculty were quite surprised that they had to spend six to eight hours preparing for each class. No longer can they present a single position on a debateable proposition, and they must be prepared for a variety of arguments.

Fourthly, both CEPED and the American law school professors have tended to concentrate on a selected group of problems rather than trying to cover the entire subject matter in an encyclopedic fashion. The assumption is that if a student learns how to approach a problem properly and think creatively about solving it, he will always be able to go to the books on his own and come up with an acceptable solution. This assumption is especially important to teaching law in a society whose legal system is rapidly changing. CEPED fortunately has no *catedrático* system to contend with. It cuts across traditional course lines in its approach and need not feel that the multiplicity of small points in a course syllabus must be touched upon.

Fifthly, there is a sense of contemporaneity and reality common to CEPED and American legal education. Many American law school courses achieve this sense of reality through the study of cases or problems, which present a piece of an actual controversy to the law students. Since the great majority of Brazilian cases are presently poor teaching tools,⁸⁵ CEPED has turned to the study of problems, complete with financial projections, supplemented with legislation, administrative regulations, cases, legal opinions, and doctrine. Frequently,

⁸⁵ Perhaps more Brazilian judges would take the trouble to state the facts and their rationales clearly if they thought that their opinions might someday be used as teaching vehicles.

the discussion turns to how a given legislative norm functions in practice. The students who work for various governmental agencies often provide invaluable insights to current practice, and occasionally the man in charge of administering the law under discussion is present.

The crucial question is: to what extent is CEPED's experience transferable or duplicable—in the Brazilian law school? Much depends on the law school's propensity towards change, which, unfortunately, seems rather low. Ironically, the basic format of legal education has become the prisoner of the legal system. For some reason Brazilian legislators have felt a driving need to regulate as many things as possible by law. Recently, a Brazilian journalist quipped that if some action is not prohibited in Brazil, it is obligatory. This tendency to prefix by rigid legislative solutions that which calls for a flexible experimental approach is particularly pernicious in higher education. It would simplify attempts to devise a workable approach to reforming Brazilian legal education if laws regulating the number of hours a *catedrático* has to teach each week, setting a minimum curriculum, providing for advancement only by *concurso*s, and fixing the same salary for each *catedrático* were repealed, but this would not resolve the underlying problems.

Classes are too large for efficient use of discussion techniques, and the students are not well selected or motivated. To some extent, the chance of being called on in class will motivate the student, but this motivation is in inverse relationship to the size of the class. Flunking out a large percentage of the non-motivated would help considerably, but such an obvious solution is politically unpalatable in a country which is hell-bent on educating more and more university students. Scholarships linked to grades as well as need may be quite useful. But the best motivation to study is an intellectually challenging course.

Another difficulty is teaching materials. A great deal of time and effort will have to be spent by law school professors on their preparation, but this cannot be done well or easily unless a great deal of time and effort is spent trying to understand and plan to what use the materials will be put. Teaching materials in the United States law schools have evolved over a long period of time, and they will require many years to evolve in Brazilian law schools.

But the biggest obstacle to reforming teaching methods within the law schools will come from the law professors themselves. Every faculty has a group who wants no part of any attempt to change the *status quo*. Even younger men may not be very sympathetic, particu-

larly if they think they will soon have a chance to become a *catedrático*. Most *catedráticos* will have to change their way of teaching or leave a fair amount of teaching to younger men. But it is difficult to believe that many will be ready to abandon a way of teaching that has become a way of life. And the present law requires the *catedrático* to give at least three classes a week. A few conscientious and able *catedráticos* may put in the time necessary to prepare for a discussion style class, but many can or will not. Many will also not accept the inclusion of facts derived from other disciplines as relevant to the study of law.

If one ties reform of legal education to revising existing legislation, full-time teaching, and/or changing the *catedrático* system, nothing will be likely to happen for a long time into the future. One of the most intriguing aspects of the proposal of Santiago Dantas is its shrewd awareness of what is possible in the Brazilian law school. He recognized that a full-time law school is not yet feasible in Brazil and that reform must take place within the structure of the *cátedra*. Any viable project for the reform of legal education within the Brazilian law school must confront this basic reality. The American law school evolved slowly into its present mold, and it is overly optimistic to expect that drastic changes will sweep rapidly through the Brazilian law schools. There are circumstances which will presently permit reforms in teaching methods, but one must recognize that these reforms must necessarily be limited and gradual.

X. *Conclusion.* One of the disadvantages of the *catedrático* system is that it permits every *catedrático* to do just about what he pleases within his *cátedra*. But this can also be an advantage if an individual *catedrático* would like to experiment with a completely different style of teaching. Projects involving an entire law school or departments of law schools must run the considerable risk of being sabotaged or diverted by conservative *catedráticos*. But this risk can be sharply diminished if *catedráticos* interested in changing their approach operate within their respective *cátedras* and can receive outside financial help.

The amount of financial investment that this approach requires is small. Individual grants for study and the preparation of teaching materials, coupled with a sojourn at CEPED or some American law school, may produce a number of professors willing and able to experiment with different methods of teaching law.

If they become enamoured of a different approach to legal education and start making invidious comparisons between the caliber of education they are receiving in other courses, the students, who are a potent political force in Brazil, may exert a fair amount of pressure on

other *catedráticos*. One or two faculty members setting a good example can be enormously influential in this respect.⁸⁶

In any event, a significant start has been made in tackling the difficult and perplexing problem of legal educational reform in Brazil. It is too early to tell whether the rather formidable obstacles that lay in the path of such reform can be surmounted or circumvented. But if they can, the beneficial effect on Brazil's economic and social development may be substantial.

⁸⁶The development of the case method at Harvard Law School was the work of one extraordinary man, Professor C. C. Langdell. See Fessenden, *The Rebirth of the Harvard Law School*, 33 *Harv.L.Rev.* 493 (1920). And its introduction to the Yale Law School was largely due to the influence of a single professor, Arthur Linton Corbin. See Gulliver, *Arthur Linton Corbin*, 76 *Yale L.J.* 878, 880 (1967).