

Legal Teaching: paradigms and discipline for undergraduate law in UFOP¹

Ensino Jurídico: paradigmas e disciplina para a graduação em Direito da UFOP

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Abstract: The text aims to initiate a reflection that leads to questioning the ways of thinking the practice of teaching in Law, from the perspective of reconstruction and revisiting the legal institutes. The bibliographic review methodology was used. It gives an overview of how the discipline project creation in UFOP and the data obtained with the project was developed. Finally, it is concluded that there is a need to review legal education and the training of students in this situation.

Keywords: Legal Education; revisitation; quality of teaching.

Resumo: O texto tem como objetivo iniciar uma reflexão que leva a problematizar os modos de se pensar a prática do ensino em Direito, a partir da perspectiva de reconstrução e revisitação dos institutos jurídicos. Utilizou-se da metodologia de revisão bibliográfica. Traz um panorama de como se desenvolveu o projeto de criação da disciplina na UFOP e os dados obtidos com o projeto. Por fim, conclui-se sob a necessidade da revisão do ensino jurídico e da capacitação dos estudantes quanto a essa situação.

¹ Part of this work is the result of the promotion approved by the Federal University of Ouro Preto by the Pro-active Program, in 2017, titled "Creation of the discipline" Trends in Legal Education: Facing the need to reformulate legal education in Brazil. " In the year 2018, a new project was approved that deals with the same topic entitled "Production of didactic-technological material as a basis for the discipline" Trends in Legal Education ": a proposal to revisit the paradigms of law teaching in universities" to give continuity to what had been developed and to produce material in the area of legal education.

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Palavras-chave: Ensino Jurídico; revisitação; qualidade do ensino.

Introduction

The issue under the Legal Teaching and quality of it brings to light the way the Law courses are structured and what would really be the finality of the Bachelor's degree in Law. Under this scenario, proposed in 2017, through the pro-active program, which will be explained later, to present the beginning of a research that involves, initially, the creation of a subject under the Legal Teaching Trends to be taught in the course of the Federal University of Ouro Preto. Thus, it is intended to present the reflections built with the development of the project, as well as disseminate the results.

The text is structured: first, it is necessary to analyze the existing reality of massification of legal thinking, in which most of the courses authorized by MEC focus on the approval of the Examination of the Brazilian Bar Association, and even on the approval in contests of the careers related to the exercise of public positions of the Judicial Power, in the last analysis, precluding the existing social reality beyond the process universe.

A brief approach was taken from the constitutional perspective and on the current regulation of teaching guidelines, in which it was demonstrated that education is a place of reflection, emancipation and collaboration between the Public Power and society as a whole.

Then, we proceeded to analyze the pertinence of the reformulation of legal education in Brazil, since the country is in constant and rapid social changes, in need, therefore, of a modern legislation capable of accompanying social needs and clamor as well as it is fundamental that jurists are able to interpret the norms in agreement with such transitoriness.

With this, it was hoped that the Discipline "Trends in Legal Education" would become an instrument of inclusion and emancipation of legal education at the Federal University of Ouro Preto, in order to provide a citizen awareness for the students, as well as a rationalization of this instrument's effectiveness of quality of life and social equality that is the Law.

Education in Brazil and its constitutional context

The current Constitution of the Republic, promulgated on October 5th, 1988, represented an advance in the social rights of Brazilians, so that the fundamental law could reflect the structuring of the State, the balance between the separation of powers, but particularly the rights and fundamental guarantees, the Constitution was very prodigal in listing them in the most comprehensive way at the time. In addition, it favored the participation of society in the processes of construction, democratization and emancipation of cultural and political spheres. The Constitution starts from a plural society and in constant transformation and tries to predict the unfolding of constant changes and struggles for recognition.

The constituent listed the citizenship and dignity of the human person in the roll of the foundations of the Republic and, in addition, listed as one of the fundamental objectives, the construction of a free, fair and solidary society without any form of discrimination (Constitution of the Republic, Article 1, items II and III and Article 3, items I and IV). Thus, for the effective application of these constitutionally assured

premises, it is necessary to implement broadly the access to education, a component indissociable to the effectiveness of citizenship, human dignity and social justice.

In addition to the policies defined and promoted by the Government in order to promote and implement education in Brazil, it is also up to society in general to collaborate decisively in the construction of a more democratic education. This is what the constitutional command itself affirms:

Article 205. Education, the right of all and the duty of the State and the family, shall be promoted and encouraged with the collaboration of society, aiming at the full development of the person, his preparation for the exercise of citizenship and his qualification for work.

In the definition brought by the Republic's Constitution, the constituent sought the commitment between the Public Power and the entire population in the various processes of consolidation of citizenship and in the living conditions of Brazilian citizens.

Thus, the Constitution specified some principles to enable professors to teach their classes autonomously, as well as students to question and participate in the teaching process, always in partnership with the community and in accordance with constitutional principles:

Art. 206. The teaching will be ministered on the basis of the following principles:

I - equal conditions for access and stay in school;

II - freedom to learn, teach, research and disseminate thought, art and knowledge;

III - pluralism of ideas and pedagogical conceptions, and coexistence of public and private educational institutions;

IV - free public education in official establishments;

V – appreciation of school education professionals, guaranteed by law, career plans, with entrance only by public competition of tests and titles, those of public networks;

VI - democratic management of public education, according to the law;

VII - guarantee of quality standard.

VIII - National professional salary floor for professionals of public school education, under the terms of federal law. (our griffins and translation)

It is perceived, therefore, as principles of teaching the freedom to teach and to learn, which makes possible the emancipation of the educational institutions and the students in front of the different ways of passing on knowledge, providing alternatives in front

of the prevailing system currently existing, which is the binomial teaching-learning standard.

For this, the democratic management of public education is ensured with the effective participation of the academic community, as well as the pluralism of ideas and pedagogical conceptions. This needs to be remembered because it is a higher hierarchy norm to ensure the democratization of educational entities and their emancipation against the standardization of thought in the current scenario.

Although the Constitution guarantees this autonomy to educational institutions together with society, the evaluation criteria currently established for higher education in Brazil do not favor the development of this pluralism, since they are formed by three main followings to be evaluated⁵ that fit, precisely, in standards, which are: the evaluation of educational institutions, the specific courses and the performance of each of the students. A good part of the higher education institute (HEI) in Law in the country takes the minimums of the assessments as "ceiling" from which they move to guarantee only their approval with the evaluating body. Differentials between courses are not encouraged, since there is no incentive by the evaluation body for a course to be well evaluated for any particularity that presents beyond the standard normalizer.

Although obstacles such as the current form of evaluation of the courses carried out by the government, it is imperative that the academic communities mobilize in order to promote reflection and the consequent improvement of the undergraduate and postgraduate courses in Brazil, in order to provide the formation of a citizen conscience in society as a whole. For this, the constituent guaranteed autonomy to the Universities, with the purpose of allowing the development of the institutions of Higher Education

Art. 207. Universities enjoy autonomy of didactic-scientific, administrative and financial and patrimonial management, and shall obey the principle of indissociability between teaching, research and extension. (our translation)

It could not be different with legal education, which despite being full of concepts and doctrines capable of directing the thinking of the applicator of Law - we realize that we still speak so naturally in "dogmatic" Law - still admits reflection about the current legal dogmas applicable, in order to rethink the quality of the law courses that exist in every country, especially after the considerable expansion and creation of new legal education courses by the country, in which the quality of teaching is not always appreciated. Note:

It should be noted that the teaching offered by institutions of higher education, which is eminently legalistic, based on positivism and not on the implementation and improvement of a rational didactic-pedagogical system, through which the main objective is to make students the center of the teaching-learning process. The traditional and still current model values traditional patterns of content

⁵ Criteria established by the National System for the Evaluation of Higher Education (SINAES), created by Law No. 10,861 of April 14, 2004.

transmission, technician, guided by the passive assimilation of the students. The conservative form is based on expository classes, without there being any necessary contextualization with the reality of the current society. (SANTOS, 2015, pp. 254-255)

Based on this analysis, it is hoped to break with, or at least evidence the standardized model of teaching experienced in most of the legal education institutions in Brazil, which is currently done without considering the evolution of teaching, as well as the eminent current needs, to be assessed under the constitutional prism of rights.

The need for reformulation of Legal Education

Contemporary society is constantly changing, whether collective, economic, political or cultural. In the same way it occurs with Law, which must be interpreted through a dynamic understanding, since it has the purpose of regulating social relations, being the inherent progression to its own development and the validation of its main scope. In this way, legal education must be studied in a way that is attached to social phenomena, in order to train law professionals to absorb reality and collective demands by applying the norms and tools that are appropriate to the specificity of each situation. This must be done critically in order to seek the correction of the interpretation forms misunderstanding, since, although it is recognized that the law is characterized by the application in the particular case, it often remains bound up with doctrinal (dogmatic) conceptualizations, abandoning the pragmatic bias of legal science or simply not questioning the existing status quo and naturalizing situations of oppression, privilege and selectivity of the system as "normal" because that is what law or dogmatics say.

The Constituent Assembly placed the pluralism of ideas and conceptions as one of the guiding principles of teaching in Brazil, as well as the freedom to learn, teach, research and disseminate thought, art and knowledge, according to the 1988 Constitution. Thus, it is verified that educational institutions are given a more plural character to undergraduate courses, which makes possible the creation of new disciplines and projects that intend to enhance the student's qualification.

Currently, Law courses in Brazil find their regulations in Resolution n. 09/2000 of the National Council of Education. The Ministry of Education determines that:

The curricular guidelines aim to provide the general guidelines for legal courses to structure their pedagogical projects in an autonomous and creative way, according to their vocations, social demands and labor market, aiming the formation of human resources with high intellectual preparation and fit for the technical and professional exercise of the Law. They do not constitute closed and immutable prescriptions, but parameters from which the courses will create their curricula ultimately to rupture with the conception that they are composed of an extensive and varied relation of disciplines and contents as juxtaposed or

overlapping knowledge and that they are no more than repetition of the already thought.⁶ (our translation)

However, Law courses in Brazil, for the most part, favor only the passing of the Examination of the Brazilian Bar Association (OAB), a requirement indispensable for the practice of law in the country, as well as a requirement to account for the period of legal practice necessary to enter some public careers such as the judiciary, or the Public Prosecutor's Office.

The OAB Examination consists of two phases, the first one consisting of 80 objective questions and the second the elaboration of a procedural piece to answer the practical case presented to the candidate, taking into account the application of legal text, often existing social reality to the practice of Law.

Many educational institutions are keen to pass the Examination of the Order, as well as in public examinations, precluding the construction of a professional who has the capacity to carry out a critical reading of society, from a broad and plural view of the existing social context.

The need for rethinking law courses has long been perceived, so that they are more in line with other disciplines, verifying law from an inter/multidisciplinary perspective, or perhaps from a transdisciplinary⁷ perspective that also focuses on skills and competences and less on specific content of exams and competitions. Let's see:

In practice, legal education has not kept pace with changes in law, allowing teachers to continue perpetrating only laws in the classroom, sedimented by some renowned teacher, or even by the simple summons of tedious trials that reveal the interpretation of the courts. The student is only charged with memorizing the lessons, which allows the formation of vicious curricula without there being any room for dialogue with the law. (SANTOS, 2015, p.256) (our translation)

Law undergraduate courses have been standardized under the shallow logic of public examinations and tests, and in this perspective there is no room for reflection on actual problems and prospects for solution. Very little is dedicated in the course to the formation of a proper and emancipatory methodology of research and incorporation of knowledge of other related areas. About this, concludes the author Natália Lisboa (2015):

(...) there is a pressing need to change the paradigms of evaluation of undergraduate courses in law and students for the construction of a plural legal culture, since the regulation of the form currently proposed evaluates and recognizes only a way of knowing, not privileging in any

⁶ Available at <http://portal.mec.gov.br/sesu/arquivos/pdf/dir_dire.pdf>. Accessed on March 1, 2017

⁷ The transdisciplinary analysis is made by the need to understand the same object of several different disciplines and at the same time beyond them, because it is an understanding of the present world (NICOLESCU, 1999, p.2-3) (our translation)

way the diverse cultural competences that the Brazilian population brings with it, thus repeating the law in accordance with the dictates imposed by cultural imperialism. (LISBOA, 2015, p.19) (our translation)

In view of the above, the creation of the discipline "Trends in Legal Education" aims to question how Law courses are constructed, evaluated and structured, in addition to promoting the critical reflection of these students in the current scenario of law undergraduate teaching.

Proposal brought by the authors by the pro-active program: a search for the understanding of legal education in UFOP beyond the classrooms

Initially, it is necessary to conceptualize the program institutionalized by UFOP and show the adequacy of the proposal. The Pró-Ativa program is an action of UFOP's Graduate Rectorate (PROGRAD), which, since 1999, aims to foster and support practices that contribute to the improvement of undergraduate courses at the University, through five lines of action : I) development of methodologies and support for learning; II) development of technologies to support learning; III) proposals to reduce evasion and retention; IV) proposals associated with the political-pedagogical project of course; V) diversity, social justice, inclusion and human rights.

The project "Creation of the discipline 'Trends in Legal Education' in view of the need to reformulate legal education in Brazil" was one of the approved, linked to line IV of the program, the project will be developed throughout the academic calendar of the University throughout the year of 2017.

The objective of the project was the offer of theoretical and doctrinal subsidy for the creation of a metalaw⁸ discipline denominated "Tendencies of the Legal Teaching" to be implemented in the grade of elective disciplines of the graduation course in Law of the UFOP.

The project was developed based on bibliographical research, considering that the data and analyzes performed were primary sources for the creation of this discipline. Scientific articles, interviews, reviews and books that analyze, review or critique the theme can be highlighted as primary sources. It was used as secondary source those that are available for the public consultation. Among them are the resolutions, ordinances and official documents made available by the Public Power.

The purpose of this proposal was to create a course in the Law course of the Federal University of Ouro Preto and, through it, to reflect on the current scenario of legal education in the country.

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The proposal to create the emancipatory and reflexive discipline in the course of Law, was planned in a linear way, in search of a conclusion that allows the current and future applicators of the Law, to have an open and variable concept, once the focus of the discipline to being created is to point out, question and problematize the inflexible way of preponderant learning in Brazil.

Innovation as to the creation of the discipline: a summary's punctual research of the law course of some Federal Universities

The discipline "Trends in Legal Education" presents itself as an innovation in the field of Law, since in a research carried out with 12 Federal University Law⁹ courses no discipline was found in the scope of the graduation that referred to the study of Legal Education according to is found, and UFOP becomes a reference in the proposal of the questioning of legal education by the graduates themselves. This is reinforced by the presence of the "New Subjects, New Rights" Masters, which is an academic master's degree in which one of its lines of research proposes to carry out re-readings of the legal institutes, with legal education being one of them.

Parallels found in the framework of post-graduation

It was found the existence of the discipline within the scope of the Getúlio Vargas Foundation's academic master's degree in Law: the discipline is called "Legal Education Training Program", which is compulsory, composed of 04 credits and has in its summary:

The training program in legal education has as its fundamental scope the training and qualification of Law teachers, within the objectives established for the postgraduate program. The course intends to construct a reflection that problematizes the ways of thinking about teaching in Law, leading the student to appropriate critically the relations between theoretical formulations on law, readings of law as a social phenomenon and legal education. This appropriation determines that the student is able to review the premises on which not only the configurations of programs, didactic materials and dynamics of the teaching-learning process, but also their relations with the theoretical matrices of construction of law as object of research and social form. The course seeks, in this sense, to enable the students to a kind of reflection that looks at the problematic, historical and contingent character of the science of law and that incorporates, to the logic of teaching action in the university scope, the implications of this necessarily provisional character of the object research. The articulation of this dual perspective - construction of a critical reflection on the law and the formulation of a teaching perspective

⁹ For this research, the following courses were studied: Federal University of Minas Gerais, Federal University of Lavras, Federal University of Viçosa, Federal University of Juiz de Fora (Campus Juiz de Fora and Campus Governador Valadares), Federal University Federal University of Ceará, Federal University of Bahia, Federal University of Western Bahia, Federal University of Espírito Santo, Federal University of Paraná).

capable of translating it - is at the heart of the process of formation of the future teacher, and unfolds in the form of constructing, for example, pedagogical objectives, didactic material, student evaluation and teaching methods.¹⁰

The discipline has the character of teacher training with new technologies and tendencies in legal education, in a similar way with proposed in the discipline "Trends in Legal Education" of UFOP, however the first one has the character of teacher training, creation of methodologies and second has a discussion character of teaching and propositions of new methods, primarily at the local level. However, it is shown as a parallel that can be established between the two disciplines that is the debate of "Legal Education" in Brazil.

Importance of the student's contact with the legal education practices

As a rule, law courses in Brazil do not deal with legal education in their curriculum, as had been shown previously, and professionals who wish to pursue this career must qualify throughout the *stricto sensu* postgraduate course, since there was no such space previously. This is reflected in the profile of the teacher of law, as brings PAGANI (2013):

The teacher of the legal magisterium carries with it some remarkable characteristics, which are derived both from the historical trajectory of Law courses and from the trajectory of teacher training for Higher Education in general. In the first case, the most obvious consequence is that the teacher is the fruit of what he experienced and becomes a repeater of the actions he or she deemed appropriate or inadequate. In the second case, it is the result of a formation that, despite having the "stricto sensu" postgraduate degree as its legally determined space, still does not have guidelines that regulate it, which may end up not contributing significantly to its formation. In both cases, the problems are repeated when considering the profile of this professional, problems that will be presented next. The teachers of the Law courses, for the most part, do not have pedagogical training before they begin teaching. They enter the classroom without knowing what the teaching requires, based only on the experience as students.¹¹

Law teachers learn to teach during their practice, due to the lack of regulation that provides such determination in undergraduate/postgraduate courses.

Disciplines in the course of Law UFOP: zetetic, dogmatic and propositions

¹⁰ <http://direitosp.fgv.br/nucleo-de-pesquisas/nucleo-de-metodologia-de-ensino>

¹¹ <http://direitosp.fgv.br/nucleo-de-pesquisas/nucleo-de-metodologia-de-ensino>

The disciplines in the Law are traditionally divided in dogmatic and in zetetic, being first defined as:

dogmatic are defined as they consider certain premises, in and of themselves arbitrary, as binding for the study, thus renouncing the postulate of independent research. Unlike the zetetic disciplines, whose questions are infinite, the dogmatic ones deal with finite questions. (FERREIRA, Adriano de Assis, 2011, p. 24)

And the second:

are, for example, investigations that have as their object the right in the scope of Sociology, Anthropology, Psychology, History, Philosophy, Political Science, etc. (FERREIRA, Adriano de Assis, 2011, p. 21)

The Teaching of Law attaches a greater weight to dogmatic disciplines, and this shows a greater tendency to the uncritical formation and circumscribed to literal analyzes of the law.

In the UFOP course of law, there are a total of 50 compulsory subjects to be studied, of which 42 are dogmatic and 8 are zetetic, representing 84% dogmatic and 16% zetetic. It is noticed the claim made above the tendency of the courses of Law by the dogmatic ones is confirmed in the course of Law of the UFOP.

The presence of a majority of dogmatic disciplines brings students to the "how right is" and not "how it should be" which is the role of the zetetic disciplines:

(...) the dogmatic approach reveals the act of expressing opinions and opinions. The zetetic, on the contrary, disintegrates, dissolves the opinions, putting them in doubt. Zetetic questions have an explicit speculative function and are infinite. Dogmatic questions have an explicit directive function and are finite. In the former, the thematized problem is configured as a being (what is something?). In the latter, the situation captured in them configures itself as a must-be (how should something be?). Therefore, the zetetic approach aims to know what a thing is. Already the focus dogmatically concerned with making decisions and guiding action. (FERRAZ JUNIOR, 2003, p. 41)

The presence of disciplines and regulatory norms that require formation with the minimum of dogmatic disciplines, being this one beyond the zetetic, shows a tradition of positivist formation, in which the Law has to be thought - and the formation of people in the universities and in the colleges walks in the same way - and executed as he is and not as an agent precursor of transformations. The interpretation of law as a set of norms is not consistent as the interpretative standard of the law of the democratic state of law, such that law is understood, or should be understood, as a community of principles (DWORKIN, 2001).

Final considerations

When it comes to the issue of Legal Education in Universities it is necessary to question even more the plural and open concept that this project should take and also the seriousness that must be realized. The authors, in an initial analysis, tried to delimit the situation of Legal Education in the constitutional context and in the context of the Law Course of UFOP to stimulate the searches by the other colleagues and pairs in the questioning of Legal Education in its course, or even the quality that this study is provided.

Thus, the project approved in Pró-Ativa is presented as innovative when proposing the discussion of legal education trends in the field of graduation in which students are expected to discuss the quality of teaching and its current configuration.

It is observed a prominence of the UFOP in opening the opportunity for the students to build a graduation of better quality, with the creation of the PRÓ-ATIVA program, but also in the approval of the project and the future discipline, since, as it was presented in the work itself, what was researched in the development of the project is not found in the grades of the discipline (or similar), which shows itself as an opportunity for knowledge expansion by the University itself.

In addition, in the course of the project, difficulties were encountered in finding manuals that dealt with the subject, so that it will be developed in 2018, as a way of continuing this, in which students (undergraduate and postgraduate) and teachers will produce a book that will be used as a bibliography for the works of the discipline "Trends in Legal Education".

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