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Globalization and Legal Education in Latin America: Issues for Law and Development in the 21st Century

Alfredo Fuentes-Hernández*

I. Introduction

The turn of the century poses new challenges for Latin American Law Schools in the task of building institutions which will be able to deliver top quality programs for lawyers. Today we face an increasing number of developments and global changes that are transforming the scope and conception of education. Higher education institutions in the region have to cope with the issue of responding to ever-increasing student demand without further diluting quality and exacerbating the scarcity of financial resources. Also, if Latin American Law Schools are to help preserve democracy and promote social change, they will have to surmount the traditional problem of the formalism that underlies legal culture through programs that enable students to apprehend new subjects now emerging in the field of law, and to serve the ideal of respect for the Rule of Law.

Which are the main specific issues that Law Schools have to deal with in order to improve the quality, coverage, and relevance of the training of lawyers in the present millennium? In an increasingly interdependent world, how will these higher education institutions assure that law and the judicial system provide the basis for a better insertion of Latin America into the world economy and for a greater respect for human rights? Which are the suggested policies for innovation in legal curriculum, teaching, and international cooperation among institutions in order to change the role of lawyers in our societies? To what extent could such policies be carried out without a new model of regulation and management of higher education institutions?

In order to examine these inquiries, this paper attempts to review

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recent trends in higher education institutions where Law Schools operate; it examines the educational consequences of the Rule of Law revival, and its upholding of political and civil liberties; and it considers how the training of lawyers is affected by economic integration processes and wider harmonization efforts in the field of international commercial transactions.

II. Globalization, Adjustment Policies and Higher Education

During the last fifteen years, Latin American countries have been implementing structural reforms in order to improve the role of the price system in attaining efficiency in the allocation of resources and gaining international competitiveness. The opening up of domestic markets to international competition; the formation of free trade areas and common markets among regional groupings; the liberalization of capital and foreign exchange markets; adjustments in labor regulations; tax reforms; privatization of public enterprises; the elimination of subsidies and price controls; alongside the adoption of macroeconomic measures to curb inflation, restore balance of payments equilibrium, and renew economic growth—all of these have been priorities in the agenda of policy makers in regional emerging democracies.¹

Empirical analysis demonstrates how countries that are open to trade, foreign investment, technological contracts, labor migration, and flows of ideas become capable of attaining higher rates of growth and improve welfare as well.² But in the process of implementing structural reforms, Latin American countries have encountered institutional obstacles to any continuous improvement of income distribution, and competitive insertion into the world economy. More than half of the differences in income levels among developed and Latin American countries is associated with deficiencies in the institutions of the latter.³ Mainly, Latin America is backward in the application of knowledge in production, and its governments are ineffective in providing public services and building social capital for democratic citizenship.

Latin America has had serious deficiencies in terms of the quality of education, the strength of democratic institutions, the quality of

1. M.C. Rueda, H. Jaramillo, and A. Fuentes, *Reorientaciones en políticas económicas y científico-tecnológicas en América Latina*, DOCUMENTOS CLADEI-FESCOL, BOGOTÁ, No. 3, 1992, at 17.

2. C. Angulo, J.R. Toro, A. Mejía, J.H. Cárdenas, and A. Carrasquilla, *New Universities for the Centennial Challenge*, UNIVERSIDAD DE LOS ANDES, BOGOTÁ, 2001, at 2.

3. INTER-AMERICAN DEVELOPMENT BANK, *DEVELOPMENT BEYOND ECONOMICS: ECONOMIC AND SOCIAL PROGRESS IN LATIN AMERICA, 2000 REPORT (2000)* [hereinafter IDB].

investment, and the dissemination of technical information, management and organizational skills. These factors, ones that determine the use of economic inputs in a more productive way, have explained approximately one half of the long term economic growth of industrialized countries.⁴ In this context, higher education is considered to be one of the crucial factors for improving productivity, given its role in the “promotion of lifelong learning practices necessary to update one’s knowledge and skills.”⁵

It is true that important progress has been made in increasing the coverage of higher education in the last fifty years. In 1950 there were some 700,000 students distributed between 75 universities in Latin America. Today there are nearly nine million, enrolled in over 5,000 establishments; 900 of them are universities—65% of them are private—and the rest are technological institutes, training centers, and other kinds of educational institutions. However, this growth has neither meant better quality in the higher learning institutions, nor accumulation and use of knowledge needed for countries to participate in the scientific and technological revolution and to develop competitive advantages.⁶ Also, despite regional progress towards democracy over the past two decades, institutions of higher education are not fulfilling their duty to provide comprehensive formation of men and women so that they will use the law and the justice system in the promotion of democracy and human rights, and in the pursuit of social and economic change.

Major shortcomings in tertiary education in the region are:

A. Coverage

Notwithstanding the enlargement of tertiary enrollment (20% as a proportion of the potential population), there is a need to increase the participation of young people. Present enrollment rates in most countries lag behind rates of Asian countries or the United States (more than 80%). It is estimated that the demand for university slots in the region is growing at a rate of 3% a year, which will require doubling the size of the offer in the next two decades.⁷ Fiscal constraints have impeded further expansion of the public education with satisfactory quality standards. Furthermore, reduction of budget allocations, combined with

4. H. Chenery, S. Robinson, and M. Syrquin, World Bank, *Industrialization and Growth: A Comparative Study* (1986).

5. Lauritz Holm-Nielsen, *Challenges for Higher Education System*, in EDUCACIÓN SUPERIOR: DESAFÍO GLOBAL Y RESPUESTA NACIONAL 170 (Luis-Enrique Orozco ed., 2001).

6. José Joaquín Brunner, *Tiempo de Innovar: Políticas Innovativas*, in EDUCACIÓN SUPERIOR, *supra* note 5, at 91.

7. See IDB, *supra* note 3, at 85.

increased fees in public universities and poor quality control policies, have resulted in a dramatic expansion of private tertiary enrollment with the creation of new profit-oriented higher education institutions, which in many cases operate with limited accountability.

B. *Quality*

Except for a few universities comparable in quality to international institutions, the expansion in the tertiary education systems in Latin America has been accompanied by a decline in the quality and relevance of learning, teaching, and research: poor physical facilities, limited and obsolete library resources, outdated curricula, weak research communities unable to participate in knowledge production and to confront economic and social problems, and unqualified teaching staff. For example, "less than 6 percent of lecturers teaching in public universities have a doctoral degree and 26% a master's degree.

More than sixty percent of lecturers in the public sector work only part time; and in private universities the proportion is as high as 86%."⁸ Quality problems are not adequately addressed, since there is a lack of efficient government controls and accreditation mechanisms, poor governance structures, and deficient management practices in higher education institutions.

C. *Equity*

Access to tertiary education remains concentrated in the wealthier groups of society, especially in the university sector. In Peru, Chile, and Uruguay, for example, the proportion of students from the bottom third income group is only 6, 11 and 18 %, respectively.⁹ In Colombia, 3 out of 4 students enrolled in higher education come from the wealthier segments of the population. In the absence of well-designed student aid mechanisms, the inequality in access tends to worsen, since low-income students have to look for work while studying. As a result, the proportion of the poorest students who actually graduate tends to be lower than among first year students.

It is necessary to transform Latin American countries' tertiary educational systems in order to increase levels of schooling that are currently below world standards, to promote Research and Development (R&D) spending and the accumulation of knowledge, and to strengthen civic skills that are so essential to democratic political participation. On average, Latin Americans remain in school fewer than nine years, much

8. See Holm-Nielsen, *supra* note 5, at 178.

9. *Id.* at 176.

less than the average of 13.5 years for young people in the United States, or the 12 years in Korea or Taiwan.¹⁰ OECD countries account for more than 80% of worldwide R&D investment and scientific publications, and in Latin America only Brazil exhibits levels of R&D comparable to other advanced developing countries.

Striking changes in the production and dissemination of knowledge, through Information and Communication Technology (ICT), may provide new opportunities for educational institutions to respond to local demands. In fact, there is an unprecedented explosion of scientific and academic works and publications. Examples are impressive. It took 1,750 years to double published and internationally registered disciplinary knowledge for the first time; it is now doubling every five years, and it is expected to double every 73 days in the year 2020. It took 275 years to collect the first one million books at Harvard University, but only 5 years to collect the latest one million. While there were 10,000 scientific journals in 1900, there are now over 100,000 of them.¹¹

The impact of ICT will be an opportunity for the provision of information to a larger number of students and also to enrich the process of teaching and up-dating education without entirely replacing student-teacher interaction.¹² Approximately 15 million Latin Americans had access to the Internet in 2000, and at present growth rates there will be 75 million in 2005, benefiting mainly young people enrolled in higher education institutions.

Adequate use of ICT will thus be an important means to meet challenges of equitable expansion of tertiary education and improving quality and social relevance of university programs in Latin America. But it must be stressed that ICT is not a guarantee that skills and knowledge will be acquired. In addition to their provision of mass information, the institutions have the task of guiding students as to how to select, evaluate, interpret, use, and add value to it.

III. Globalization, the Rule of Law and Legal Education

Following setbacks to democracy in Latin America in the mid-1960s and the late 1970s, subsequent remarkable progress has been made towards the building of democracy in the region. Individual countries have achieved different degrees of progress toward civil and political freedoms, but the region as a whole has progressed considerably above world levels in this field. Relevant indicators in the area of political

10. See IDB, *supra* note 3, at 10.

11. See Brunner, *supra* note 6, at 88.

12. See Angulo, et al., *supra* note 2.

rights point out enlarged abilities of individuals and social groups to participate freely in the political process, to set up political organizations, and to act in opposition to the party in power. In the civil liberties arena, the indicators gauge the ability of individuals to make personal decisions without being discriminated against; to express their opinions and publicly dissent; to create organizations; to benefit from their economic effort and their property; to have better access to justice; and to be protected from arbitrary treatment.¹³

In the area of international protection of human rights, the region has achieved remarkable formal progress with the adoption of an important body of supranational legislation, such as the American Declaration of Rights and Duties of Man, adopted in 1948, and the American Convention of Human Rights approved in 1969 that entrusts a Commission to implement the Convention and creates a Court of Human Rights. The presence of repressive military regimes during the 1970s and part of the 1980s, and continued political violence in some countries of the region, have promoted adoption of other treaties and international conventions, as well as the development of domestic legal systems for confronting human rights violations. A regional network of non governmental organizations has also evolved for the monitoring of violations, research, and litigation combined with advocacy, in order to ensure greater accountability.

This democratic progress in the region, as well as the economic liberalization and stabilization policies mentioned earlier, are now in a difficult process of consolidation through the adoption of reforms oriented by the Rule of Law. "The Rule of Law is receiving so much attention now because of its centrality to both democracy and the market economy in an era marked by a wave of transition to both."¹⁴ The upholding of political and civil liberties, the promotion and defense of human rights, and the enforcement of property rights and contracts are central to the strengthening of the rule of law, all requiring competent legal and judicial systems. Accordingly, there is a growing concern about the need to improve the judiciary's role in social and economic development by enhancing its responsibilities of guaranteeing law enforcement, facilitating business, and avoiding arbitrary action and corruption.

It is well known that judicial reform efforts in the region have been aimed at overcoming various obstacles to the provision of better services, including: (1) limited independence of the judicial power; (2) inefficient

13. See IDB, *supra* note 3, at 15.

14. Thomas Carothers, *The Rule of Law Revival*, FOREIGN AFF., Vol 77, No. 2, 1998, at 97.

allocation of resources to operate the system; (3) cumbersome legal procedures; (4) inadequate management of court houses and legal cases; (5) deficient policies for selection and training of personnel; (6) feeble sanctions to anti-ethical conduct; and (7) the limited scope of alternative dispute resolution and access mechanisms for low-income sectors and minority groups of the population.¹⁵

Despite the wave of justice reforms, there are still serious delays in trials, a great accumulation of cases in courts, limited access to services—especially by the poor—impunity before crime and corruption, violation of human rights, and a high level of mistrust of the judicial branch among the general public.¹⁶ While the region now stands in the forefront of the developing world in terms of civil liberties and democratic rights, the vast majority of Latin Americans say that crime and corruption have increased a great deal, and that most public institutions do not deserve their trust. Property crimes represent the most common form of crime in all countries, but also, with some notable exceptions, murder rates in the region have increased dramatically since the middle of the 1980s. Despite reforms in criminal codes, in terms of Rule of Law indicators (such as predictability of the judicial system, respect for contracts, and the use of criminal jurisdiction for solving conflicts), and of control of corruption (irregular practices for private gains in public administration), Latin America ranks lower than any other region, except Africa.¹⁷

Given the current dissatisfaction with justice services, a new approach to institutional change would require the adoption of a conception of reforms which acknowledges the interest of supporting and opposing groups, and which equally regards the incentive system as relevant to the improvement of poorly performing institutions.¹⁸ This approach would promote the removal of cultural impediments that pose obstacles to well-designed and timely reforms. Aside from formal rules and written Codes, there are informal restrictions deeply entrenched in traditions, the culture of lawyers, and corporate behavioral patterns, which generate perverse incentives and deter individuals from implementing changes of routine. Within this context, the continuation of Rule of law reforms should give priority to the identification and

15. Alfredo Fuentes, *Pending Challenges of Judicial Reform: The Role of Civic Society Cooperation*, in COMPREHENSIVE LEGAL AND JUDICIAL DEVELOPMENT: TOWARD AN AGENDA FOR A JUST AND EQUITABLE SOCIETY IN THE 21ST CENTURY 342 (Rudolf Van Puymbroeck ed., 2000).

16. Linn Hamberg, *Years of Judicial Reform in Latin America: Where We Are and Why We Have Not Made More Progress?*, in JUDICIAL REFORM IN LATIN AMERICA 3 (Alfredo Fuentes ed., 1999).

17. See IDB, *supra* note 3, at 25.

18. See Fuentes, *supra* note 15, at 343.

modification of a set of formal and informal rules which ultimately determine the conduct of the operators and users of the legal system.

In order to support change and provide knowledge, skills, and attitudes to the people playing the various roles affected by the reforms, there is a need to design systematic educational methods reflecting the values and contents of the reform programs. Emerging curricula should encompass training of lawyers, judges, officials, and also members of the public, if legal, procedural, and administrative reforms are to be carried out successfully.¹⁹

There are many examples of the particular links between the judicial system and the university classroom: the new adversarial criminal procedure adopted in the majority of Latin American countries resulted in a significant transfer of responsibilities among judges, prosecutors, the police, and defenders. In order to learn and apply their new roles correctly, students need to conduct mock arrangements and trials, view videos, and visit Courts in other jurisdictions to experience how adversarial procedures are applied to an array of typical crimes or disputes, among other activities.²⁰ The establishment of mediation as a necessary procedural step, before attempting any action before a court of justice, also requires teaching theory and practice of systems for the delivery of alternative dispute resolution mechanisms which will enhance access to justice. Likewise, the scope of judicial activism which emerges from a particular constitutional arrangement in a country, has to be studied in its context of local values, institutions, traditions, and public expectations in order to evaluate conservative or reformist approaches.

If it is to operate successfully within the legal system, a curriculum must contain activities to enhance learners' substantive knowledge through developing problem-solving skills and attitudes. Operational skills such as interviewing, drafting a bill of law, reading, writing, hearing, and negotiating, are critical. Attitudes essential to service, such as integrity, honesty, fairness, and commitment to public service are also crucial. At the same time, future lawyers must be acquainted with theories about the nature and social function of the law and the legal system.²¹ Moreover, if they are to participate in civic affairs in an informed manner, young adults need to master data, commentary, and argumentative capacity in areas outside their specialty. A general education program for law students is indispensable to consider the

19. Neil Gold, *Legal Education in Changing Societies, in JUDICIAL REFORM IN LATIN AMERICA AND THE CARIBBEAN: PROCEEDINGS OF A WORLD BANK CONFERENCE* 113 (1994).

20. INTERNATIONAL DEVELOPMENT BANK, *HOW MUCH FOR THE LAW DEGREE, in AMERICA SPECIAL REPORT* (1999).

21. See Gold, *supra* note 19, at 117.

meaning and value of our common life and our responsibilities for each other as human beings.²²

Given poor social performance—over 220 million of people in Latin America and the Caribbean still live in poverty—Latin American law schools are also facing the need to reinvigorate clinical legal education as a complement to the traditional model of Law Clinics based on representation and legal advice to impoverished clients by practicing law students. This approach, that mirrors the private lawyer, has been adopted in many countries, including a few in Latin America, by means of involving students in teaching law, human rights, and advocacy, and introducing them to the possibility of using the law for social justice purposes. Public Interest law clinics are supporting the education of new lawyers who are better trained and more socially aware, and thus in a better position to help empower democratic citizenry. Such clinics not only improve the legal training process, but also enhance access to justice by providing legal representation on important community issues that may not receive attention from other public or private agencies.²³ In this field, constitutional amendments have provided new possibilities of bringing into play the judicial system for promoting public accountability and defending and assisting collective rights.

The relationship between Rule of Law reforms and the law school curriculum illustrates the importance of rethinking the dominant model of legal education, in order to take into account the needs that different countries may have in different stages of development: “law schools—as the forums for the inculcation of substantive law, knowledge of the legal system, legal work study, and the values of justice and human rights—offer the potential for a variety of approaches . . . [e]ach law school should reflect upon its regional and parochial responsibilities, its capacity to meet some of its society’s demands, and its ability to maintain a balance of supply between legal expertise that services the City (in the sense of financial core) and those who administer legal services on behalf of the citizens. The more successful ones will also be able to consider how they address the growing demand for international legal expertise and experience.”²⁴

22. See generally J. KATZ, ET AL., ASSOCIATION OF AMERICAN COLLEGES, A NEW VITALITY IN GENERAL EDUCATION: PLANNING, TEACHING, AND SUPPORTING EFFECTIVE LIBERAL LEARNING BY THE TASK GROUP ON GENERAL EDUCATION (1988).

23. Hugo Frühling, *From Dictatorship to Democracy: Law and Social Change in the Andean Region and the Southern Cone of South America*, in MANY ROADS TO JUSTICE: THE LAW RELATED WORK OF FORD FOUNDATION GRANTEES AROUND THE WORLD 79 (2000).

24. Roger Burrigde, LEGAL EDUCATION AND DEVELOPMENT – FALSE DAWNS, FRESH BREEZES 5 (2000).

IV. Globalization, Latin American Integration into the World Economy and Legal Education

There is strong evidence demonstrating that countries that actively participate in international trade attain higher rates of growth and income. In the period following 1950 the world economy resumed its globalizing trend and international trade grew faster than domestic output, raising living standards and speeding development. Exposure to foreign competition, and increased trade and capital flows have helped developing countries to boost productivity and improve their participation in world trade. Though, some countries have moved ahead more rapidly than others, suggesting that not all of them are well equipped, in terms of infrastructure and institutions, to participate and use the trading system effectively.²⁵ Legal systems have to be renovated to take advantage of the paths of unification and harmonization of international commercial practices in order to enable the law to better reflect changing commercial realities, and to provide better tools for lawyers to promote economic and social enterprise.²⁶

A. Institutional and Legal Challenges of Open Regionalism

For the past half century the multilateral trading system has actively worked to eliminate tariffs and non-tariff barriers that pose obstacles to trade and investment. The general Agreement on Trade and Tariffs, and more recently the World Trade Organization (WTO), have championed trade liberalization on a multilateral and non discriminatory basis. Countries of Latin America, as members of the multilateral system, not only have experienced expansion of trade flows through wider access to markets of developed countries, but also have reinforced sustainability of market oriented development reforms.

But the multilateral trading system has not represented the unique track towards freer trade. Latin American States have been actively involved in regional and subregional liberalization of trade and industrial cooperation, since the 1960s, in order to overcome the market and financial limitations of import substitution industrialization strategies. Initiatives such as the establishment of the Central American Common Market and the Latin American Free Trade Association in 1960; the

25. COUNCIL OF ECONOMIC ADVISERS, *THE GLOBAL ECONOMY* 683 (2000).

26. See generally Arthur Rossett, *Unification, Harmonization, Restatement, Codification, and Reform in International Commercial Law*, 40 AM. J. COMP. L., 683 (1992).

Andean Pact, aiming at creating a Customs Union, created in 1969; the thirteen-nation Caribbean Common Market founded in 1973; the renegotiated Latin American Integration Association (LAIA) in 1980, with the ultimate goal of a Latin American Common Market; the Southern South Common Market (MERCOSUR) settled in 1991; and a number of bilateral trade agreements between Chile and Mexico, Colombia and Chile, and Mexico, Colombia and Venezuela (Group of the Three), have all been expressions of regionalism in Latin America throughout the post war period. The regional scenario has offered a concrete setting in which to visualize the equitable distribution of benefits of a wider scope of economic activity and, hence, the willingness to make ample concessions to trading partners.

The invigoration of economic regionalism is a component of a world trend toward international integration and has meant a process of bringing national legal systems of Latin America closer to each other. But this approximation within civil-law boundaries through the adoption of common policies, binding rules, and even Courts of Justice decisions, has brought enormous legal and judicial challenges in response to the proliferation of schemes and multiple memberships that will have to be sorted out. Even though regional trade agreements are authorized in Article XXIV and in the Tokyo Round Enabling Clause, each arrangement has its own rules and they are not always consistent. As one observer has noted, "this complex structure must give way to something more coherent if the process of hemispheric trade integration is to advance further."²⁷

At the hemispheric level, the process of integration will be a more complex one, in light of implications for convergence among common law and civil law traditions, and the task of accommodating different sizes and degrees of economic development. The North American Free Trade Agreement (NAFTA) signed in 1992 has been a first step towards the design of fair and predictable rules of trade and investment among countries that exhibit different legal families and stages of development. Many observers see the NAFTA agreement not as the end of a three-country negotiation, but as the beginning of a long journey for the countries of the Hemisphere to harmonize their policies.²⁸

The Enterprise for the American Initiative (EAI), launched in 1990, initially envisioned a process of trade liberalization that would lead to a free trade area in the Western Hemisphere between developed and

27. Sidney Weintraub, *Western Hemisphere Free Trade: Getting from Here to There*, in TRADE LIBERALIZATION IN THE WESTERN HEMISPHERE 338 (1995) [hereinafter TRADE LIBERALIZATION].

28. Robert A. Pastor, *The North American Free Trade Agreement: Hemispheric and Geopolitical Implications*, in TRADE LIBERALIZATION, *supra* note 27, at 53.

developing countries, through partnership built around negotiation of reciprocal, rather than unilateral, trade concessions. Such a pact might be in place by 2005, as agreed by the Heads of States of the Americas at the Miami Summit; mindful, however, that at the time of this writing, the U.S. Congress has yet to approve fast track procedures and that much technical work has to be done to feature wider economic harmonization.²⁹ Like the European Union, which is becoming a mixed jurisdiction, a growing convergence between the Americas' two major legal traditions might be expected: the civil law of the continental countries and the Anglo-Saxon or common law.

Critical issues like the protection of intellectual property rights; the harmonization of labor and environmental standards; the enactment of rules for freeing trade in services and government procurement; the establishment of dispute settlement procedures; and standardized rules to prevent or remedy unfair trade practices, will have to be accommodated within disparate legal traditions. Those rules will be built up on a GATT-plus basis and regarded as a hybrid of the common and civil law traditions to facilitate transactions on a hemisphere-wide free trade area. Within this context, lawyers, law firms, labor unions, business representatives, non-governmental organizations, and negotiators will have the difficult burden of building up codes and regulations at the hemispheric level that are compatible with, and complementary to, multilateralism.

B. International Legal Developments to Support Economic Transactions

Besides the role of economic groupings in the unification of texts and the harmonization of national statutes to facilitate integration goals, there is another important mode of convergence between different legal traditions that is relevant for the present global reshaping of Latin American legal systems. It is the effort in regional organizations and agencies such as the International Institute for the Unification of Private Law (UNIDROIT), the United Nations Commission on International Trade Law (UNCITRAL) and the International Chamber of Commerce, to bring the commercial law of the world together.³⁰ Such a process of harmonization of legal rights and duties arising under international commercial transactions results in conventions, treaties, guides to enactment or legislative recommendations that may end up with the force of law, or in instruments, guidelines, and model contract rules, the

29. THE AMERICAN ASSEMBLY, COLUMBIA UNIVERSITY, THE FUTURE OF THE WESTERN HEMISPHERE: A SHARED VISION TOWARD 2015 18 (2000).

30. See Rosset, *supra* note 26.

efficacy of which depends upon incorporation into dealings by contracting parties.

UNCITRAL, with the task of reducing or removing disparities in national laws governing international trade that create obstacles to the flow of trade, has achieved major results since its establishment in 1966 in areas such as the international sale of goods and related transactions; electronic commerce; international commercial arbitration and conciliation; international transport of goods; procurement of goods, construction and services; and international payments. Six Latin American countries are in the group of the thirty six member States of the Commission.

In the case of UNIDROIT, ten Latin American countries are among the fifty-eight member States, striving to prepare rules concerned with the unification of substantive law. The uniform rules drawn up by the Institute tended to take the form of international Conventions, but alternative forms of unification, including model laws, general principles addressed to legal operators and contracting parties, and legal business guides, are increasingly being crafted. Many commentators welcomed the UNIDROIT Principles of International Commercial Contracts, published in 1994 and drafted by a working group representing all of the major legal and socio-economic systems of the world, as a new *lex mercatoria*. Though it remains to be seen, depending upon effective incorporation of the Principles into the legal activities, they illustrate the global trend of finding synthesis between different legal systems, through modeling transnational bodies of law, opened to customs, and especially tailored to the needs of international commercial transactions.³¹

C. *Challenges to the Training of Lawyers*

The aforementioned developments in the unification and harmonization of rules for international integration and consistency of commercial transactions have meant new challenges to Latin American legal education. On the one hand, there is a clear tendency toward specialization and consolidation of a group of global firms with multiple professional legal services: "Today, no one lawyer can hope to master the full range of legal problems and challenges confronting lawyers . . . more and more lawyers are becoming technicians, with an intensive focus upon an area of expertise." Also, in light of complexities of economic transactions in an interdependent world of commerce and finance, clients require a blend of professional advice, and "one-stop"

31. Gesa Baron, Bonn/Edinburgh, *Do the UNIDROIT Principles of International Commercial Contracts Form a New Lex Mercatoria?*, available at <http://www.cisg.law.pace.edu/cisg/biblio/baron.html>. (1999) (last visited Sept. 3, 2002).

professional law firms could reduce the costs of identifying and monitoring the appropriate specialists.³² The challenge is how to enable lawyers to function in this increasingly integrated environment.

Besides offering traditional basic law courses, curricula must include increasing alternatives to help students understand changes in the legal profession, and give them tools to explore emerging fields of law in the context of a global economy. Law Schools must exhibit different choices through more internationally specialized offerings, interdisciplinary courses, and renewed comparative and international law classes for understanding foreign legal systems. Furthermore, a law program of truly global reach in Latin America should systematically expose its participants to basic training in the Common Law. Cooperation with North American and European Law Schools offering bijural curricula, would be of great interest for undergraduate and continuing educations programs in the hemisphere.³³

In the process of convergence of the Common Law and Civil Law systems in the hemisphere, university education will have to take into account forces tending to cause legal systems to diverge, such as (1) the influence of strong organized interest groups within a nation; (2) the importance of decentralization and separate local regulations according to diverse provincial interests; and (3), the role of people's loyalties commanded by regional, ethnic, sex, job, and other socio-political-ideological affiliations.³⁴ Law schools in Latin America should enhance horizontal cooperation among themselves, and with their North American and European peers. It would promote understanding of the links between legal rules and conventions, and those historical factors that explain diversity of solutions in different legal cultures. Understanding diversity will help to reconcile trends of harmonized laws in different cultural environments.

Many of the international conventions and model rules gradually being adopted in Latin American legal systems face the problem of non-uniform application given different legal traditions and sources of law applied in their usage. "Having harmonized codes or restatements in place, does not achieve harmonization in practice in the absence of competent legal technicians sharing a common frame of reference and

32. See THINKING ABOUT THE TRAINING OF LAWYERS IN THE NEXT MILLENNIUM (American Bar Association Annual Meeting, Presidential Showcase Panel, London 1999).

33. See JOHN J. COSTONIS, THE LOUISIANA LAW CENTER'S BI-JURAL PROGRAM (United States - Canada Conference on Bi-jural Education, Louisiana State University 2001).

34. John Henry Merryman, *On the Convergence (and Divergence) of the Civil Law and the Common Law*, in THE LONELINESS OF THE COMPARATIVE LAWYER 32 (1999).

standards, which they can utilize in applying and interpreting the harmonized language.”³⁵ Law schools in the hemisphere need to offer courses and materials to teach not only the content of uniform laws, but how its practice diverges in different scenarios.³⁶

In the field of market and social integration, the diverse and simultaneous regional and sub-regional processes of supra-national unification of trade and private laws in Latin America are creating multiple zones of formal unity, which may become incompatible. This essential disunity underlying several harmonization efforts calls for wider teaching and research on private international law rules. “The disunity and conflict inherent in competing sets of formal rules must be dealt with by a further set of formal rules. These rules themselves become the object of unification efforts.”³⁷

To confront disunity, Latin American law schools should also play a crucial role in the process of building up the legal infrastructure needed for a Free Trade Area in the Americas. Lawyers and other social scientists need to develop a research agenda on issues that are critical to understanding how free trade will affect the majority of persons in the Western Hemisphere. It would shed light on how to provide the legal and institutional basis for equitable economic interdependence. Hemispheric integration is far from a free lunch, and it is far from certain that it will be the panacea to mechanical economic development.³⁸ To be successful in promoting growth and social welfare, wider economic integration must rest upon fair rules and also on “political institutions based on democracy and rooted in respect for social standards, including labor, women’s and general human rights, consistent with a respect for future generations.”³⁹

The aforementioned challenges to the training of lawyers call for systematic international institutional cooperation in the field of legal education in the 21st century. Programs may embrace, apart from the traditional sending of graduate students abroad: (1) the formation of study groups to discuss curriculum design and teaching methods with an interdisciplinary and trans-systemic approach; (2) programs to develop

35. Louis F. Del Duca, *Developing Transnational Harmonization Procedures for the Twenty-first Century*, in *COMMERCIAL LAW AND CUSTOMER LAW – NATIONAL AND INTERNATIONAL DIMENSIONS* 38 (Cranston & Goode eds., 1993).

36. Robert C. Clark, *Building A World Law School*, 42 *Harv. L. Bull.* 5 (Winter 1991).

37. H. Patrick Glenn, *Harmonization of Law, Foreign Law and Private International Law*, 1 *EUR. REV. PRIVATE L.* 47, 50 (1993).

38. Robert A. Blecker and William E. Spriggs, *Beyond NAFTA: Employment, Growth, and Income-Distribution Effects of a Western Hemisphere Free Trade Area*, in *TRADE LIBERATION IN THE WESTERN HEMISPHERE* 61 (1995).

39. See *AMERICAN ASSEMBLY*, *supra* note 29, at 19.

skills of comparative law teaching; (3) joint research activities and drafting of teaching materials on hemispheric integration issues; (4) promotion of flexible systems of validating knowledge for students and teachers; and (5), providing basic foreign language training to enable future lawyers to function within an integrated environment. Experiences concerning the implementation of the SOCRATES Programme in the Member States of the European Union would be relevant for designing inter-university cooperation activities, and to support the growth of international culture shared by western nations.⁴⁰

V. Final Remarks on Latin American Legal Education and Development

Latin American Law Schools are under pressure to update their curricula and teaching methods in order to help promote democracy, human rights, and social and economic change within a growing interdependent world. The main points arising from this paper suggest the relevance of facing three tasks to deal with such pressures, and at the same time building institutions which will be capable of delivering top quality programs for lawyers in the present century.

The *first task* is linked to overcoming deficiencies of the tertiary education system. Given fiscal constraints that impede expansion of the public system at the pace of expected demands, government policies should aim at counteracting inefficient use of available public resources. At the same time, there is a need to create a framework that encourages levels of quality, vigilance, competition, information, and incentives for academic activities. Such incentives can be introduced based on academic performance and the fulfillment of international standards. Their purpose would be to motivate better qualification and remuneration of teaching staff; the formation of research communities; the development of libraries and technology; and improvements in management and curricula. Also, policies must be adopted in the field of professional practice, such as establishing minimum requirements to practice law, or make membership by Latin American lawyers in self governing bar associations mandatory.

The rapid development of private law schools enrollment in Latin America requires the strengthening of information and accreditation systems to guarantee accountability. In some cases, the closure of sub-standard quality institutions will be needed. A leading group of private non-profit universities in the region are capable today to provide legal education of international quality. Given the lack of government funding

40. Final Commission Report on the Implementation of the Socrates Programme 1995-1999 (Commission of the European Communities ed., Brussels, 2000).

and high tuition fees to cover their cost structure, student access to this type of education can be expanded and extended to low-income sectors through long term university credit mechanisms, and with merit-based scholarships.⁴¹

The adequate use of new technologies to meet challenges of expansion and quality improvement of legal training has to be accomplished at the university level, where economies of scale could be attained. Learning in cyberspace can certainly provide new opportunities to law students and will alter the nature of law professors' activities as well. But infrastructure investment is costly and requires permanent training of students and staff. One might expect that the pace of these developments will be uneven, and in the process will create both inequalities and new centers of expertise.⁴²

The *second task* relates to how Latin American lawyers could play a responsible role in supporting policies for the consolidation of democracies and market economies, including the implementation of policies to fight income inequalities. In the field of judicial reforms, educational steps ought to be taken in order to achieve an efficient judiciary that proves competent in adjudicating cases without further delays and backlogs. The law school curriculum itself should encourage not only visionary standards—such as due process, judicial independence, service efficiency, ethical behavior, and access to justice—but also learning methods for the application of skills in various contexts (i.e., acting as judges, prosecutors, counselors, defense lawyers, mediators, etc.) to promote new corporate behavioral patterns and commitment to change. In the teaching process, law schools need to invigorate cooperation with the judiciary, in order to develop a systemic approach in order to change the behavior of operators of the legal system.

Law enforcement and crime prevention policies designed to guarantee respect for life and property could also be supported in university classrooms. On the one hand, law schools are under pressure to update their curricula so that students have at least basic abilities to work with the new codes and procedures.⁴³ On the other hand, interdisciplinary legal and social research is crucial to identify crime prevention strategies. Traditional measures against crime in Latin America have emphasized the role of criminal justice over crime prevention. Nevertheless, reliable international evidence shows how prevention policies are not only more cost effective, but they can afford

41. See IDB, *supra* note 3, at 86.

42. See Burrige, *supra* note 24, at 6.

43. See HOW MUCH FOR THE LAW DEGREE, *supra* note 20.

higher dividends in reducing delinquency, violent crime and insecurity.⁴⁴

Providing wider access to quality legal services for the underprivileged must be a pivotal goal incorporated in the field of legal education. While maintaining traditional free legal services for the poor, university legal aid clinics in Latin America can continue the process of joining forces with government, NGOs, and community based paralegals to meet legal needs in targeted communities. They can also complement the work of existing human rights organizations, inspire policy review, and seek broad impact through class action suits. Increased litigation on public interest matters can help students to explore weakness in legal systems or procedures, and will help in the education of the judiciary itself.⁴⁵ A few public interest law clinics in Latin America are also helping to encourage greater population participation and citizens' empowerment through civic education. The objective is to grant non lawyers the opportunity to understand their rights and duties as citizens, as well as the mechanisms that have been established to protect these rights. This course of action will contribute to the formation of tolerant and respectful citizens in Latin America.

The *third task* deals with accommodating the education of lawyers to the main trends in globalization and regional integration. At the outset of the 21st Century, law school curricula must be precisely articulated with the WTO multilateral agenda, which is expected to enhance market access and sketch balanced rules to ensure that developing countries secure a share in the growth of world trade. Incoming multilateral negotiations, that shall be concluded no later than 2005, will lead to domestic efforts in Latin America to adjust to WTO rules and disciplines, implement obligations and exercise the rights of membership, with a view of ensuring benefits to all participants.⁴⁶

Besides global trade rule-making and liberalization, the multilateral trading system also recognizes that regional trade agreements can play an important role in promoting the liberalization and expansion of trade to foster economic and social development. The new drive to hemispheric integration indicates that a pact should be in place by 2005. This raises the challenge of converging rules that facilitate wider economic harmonization to construct new relationships in the Americas.

44. See IDB, *supra* note 3, at 71.

45. See Aubrey McCutcheon, *University Legal Aid Clinics: A Growing International Presence with Manifold Benefits*, in MANY ROADS TO JUSTICE, *supra* note 23, at 267; see also Felipe González, *Evolución y Perspectivas de la Red Universitaria Sudamericana de Acciones de Interés Público*, in ROMPIENDO LA INDIFERENCIA, ACCIONES CIUDADANAS EN DEFENSA DEL INTERÉS PÚBLICO (2000).

46. World Trade Organization, Fourth WTO Ministerial Conference in Doha, *Ministerial Declaration* (Nov. 14, 2001) available at <http://www-heva.wto-ministerial.org> (last visited Sept. 3, 2002).

In the process of bringing national legal systems closer to one another, practicing lawyers have the challenge of facilitating international commercial transactions by drafting international contracts and foreseeing their global tax implications; by securing predictable conditions for cross border foreign private investment; by promoting understandings aided by international commercial arbitration and conciliation; by sketching agreements for the protection of intellectual property rights; by meeting standards of competition in trade operations; and by following transparent rules in government procurement operations, and the like. This trend towards an increasingly specialized bar, supported in transnational regulations of private law, have to be embodied in law school endeavors. The aim is to promote necessary understanding of the functioning of the global economy and emerging fields of the law.

Within this growing economic and legal interdependence, law schools must facilitate student comprehension of foreign legal systems. Basic bijural training and cultural understanding of diversity will also help to achieve "harmonization in practice," in order to better apply and interpret a growing body of conventions and model rules. Candidates for law practice must understand how the profession is developing under a highly pluralistic legal environment, where the State confronts its declining power in light of supranational forces, local powers, and diverse people's affiliations.

This environment offers an opportunity to push forward changes in content and method of traditional legal teaching in Latin America. Concerning content, increased offering of comparative and international law courses, as well as those pertaining to law and society, and interdisciplinary subjects, may facilitate getting in touch with the changes in the legal profession and the process of building a common legal culture. Concerning method, there is ample space for innovation in teaching, giving attention not only to scientific knowledge but also to the practical skills needed for transnational legal practice. A few universities in the region are incorporating into their programs the "Problem Based Learning" system, that favors working with smalls groups and encourages research, analytic insight, and zest for work.⁴⁷ Interuniversity cooperation to support changes in content and method may contribute to the removal of barriers to inter-jurisdictional legal practice and to the growth of international culture shared by western nations.

These horizontal cooperation proposals differ from the foreign

47. See generally MAASTRICHT UNIVERSITY, PROBLEM BASED LEARNING IN A LEGAL CURRICULUM: REPORT UNIVERSIDAD DE LOS ANDES, FACULTY OF LAW (1999).

development assistance programs, launched during the 1960s, to support what was known as the law and development movement. These early efforts focused on the reform of legal education; hence, lawyers were considered social engineers capable of changing antiquated legal and judicial systems. There was a shared belief that the system of legal education perpetuated the legal system's deficiencies, and that reforms of teaching and research in Latin American law schools were the most efficient way to break the cycle.⁴⁸ Based on these grounds, a remarkable methodological effort was launched in order to introduce the active teaching and problem-oriented research methods applied in North American legal education, as opposed to the traditional lecturing method that was dominant in Latin America. The intent was to build up a core group of legal professionals and the infrastructure needed to promote social and economic development.

Though many Law Schools in Latin America still face some of the traditional problems that were addressed by the law and development movement—such as course work based on passive lecture, shortage of full time professors, poor library collections and materials, and weak centers of legal research—successful reforms will depend on domestic efforts aimed at removing resistance to educational reforms, and creating incentives for institutional building and cooperation. A strategy that seeks to boost the capacity of legal education and research in Latin America should embrace discussions about: (1) specific regional, national, and local development goals; (2) guidelines to reform curriculum and law in action programs, if law schools and lawyers are to play a role as agents of development; and (3), the role of domestic public educational policies in promoting institutional modernization and high quality university services.

Beyond improved institutional education, a great deal of empirical research is needed in each national and local jurisdiction in order to learn more about the characteristics of segmented markets for the legal profession. Only by knowing more about law jobs, and jobs in which legal knowledge plays a significant role, will it be possible to provide better quality specialist services in different public and private scenarios.⁴⁹ This may suggest that law schools in Latin America also in need to improve local institutional strategies of legal expertise, in order to enhance service to society and the economy. "The goal of each law school might be different from that of others, but each school must be

48. John Henry Merryman, *Law and Development Memoirs I: The Chile Law Program*, 48 Am. J. Comp. L. 481, 496 (2000).

49. See Burrige, *supra* note 24, at 14.

asked to articulate a considered purpose.”⁵⁰

In this context, legal education needs to be conceived as a dynamic and diversified activity. Law schools in Latin America are required to periodically reconsider social and economic issues, and to examine the role of the law in the pursuit of socioeconomic change. Empirical analysis about trends involving demand for graduates in various legal jobs and activities is also needed. Such a flexible approach may result in greater diversification in the services of legal education institutions. However, the complexities of globalization in the 21st Century make it advisable to establish a core curriculum in law schools so that they might serve as a genuine tool of contemporary civilization. Law students need to understand the interconnected nature of learning in a radically pluralistic universe.⁵¹ A core interdisciplinary curriculum would be a crucial device for educating lawyers on the civic and ethical values of democracy, and contributing to social and economic development as hemispheric integration continues.

50. See *Thinking About the Training of Lawyers*, *supra* note 32, at 43.

51. See generally Timothy P. Cross, *An Oasis of Order: The Core Curriculum at Columbia College* (1995).

