

Association of
American Law Schools

Journal of
Legal Education

LAW PROFESSORS AS ACADEMICS AND TEACHERS

Stephen M. Feldman
James Boyd White

THE FIRST-YEAR CURRICULUM

Roberta Rosenthal Kwall
Jennifer Wriggins
David K. DeWolf

PEDAGOGY

Douglas R. Haddock
Paul L. Caron and Rafael Gely
Sarah E. Ricks
Jane Korn



GENERAL ARTICLE

Steven E. Hendrix

BOOK REVIEW

Harry Arthurs

Printed and distributed to law teachers as a public service
by West Law School Publishing and Foundation Press

Volume 54

December 2004

Number 4

more than ten participants. They liked all of the assignments, though not necessarily at the time. They thought they had learned some employment law as well as some practical skills. Many said they could not look at a speaker in the same way as before; they had become much more analytical and involved when listening to oral presentations.

Students felt that the atmosphere of the class was crucial. Trust is all-important. While I don't want students (or myself) to pull punches in critiquing a speaker, speakers should feel sure that they will not be humiliated by anyone else. If they feel embarrassed, that should be because of their own critical self-assessment, not what someone in the class says to them. There are ways to critique without being overly critical. It was rare for students to be overly harsh with each other, and they were never cruel. I could always temper a tough critique by saying that I disagreed with it.

Students liked the way their skills built up slowly over the semester as we focused on a different aspect of oral communication each week (rather than trying to do everything all at once).²⁸ Students learned about research while preparing their presentations; they learned as well about the importance of narrowing a topic down to fit the allotted time. This was another opportunity to reinforce the importance of preparation and the consequences of inadequate preparation.

There are now at least a few students who will go out into the world as better public speakers. They learned a useful skill that has many applications, and along the way they learned some employment law. Mostly they seemed to enjoy the semester, to be truly engaged in the process of becoming more proficient at oral communication; and they became active listeners. As a teacher, I could not ask for more.

28. Students learned a lot about employment law in addition to oral communication skills. It was crucial that all the students in the class had had some basic course in the area. While this article highlights what students learned about public speaking, they did so in the context of employment law. Some of what they learned was directed, but much of it was not. Students had the opportunity to explore areas of employment law that they were interested in, but they also heard a lot from other students in various other areas.

Restructuring Legal Education in Guatemala: A Model for Law School Reform in Latin America?

Steven E. Hendrix

For decades, American law school articles have concluded that university legal education reform was problematic at best in Latin America.¹ Conventional wisdom embodied in the so-called law and development literature during the 1960s and 1970s held that such efforts had largely failed.² Also during the 1970s, it became popular throughout Latin America to advance open-access admissions policies that made university education available to many people for the first time. This meant that many national law schools, such as those in Buenos Aires, La Paz, Mexico City, and San Salvador, went from several hundred law students to tens of thousands nearly overnight.³

Steven E. Hendrix is the acting team leader for democracy programs with the Latin America and Caribbean Bureau, U.S. Agency for International Development. Previously he served in USAID in Guatemala supervising the justice program that included the law school reform at the University of San Carlos.

1. One of the more famous experiments in the 1960s, supported by the Ford Foundation, was the Stanford Law School program in Chile. See John Henry Merryman, *Law and Development Memoirs I: The Chile Law Program*, 48 *Am. J. Comp. L.* 481 (2000). Legal education in civil law countries is basically general undergraduate education, with emphasis on theory and culture. It caters to civil lawyers as "technicians" or operators, unlike legal education in the U.S., which is mainly professional education catering to lawyers as "social engineers" or problem-solvers. Civil law legal scholarship is often very abstract, less concerned with concrete social problems than U.S. legal scholarship.
2. Much of the criticism of the law and development movement began with David M. Trubek & Marc Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, 1974 *Wis. L. Rev.* 1062. The law and development movement was an outgrowth of earlier, much more optimistic theory. See Brian Z. Tamanaha, *The Lessons of Law-and-Development Studies*, 89 *Am. J. Int'l L.* 470, 471-73 (1995) (reviewing *Law and Development* (Vol. 2, *Legal Cultures*), ed. Anthony Carty (Aldershot, 1992); *Law and Crisis in the Third World*, eds. Sammy Adelman & Abdul Paliwala (London, 1993)).
3. For an overview of the dismal state of Latin American law schools, see generally Alfredo Fuentes-Hernández, *Globalization and Legal Education in Latin America: Issues for Law and Development in the 21st Century*, 21 *Penn St. Int'l L. Rev.* 39 (2002).

Guatemala is an example of this trend.⁴ The country had fewer than 300 law students in the 1970s, but nearly 18,000 by 1998.⁵ Physical plants, faculty numbers, and budgets did not increase to reflect the change. Quality in nearly all public Latin American law schools has suffered. At the same time, international donors dropped law schools from the list of priorities,⁶ citing the results of the law and development movement and competing funding needs for elementary education.⁷ The subsequent neglect of legal education resulted in poorly performing law schools. This in turn reinforced the notion that university legal education reform is not effective and that law schools are not capable partners in advancing reform.⁸

4. The Guatemalan peace accords ended 36 years of civil conflict that left 200,000 dead or disappeared. Comisión para el Esclarecimiento Histórico, *1 Guatemala: memoria del silencio 73* (Guatemala, 1999). One of the recommendations of the accords was to set up a "commission on strengthening of the justice system." U.N. Dep't of Public Info., *The Guatemala Peace Agreements 136* U.N. Sales No. E.98.I.17 (New York, 1998). That commission issued a report with a chapter dedicated to recommendations for reforming legal education. See Comisión de Fortalecimiento de la Justicia, *Una nueva justicia para la paz*, 2d ed., 91-106 (Guatemala, 1998) [hereinafter Justice Commission Report].
5. Justice Commission Report, *supra* note 4, at 92. The latter figure includes students from five law schools, but 14,000 come from the public university—San Carlos. The other four law schools are private. *Id.*
6. When new rule of law programs came back on line with USAID, law schools were not included. *Id.* at 5. Interestingly, in the 1980s USAID developed several LL.M. programs at the University of Costa Rica, offering specialization rather than the general course of studies offered in a first law degree in Central America. For an overview of that program, see James P. Rowles & Ana Maria García Barzelatto, *Evaluation of the Graduate Legal Studies Program at the University of Costa Rica Law Faculty*, USAID, Pub. No. PN-ABM-474 (Washington, 1991). In the mid- to late 1970s a new emphasis on access to justice for the poor and legal aid projects became ascendant. Harry Blair & Gary E. Hansen, *Weighing In on the Scales of Justice: Strategic Approaches for Donor-Supported Rule of Law Programs*, USAID, Pub. No. PN-AAX-280, at 3 (Washington, 1994) [hereinafter *Weighing In*]; Aubrey McCutcheon, *University Legal Aid Clinics: A Growing International Presence with Manifold Benefits*, in *Many Roads to Justice: The Law-Related Work of Ford Foundation Grantees Around the World*, eds. Mary McClyment & Stephen Golub, 267 (New York, 2000). In the mid-1980s, with new court-reform programs in El Salvador and elsewhere in Central America, USAID programs were again refocused toward "administration of justice." As part of these programs, USAID invested heavily through the 1990s in judicial training and justice reform programs, especially for judges and prosecutors. USAID became a promoter of judicial schools offering specialized education for the particular needs of judges. For a good overview, see Linn Hammergren, *Judicial Training and Justice Reform*, USAID, Rule of Law Series, Pub. No. PN-ACD-021 (Washington, 1998).
7. In the early 1990s an influential World Bank study concluded that donors would be much more effective investing scarce funding in girls' elementary education than in university-level programs. In fact, Lawrence Summers, then chief economist at the World Bank, concluded that girls' education may be the investment that yields the highest possible return among development projects. In low-income countries investing in primary education, especially for girls, tends to produce a greater impact than investing at secondary or higher educational levels. Further, since girls are usually concentrated at the lower levels of the education system, investment at the higher end appears to have a gender bias against women. Isobel Coleman, *The Payoff from Women's Rights*, *Foreign Aff.*, May-June 2004, at 80, 83.
8. Joseph R. Thome, *Heading South but Looking North: Globalization and Law Reform in Latin America*, 2000 *Wis. L. Rev.* 691, 706 (citation omitted), notes the traditional mode of legal education long dominant throughout Latin America. Notable exceptions apart, the five- to six-year formation and training received by law students lacks the broadening enrichment of critical debate; instead, instruction is authoritarian in style, anchored in traditional pedagogy based mostly on foreign legal sources, and encyclopedist with an emphasis on memorization. Given the "rationalist natural law" basis of the Codes, the student who knows their content knows "the law." This thesis is inculcated throughout the long years

In Guatemala the U.S. Agency for International Development has taken a fresh look at the issue. The USAID office in Guatemala believed that the future of justice reform would depend in part on the quality of the nation's legal professionals. In approving the reform project, USAID concluded that in Guatemala, as possibly elsewhere in the developing world, ignoring law schools would diminish the constituency for reform today and threaten the sustainability of efforts in the future. Many of the mid- and high-level figures in the justice system today in Guatemala have less than ten years' experience and appear open to infusions of support from recent graduates. As a result, university education reforms might have real effects in the medium term.⁹ Legal education and law schools had to be part of the strategy if justice reform efforts were ever to be sustainable. Separately, the Guatemalan National Justice Strengthening Commission came to similar conclusions.¹⁰ So there were natural synergies for reform between the law school leadership, the National Justice Commission, and USAID.

Although many counseled that it would be much easier to work with the private law schools, USAID in Guatemala decided to work with the national law school at the public university.¹¹ With USAID's focus on helping the poor, the indigenous, and women, it was the logical place to go: most university students of the lower middle class attended there, and it had the highest numbers of female and indigenous students.¹² Further, ninety percent of all prosecutors, judges, and public defenders were graduates of that institution. To work elsewhere would mean not having an impact on these other institutions of justice. There was also a feeling that the private universities had other funding sources, whereas the national university had few alternatives. And since the national law school educated over ninety percent of all law students in the country, working with this one institution would in effect mean a national coverage of ninety percent. Finally—the real clincher—since the

of law school and reiterated in a legal scholarship with scant relations to reality, forming a dogmatic system of knowledge and truth few have been able to question or resist. Legal scholarship and education to this day, despite growing critiques and some notable exceptions, continues largely unchanged.

9. One criticism of university legal reform in the past has been that it has only long-term impact and is therefore not a good investment. The Guatemalan experience shows it may be possible to have a tangible impact on the justice system within five to ten years through reform of university legal education. But cf. *Assoc. in Rural Dev., Inc. & Checchi and Co. Consulting, Final Report on the ARD/Checchi Consortium Rule of Law Program in Ukraine*, USAID, Pub. No. PD-ABR-812, at 9-12 (Washington, 1999). That report documents very modest progress at university legal education reform despite significant investments and efforts in Ukraine.
10. Justice Commission Report, *supra* note 4, at 91.
11. There are seven universities offering law programs in Guatemala. Pedro Galindo, *Justice Studies Center of the Americas, Report on Judicial Systems in the Americas 2002-2003*, at 205 (Santiago, 2003) available at <<http://www.cejamericas.org>>.
12. The really poor do not attend university even with open enrollment; they have to work to meet basic needs for themselves and their families. Further, the poor often do not have the high school degree required for university study. Among indigenous women in Guatemala, for example, illiteracy runs at nearly 80 percent. Open admission primarily favors the lower middle class, making it possible for people like the children of skilled workers and white collar administrative employees to attend a university.

national university sets national standards, any reform there would later be required of the other schools in the system. By working with the national law school, USAID could get a multiplier effect. While the public system would be more bureaucratic and much more challenging, U.S. interests in Guatemalan justice reform depended on involvement of the public school.

The national university in Guatemala—Universidad de San Carlos—was founded by King Charles II of Spain on January 31, 1676; it is the fourth-oldest university in the hemisphere, following those in the Dominican Republic, Mexico City, and Lima.¹³ More recently, however, San Carlos was associated with Marxist ideology and the country's guerilla movement. During the thirty-six years of civil war (concluded in December 1996), many of the top faculty were shot by the military, were kidnapped, or left the country. Among public institutions in Guatemala, the San Carlos University was clearly the hardest hit by the civil war, and on campus the department hardest hit was the law school (together with political science). During the conflict upper-level students actually taught the lower-level classes. Even today virtually all the faculty are graduates of that same undergraduate law school who studied in that dismal environment. In this sense, the civil war has exaggerated some of the problems inherited from the open-access enrollment policies of the 1970s. Clearly, for Guatemala, structural change of the main national law school would have to follow peace settlement.

To advance an approach to law school and legal education reform, the Guatemalan National Justice Commission and a United Nations special adviser on justice each echoed the critical need for changing and improving legal education. A separate USAID study also noted the need to prepare students to be attorneys in the year 2020. The peace accords similarly called for a major expansion of access to the student law clinics, and upgrades in quality of service at the law schools.¹⁴

The reform task was daunting. Legal education reform in an American law school usually takes a phased approach of five to seven years, or longer, and rarely involves massive structural changes. In Guatemala, USAID hoped for tangible, measurable results in less than three years. And the main law school was in seemingly irredeemable shape. With more than 18,000 law students, it had inadequate physical facilities and budget and an open-enrollment policy. Incredibly, it graduated fewer than 300 students per year.¹⁵ Those graduates

13. Its original name was the Real y Pontificia Universidad de San Carlos de Guatemala. For the university's history, see Augusto Cazali Avila, *Historia de la Universidad de San Carlos de Guatemala: época republicana (1821-1994)*, 2d ed., at 17 (Guatemala, 2001).

14. Law School Faculty, University of San Carlos, *Perfil de Egreso, líneas curriculares y pensum de estudios 3* (Guatemala, 2001) (on file with the USAID library) [hereinafter *Perfil de Egreso*].

15. Guatemala is not unique in its gross attrition rate. Colombia's rate is as high as 76 percent. See Luz Estrella Nagle, *Maximizing Legal Education: The International Component*, 29 *Stetson L. Rev.* 1091, 1098 (2000). The exact number in Guatemala is somewhat imprecise. One author puts the figure at only 100 graduates per year, out of a total of 12,000 students. See Antonio García Padilla, *Puerto Rico: Perspectivas sobre la Internacionalización de la Educación Jurídica*, 70 *Rev. Jur. U.P.R.* 895, 897 (2001).

took, on average, more than ten years to complete a five-year course of study. The physical infrastructure was able to support only about 3,000 students, so the 18,000 students were assigned to three separate shifts—morning, afternoon, evening—and even then had to put up with gross overcrowding.¹⁶ Just 180 instructors were on staff, most of those working part time and getting paid only a nominal sum. Instruction was almost exclusively theoretical and doctrinal, offering little in terms of practical application or real-life experience. Students had little opportunity for research, and attendance was irregular. Law school academic demands were labeled "lax" in a report by the National Justice Commission.

Because attempts to reform university standards are sensitive in Latin America and are subject to protests and worse, both USAID and the law school administration had to move cautiously. Avoiding conflict would require motivating students, faculty, and the public to work as a team, looking for constructive answers. Key to any change was assuring a continued commitment to the law school's mission and preserving its character as the most inclusive and ethnically diverse law school in the country.

Joining forces with the U.S. just after the prolonged war was controversial for the law faculty and students. And it took real courage for the university rector, the law school dean, the faculty, and students to even begin discussions. To overcome initial resistance, USAID met with the dean, the rector, and essential faculty to seek a common understanding of the problem and the need for radical restructuring. USAID began with activities to gain confidence and mutual understanding. As time went on, it formed an elite team of mainly Central American consultants to help advance a new vision for reform.¹⁷

The consulting team worked closely with faculty, students, and administrative staff. Others worked, with outside foreign consultants and experts on reform, in seminars, workshops, and dedicated work days, to seek a consensus on the reform process. After a series of intensive, participatory meetings, several action items emerged. This technical approach at strategy design based on needs and technical assessments and an active consultation process proved its worth.

Within a year and a half, a new admissions exam was in place—a first for a public university in Latin America since the 1970s. It gained approval from the university administration and entered into force in November 2001. The new exam and admissions policy meant that 2,000 fewer students enrolled in 2002, as the university enforced new minimum standards.

Historically, of Guatemalan universities, San Carlos has had the highest percentage of women, minorities, and the working class poor in its student body. But with an enrollment of about 15,000 and only 200 to 300 graduating

16. About 10,000 of the students are enrolled in the evening division. See Justice Commission Report, *supra* note 4, at 93.

17. The team was largely made up of Central American advisers specifically to avoid some of the pitfalls outlined in articles such as Jacques deLisle, *Lex Americana? United States Legal Assistance, American Legal Models, and Legal Change in the Post-Communist World and Beyond*, 20 *U. Pa. J. Int'l Econ. L.* 179 (1999).

each year, it was clear that the public investment in such a big group of students was not effective for the student body as a whole, and particularly not for these vulnerable populations. Further, the sacrifice families were making to send their children to university was often in vain—a sacrifice disproportionately cruel to those with scarce resources. The intense debate included a few conservative lawyers and professors looking nostalgically to recover a bygone era when the law school had only 300 students in total (mainly male and nonindigenous). But what seemed to carry the day was recognition of the fact that open enrollment, whatever one thinks of it in theory, had failed nearly everyone in practice. As an institution, the law school was near collapse and needed rescue. After exhaustive discussion among students, faculty, administration, parents, and community groups, there was a consensus (far short of unanimity) that enrollment should be restricted.¹⁸

With technical assistance from the University of Puerto Rico, paid for by USAID, the San Carlos law school decided to address concerns over the potential negative impacts in several ways. First, by cutting back enrollment it could do a better job of educating the historically disadvantaged students it already had, making it much more likely that those admitted would eventually graduate. In the first year, with increased fees, the school also had a twenty-percent increased budget that allowed it to improve the quality of education across the board—again a benefit for all students. Second, USAID made available to the rector a small endowment from which the university could cover tuition and living expenses of students who otherwise would not be able to attend university, alleviating the impact of increased fees at least for some of the most vulnerable.¹⁹ Third, the law school got together with other faculties on campus to organize a remedial training program for students who did not pass entrance requirements. This represented an opportunity to upgrade skills in areas that should have been covered in high school.²⁰ Upon completion of the remedial program, students had another opportunity to take the entrance exam.

Finally, the law school noted that Mayan students had a particularly difficult time passing the final comprehensive exams in public and private law—effectively the bar exam in civil law countries like Guatemala. To address this, the university partnered again with USAID, which organized a special tutorial program for Mayan students who needed additional help to get over this final hurdle. The program was not limited to San Carlos students; it was open to indigenous students from any law school, although in fact most of the students

18. Discussion facilitators were San Carlos faculty who had been trained in participatory techniques by Guatemalan and Central American consultants paid for by USAID.
19. Students did not receive a lump sum of cash. The fund paid the tuition directly and then gave students a monthly stipend only if the attendance records indicated that they were actually participating in classes, research, and lectures. About 50 students benefited from this program each year.
20. The new remedial program has open admissions. It will help out students from the lower middle class who previously could not afford the tutoring necessary to do well on entrance exams. The truly poor probably will not participate, since they must work to meet daily expenses. Support for historically disadvantaged students of this sort, in the U.S. context, is often one element of a broader strategy for academic support.

came from San Carlos.²¹ While at first blush it might appear that the reforms would work to exclude historically marginalized groups, the law school tried hard to mitigate any such effect. It may be that the reverse will turn out to be the case: that the reforms will lead to greater participation of historically excluded groups in educational opportunities.²²

The San Carlos University is not the first to try to address the problems of an open enrollment, an obsolete admissions process, low tuition fees, and a need for structural reform. The National Autonomous University of Mexico (UNAM), that country's main national institution, tried to implement new admissions fees and standards but did not follow the participatory and inclusive approach, plus phase-in of new fees, as San Carlos University did in Guatemala. As a result, in 2000–01, students took over a portion of the main UNAM campus, staging protests and trashing the library, and losing most of that academic year.

Few other public universities have had the courage to even think about new admissions standards or fees. No doubt they fear the type of violence that occurred at UNAM when it tried to reform. They continue to admit large entering classes but put up roadblocks so that most of the students never make it through—a tremendous waste of scarce public resources.

As part of the reform package, the university looked at its curriculum, considered at the time to be excessively rigid, locking students into standardized theoretical courses without opportunity for problem-solving approaches or real-life applications. The university administration approved a major redesign of the curriculum, based on the work of the team in 2001, to include indigenous law, legal pluralism, diversity and conflict resolution, gender analysis, human rights law, domestic violence, and other new topics²³—the first such modification of the curriculum since the 1970s. (In all those intervening years the curriculum took no account of economic trade integration, the Internet, many human rights conventions and laws, and even the Guatemalan Constitution.²⁴)

21. This program began only recently, and data are not yet available on its impact.
22. It should be noted that the law school already had three separate divisions: a morning division catering to full-time students, and afternoon and evening divisions catering to part-time students who usually worked full time in addition to their studies. The morning division today has only about 300 students; as might be expected, it has the highest graduation rate. Under the reform, the law school will continue to accommodate working students in afternoon and evening divisions to guarantee their access to education.
23. Perfil de Egreso, *supra* note 14, at 7–10. For a discussion of inclusion of gender in general, and a proposed specialization course on gender and legal culture, see Edna Victoria Rodríguez H., Informe final de la consultoría para la elaboración de una propuesta sobre el establecimiento del diplomado "género y cultura jurídica" a nivel de postgrado universitario (Dec. 2001) (on file with the USAID library). USAID worked with American University and Chemonics International on a "model" graduate degree program on gender and the law for the law school at San Carlos. Joan D. Winship, Annual Report on Best Practices, Lessons Learned and Success Stories: Illustrations from Albania, Guatemala and Southern Africa, USAID, Pub. No. PN-ACW-794, at 8 (Washington, 2004).
24. Dirección General de Docencia, Proyecto de Rediseño Curricular de la Facultad de Ciencias Jurídicas y Sociales (Guatemala, Nov. 16, 2001) (approval certification). Constitutional law was singled out as an area of particularly poor performance before the reforms. See Justice Commission Report, *supra* note 4, at 96–97.

This new curriculum entered into force in January 2002, but students already enrolled had the option to continue under the old curriculum plan. Since law school is a five-year program, by 2006 the new curriculum will be fully implemented. It prepares attorneys for the year 2020 and includes new technology and computer learning. Before the reforms courses consisted of theoretical lectures. During 2001–02 instructors had training in new teaching techniques so that the new curriculum will have a decidedly practical orientation.²⁵

One of the more visible signs of change is a new computer laboratory. With eighty new personal computers, the lab gives students a chance to learn new technologies and conduct online legal research. Funding for the computers came from the dean's office and fundraising by the students themselves. USAID contributed the cable connections, networking, and installation. Students pay a modest amount to use the service, guaranteeing a fund to maintain the machines in working order and assuring sustainability.

On a parallel track, USAID worked with students and the administration to upgrade administrative functions such as scheduling and recording grades. Today students can check their grades online at the computer lab. New administrative systems have eliminated the falsifying of academic records—a major problem previously.

Student law clinics are also getting a facelift.²⁶ These clinics serve hundreds every day. Most clients are women, half are indigenous, and all are poor, with no other access to justice. A new case-tracking system has improved customer service and enhanced the faculty's ability to supervise the legal assistance provided by student volunteers.

While San Carlos students gain valuable practical experience in the clinics in civil, family, and labor law, Guatemalan law does not allow them to represent clients in criminal cases. For this reason, until very recently, the criminal law practicum requirement was largely carried out in moot court settings. USAID and the Public Affairs Section of the U.S. Embassy organized a working group of counterparts to begin studying options. In April 2001 key counterparts visited Washington to look at different internship experiences.

25. USAID, Apoyo a la facultad de ciencias jurídicas y sociales de la Universidad de San Carlos de Guatemala 1 (Dec. 12, 2001) (on file with the USAID library) notes that the new teaching methods to be used by the USAC faculty were the result of training by Robert Barker of Duquesne University School of Law. The poor quality of teaching is discussed in general in the Justice Commission Report, *supra* note 4, at 99–100.

26. In this sense, the Guatemalan experience can be set in a broader context of clinical education reform. See McCutcheon, *supra* note 6, at 267. Neighboring El Salvador is also going through a reform and restructuring of its clinical legal education programs. USAID, Achievements in Building and Maintaining the Rule of Law: MSI's [Management Systems International's] Studies in LAC, E&E, AFR, and ANE, Pub. No. PN-ACR-220, at 67 (Washington, 2002). It is also interesting to note a parallel effort at reform of clinical education in African law schools. See, for example, Grady Jessup, Symbiotic Relations: Clinical Methodology—Fostering New Paradigms in African Legal Education, 8 *Clinical L. Rev.* 377 (2002). Similar changes appear to be starting in Chile. See generally Richard J. Wilson, Three Law School Clinics in Chile, 1970–2000: Innovation, Resistance and Conformity in the Global South, 8 *Clinical L. Rev.* 515 (2002).

As a result of these efforts, students can now do externships with the court or with public prosecution or defender offices under a program USAID brokered between the president of the supreme court, the public defense director, and the attorney general. They learn to be prosecutors, public defenders, or judges. With improved legal education opportunities and standards, there is a new future for the sustainability of justice reform in Guatemala. In fact, at the end of the initial phase all students working with the Public Ministry were offered positions there, reflecting progress by the students in on-the-job performance opportunities. Students have to compete for scarce slots and so are motivated to perform.

With USAID help, the San Carlos law school now offers a master's degree in indigenous law (the only such degree program in Latin America). In fact, this program represents one of the first commitments met of the Guatemalan peace accord. It aims to depoliticize indigenous policy in Guatemala, advancing empirical studies and comparative frameworks to replace prejudice, misunderstanding, and fear. It has been carried out in a partnership with UNAM Mexico, together with USAID/Mexico, one of the first activities undertaken under Mexican President Vicente Fox's Plan-Puebla-Panama. The third class of master's degree students in the indigenous law program graduated in 2002.

Another master's program assisted by USAID is in criminal law. In the late 1990s USAID helped develop a new criminal law curriculum.²⁷ Through the Fulbright Program, several of the faculty studied at the University of Puerto Rico. On their return, USAID helped them to establish the new graduate degree in criminal law. In 2001 the law school extended the master's program in criminal law outside the capital, to Quetzaltenango, a mainly indigenous area of the country. Students in the Quetzaltenango program are mostly judges, prosecutors, public defenders, and human rights activists; the program will have immediate impact at the community level.

A third master's degree program receiving help from USAID is in intellectual property rights (IPR) and commercial law. This program is a direct attempt to put San Carlos on the cutting edge in Central America in terms of the proposed hemispheric Free Trade Area of the Americas and Central American Free Trade Agreement. Carlos Melini, president of the Institute of Commercial Law at the San Carlos law school, also notes the importance of the introduction of IPR issues into the curriculum to prepare law professionals in the region to assure compliance with requirements of the World Trade Organization. Incredibly, the IPR/commercial law program—unique in all Central America—is now financially self-sustainable. There are just two other master's programs in IPR and commercial law in Latin America, both in South America and both financed by donors.

27. As a result of this effort, San Carlos produced more academic research in 1998 than in the prior 23 years combined. Steven E. Hendrix, Guatemalan "Justice Centers": The Centerpiece for Advancing Transparency, Efficiency, Due Process, and Access to Justice, 15 *Am. U. Int'l L. Rev.* 813, 839 (2000). New criminal law and criminal procedure courses were assisted by DePaul University School of Law and DPK Consulting, San Francisco, both with USAID funding. New materials coming out of this effort included a criminal investigators' manual, an evidence notebook, a trial practice manual, and several administrative procedure manuals. *Id.* at 840 (citation omitted).

As counterpart to the USAID support for graduate studies in law, the rector gave the law school an additional building for classes, greatly relieving stresses on the physical plant. After additional policy discussions with USAID, the Guatemalan government has given the law school a twenty-percent increase in budget—the first budget increase in more than twenty years. This should go a long way toward reversing the budgetary neglect the law school has suffered from in recent decades, and it evidences the government's commitment to the reform program.

One oft heard criticism of legal reform programs in Latin America and the Caribbean is that they excessively assimilate national law schools into their U.S. counterparts.²⁸ In Guatemala this was not the case. While USAID did encourage exchanges with the University of Puerto Rico, American University, and DePaul University, it also advanced exchanges with the University of Costa Rica, several in El Salvador, the national University of Honduras, the National Autonomous University of Mexico, and other institutions. San Carlos also hosted exchanges with each of the other law schools in Guatemala, especially with regard to clinical legal education. Guatemala benefited from these exchanges but did not adopt any single model or approach. Rather, it adapted various ideas to create its own model for legal reform. There is no dependency relationship today between the San Carlos University and any other university.

Another common complaint about university legal reform programs pushed from the United States is that they can impose a North American common law tradition and result in the loss of a rich civil law identity shared across Latin America, Europe, and much of the developing world. USAID's efforts were sensitive to this concern. Instead of conditioning its assistance on the adoption of U.S. legal models, USAID helped the law school to explore alternative models in neighboring countries with a civil law tradition, as well as presenting the benefits of a U.S. approach. The assistance that seemed to attract the most attention was a workshop on alternative teaching methodologies coordinated by Robert Barker of Duquesne University.²⁹

Previously one of the defects of university legal education in Guatemala, as in much of Latin America, was its overemphasis on memorization and lectures. Before the 1970s students often could get by with minimal attendance, without critical thinking or applying legal concepts, just by memorizing text. With open enrollment, lecture size expanded greatly, and the straight lecture approach continued, again without much critical engagement of students and

28. The law and development movement criticized programs as "imperious and ethnocentric in [their] effort to transplant Western notions of law into non-Western settings." Weighing In, *supra* note 6, at 3.

29. The multiday workshop included a demonstration of the Socratic method. To avoid embarrassing senior professors, USAID advised that actual students be used in the demonstration rather than subjecting the faculty to participation. Instead, faculty observed as Barker demonstrated the Socratic method using several constitutional law cases. Although workshop and organizational expenses were paid by USAID, Barker's travel expenses were covered by the State Department.

often with low attendance.³⁰ Having explored new alternative teaching methodologies, the faculty have now begun to introduce new forms of instruction. In the end, the Guatemalan-led design produced a blended strategy, preserving much of the rich civil law heritage and approach, while taking advantage of new technologies and elements of the Socratic method, where appropriate, for classroom instruction. The criticisms now heard mainly concern not going far enough to institutionalize new methods for instruction.

One supposed advantage of open enrollment with zero or low tuition is that it gives greater opportunity to women, minorities, and the poor. As a corollary, another criticism of reform of university legal education in the past has been that restriction of admissions and higher fees often have a negative effect on those historically left out of higher education opportunities. As San Carlos moved to address open enrollment and tuition issues, these problems were hotly debated. In fact, at one point, a bomb exploded in the open square of the law school, and popular rumor attributed the explosion to the debate on restricting enrollment and increased fees.

In Guatemala, as in many parts of Latin America, law teachers are often employed part time, with only a nominal salary. This was certainly the case at San Carlos. Worse, in some cases salaries were so low that people were given full-time slots and paid full salary for what was essentially part-time work. While some might consider this fraud, it reflected the reality. If the law school wanted competent teachers, it had to pay them, and the only way to make teaching worth their while was to offer them full-time appointments and expect part-time performance.

That situation is changing, but slowly. With increased revenue, the law school is in a better position vis-à-vis the university system and the rector to request higher salaries. With USAID technical assistance, some position descriptions have been rewritten to reflect full-time work expectations. Yet this remains a challenge. So far, the honor of being a university professor seems to be the main reason why San Carlos is able to attract and retain the faculty it has. The law school administration will have to continue to struggle with this and make incremental improvements over time.

Given Guatemala's situation as a poor country, devastated from four decades of civil war, one might wonder how a reform of university legal education there would be relevant to the broader hemisphere. But neighbors such as Honduras, El Salvador, and Nicaragua suffered conflict during the same period. And since 1990 there have been violent conflicts in Colombia, Mexico (Chiapas), Haiti, and Peru, and irregular transitions in Argentina, Ecuador, Bolivia, and elsewhere. Institutional fragility crosses the entire hemisphere, with possible exceptions in Chile, Uruguay, Canada, and the U.S. And while its poverty is pervasive, Guatemala compares with countries like Brazil, Bolivia, Peru, Honduras, El Salvador, Guyana, Nicaragua, and southern Mexico. So it

30. The low attendance had one positive effect: given its space limitations, there was no way the law school could have accommodated the students if they all had actually attended. Low attendance mitigated grossly inadequate physical facilities.

may well be that the Guatemalan experience with legal education reform could be applied elsewhere in the region.

The university reform efforts represented about \$100,000 per year out of a broader \$2 million per year USAID justice reform program for Guatemala, implemented through an institutional contractor. Allocation of funding among competing demands was done mainly through private meetings between the USAID justice program coordinator, the dean of the law school, and the lead from the contractor team, and also through occasional consultations with the university rector. The dean was responsible for representing the law school governing council's decisions in these discussions. Most of the funding paid for technical assistance in the form of consultants.³¹ The institutional contractor also had a subcontract with the University of Puerto Rico to supply consulting services as needed. USAID did not pay for recurring operational expenses for the university, noting that if the reforms were to be sustainable, the university itself would have to bear those costs. And San Carlos had to demonstrate in concrete financial terms that it too was committed to the reform.

It is a tribute to USAID's and the San Carlos University's shared participatory approach and technical credibility, along with the courage and true leadership of a dedicated university team, that San Carlos was able to make real, tangible, and measurable improvements in its law school. This in turn will help Guatemala to improve the quality of justice in the future. More important, Guatemala shows other law schools in the region, and others across the developing world, that legal education reform is possible, despite the prejudices of the "conventional wisdom" coming out of the law and development movement. In fact, measurable progress can be made, even given shorter donor time horizons. Legal education reform, carried out in a participatory, professional way, may soon become a necessary part of broader efforts to effect improved democracy and justice with corresponding social change. To be sure, Guatemala will have to stay the course to assure success. But in the meantime Guatemala has given us an important model.

31. Most of the consultants came from Guatemala itself. Some came from other Central American countries, and a few came from the United States.

Book Review

Richard Abel, *English Lawyers Between Market and State: The Politics of Professionalism*. Oxford: Oxford University Press, 2003. Pp. xxxiv + 712.

Reviewed by Harry Arthurs

Richard Abel, for three decades a leading figure in research on the legal profession, has written a brilliant social and political history of the English legal profession. His study chronicles a twenty-year debate over the restructuring of the bar and of the solicitors' branch of the profession, the revision of their internal political economy and governance structures, and the reconfiguration of the state regulatory regimes within which the profession operates. He touches on such issues as the attempt to merge the two branches of the profession, the competitive pressures playing on different markets for legal services, the radical "reforms" to legal aid, and attempts to open up both the practicing professions and the bench to women and members of racial and ethnic minorities.

But Abel's book is not solely or even primarily about the causes and consequences of these developments. Rather, he says, "my quarry is the politics of professionalism," to whose conflicts, he rightly notes, "the principal players [bring] money, status, power but most of all rhetoric" (page xv). I will return to the politics of professionalism shortly, but first I will say something about rhetoric.

Rhetoric

Rhetoric is not only the most significant factor in the politics of professionalism; it is the organizing principle and a chief delight of Abel's book. Its Foreword is by Lord Mackay of Clashfern, arguably *the* principal player in this great drama, who as lord chancellor in the third Thatcher government and in the Major government which succeeded it bore primary responsibility both for initiating the debates over the transformative changes chronicled in Abel's book and for negotiating their political and legislative resolution. He appears to have been more successful in the former than the latter, in part, his critics say, because of his abrasive and egotistical personal style. Abel ventures no opinion on this particular point, but readers may draw their own conclusions when they read the Foreword, in which Lord Mackay uses the first-person singular in the first sentence of twelve paragraphs out of fourteen, devotes another paragraph entirely to events involving himself, and writes only a single paragraph in what might be called an impersonal voice. The Foreword, in other words, exemplifies Abel's clever strategy of allowing the dramatis

Harry Arthurs is president emeritus and professor of law at York University.