

CASE LAW METHOD AND LEGAL EDUCATION IN MEXICO

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I. Introduction.

In 2001, a study of the United Nations Committee, among other findings, concluded that “the total want of organization of legal education and qualification for practice, and the lack of the organization of the profession, without any disciplinary procedures to ensure accountability, may have been the cause of the ills in the administration of justice in Mexico over the years”¹.

That study showed that the legal education is directly connected with the effectiveness of the rule of law and demanded an urgent reform. But the question is: what abilities have to be developed in new lawyers? According to the concept of “ideal statesman lawyer”, a good lawyer should be a leader with prudence and practical wisdom. Those abilities are not just an ideal. Society and legal market expect not only professionalism from lawyers but also the capability to solve problems (prudence and practical wisdom).

¹ Civil and Political Rights, Including Questions of: Independence of the Judiciary, Administration of Justice, Impunity. Report of the Special Rapporteur on the Independence of Judges and Lawyers, Dato'Param Cumaraswamy, Submitted in Accordance with Commission on Human Rights Resolution 2001/39. Addendum. Report on the Mission to Mexico, U.N. ESCOR, 58th Sess., at 4, U.N. Doc. E/CN.4/2002/72/Add.1 (2002).

In the North American, especially in United States, the law case method has been an interesting via to obtain new lawyers. That pedagogical method seems to be adequate to develop a creative thinking and the capability to solve problems in students. In spite of being a method related with the common law system, the case law method can be adopted as a pedagogical tool by countries with civil law, because the study of law does not depend on the general characteristics of the legal system.

II. State of legal education in Mexico.

A recent empirical study developed in the year of 2000², discovered that the owners of law firms expect in new lawyers more abilities than those that are learned in the universities (even in the Mexican elite universities). The study concluded that is needed a new lawyer profile. Nowadays, lawyers need analytical tools; interdisciplinary knowledge and specially the ability solve problems.

This research emphasis that Mexican universities teach a great amount of information (rules, juridical concepts) but not the way in which this knowledge can be applied in legal practice. In other words, the study argues that exist a lack of connection between professional practice and legal education.

² Ana Laura Magaloni, Cuellos de Botella y Ventanas de Oportunidad de la Reforma a la Educación Jurídica de Elite en México, in *Del Gobierno de los Abogados al Imperio de las Leyes*, Pages 61-91. (Héctor Fix-Fierro ED. UNAM 2006). The methodology used in that research was an analysis of the seven most important universities in the country, between their studies' plan. Also, the study analyzes the lawyer's profile that is expected by the owner of the principal firms in Mexico. Finally, the research explores law students' expectations.

This legal training is originated by the understanding of the law since a formalism perspective. In Mexico, the natural way to teach and learn law was through the civil law. This legal approach has several characteristics of a legal formalism system where only the rules matter and not how to apply them.

This legal tradition is proper of the countries where legislative law is the predominant. In this perspective, the objective of those who apply the law is only descriptive. Legal formalism argues that the legislative law is a self-sufficient system capable of solve any problem. Any juridical solution has to be derived of the written law without see over juridical considerations³.

In Mexico, the study of law is taught through this paradigm. For that reason, universities only teach rules and theoretical concepts. They are not interested or do not focus in the development of students' abilities. The universities privilege the study of the rules and doctrine in an abstract perspective without any interaction with the facts and practical problems⁴. Mexican lawyers learn theoretical concepts in universities but the capability to apply rules and professional values begin and are developed in the legal practice⁵.

³ Carlos Santiago Nino, *Algunos modelos metodológicos de Ciencia Jurídica*, Biblioteca de Ética, Filosofía del Derecho y Política, México 1999, Page 15.

⁴ Alejandro Posadas Urtuástegui, "La Educación Jurídica en el IDE (México): el Adecuado Balance entre la Innovación y la Tradición", Work Paper, CIDE, Mexico, Page 3.

In the same sense, Magaloni argues that "In law programs prevails a teaching model based on the transmission of a great amount of information about the content of rules, and about key legal concepts to understand those rules. The idea that a good lawyer is one who knows lots of laws is still deeply in Mexican legal education". Magaloni *supra* note 2.

⁵ Id. at Page 8.

In order to form better lawyers and to improve the law practice, it is necessary to reform the Mexican legal education. In this aspect, universities have the huge responsibility to provide students the needed tools to deal with professional problems.

III. Statesman lawyer ideal.

In the training of law students is important to know what abilities should be taught. Universities need a role model of lawyer in order to develop qualities in students based on common good. In this aspect, Anthony T. Kronman explains in his book “The lost lawyer” the concept of the statesman lawyer which is an interesting role model oriented to the public good. Kronman’s perspective emphasize that a lawyer should possess great practical wisdom and exceptional persuasive powers, and should be devoted to the public good but keenly aware of the limitations of human beings and their political arrangements⁶.

These qualities explained by Kronman are related with the abilities that the society and the legal market expect from lawyers: the capability to solve disputes. However, universities have the responsibility to orient this ability to the public good. In other words, it is necessary that legal education focus on developed of prudence and practical wisdom in students⁷.

However, how do universities develop prudence and practical wisdom in law students?

⁶ Anthony T. Kronman, *The Lost Lawyer*, Belknap Harvard, Cambridge, Page12.

⁷ “Aristotle believed that to make sound judgments regarding political matters, a person must possess not only theoretical understanding but also a trait of character he called prudence or practical wisdom”. Kronman, *Supra* note 6, Page 176.

IV. Case law method.

From an ethical perspective but also since a market point of view⁸, it is necessary to form lawyers with the capability to solve problems. This skill requires a degree of imagination as well as technical expertise.

According with Perez Hurtado a problem solver lawyer is who apply his juridical and no juridical knowledge, and his abilities and creativity to solve a specifically and concrete problem. The essence of this ability is in the process to solve problems, not in the solution. In other words, the question is not which the correct solution is but how to arrive to that answer.⁹

The problem solve capability is especially important in common law countries. In contrast to the Mexican legal tradition, countries of common law, such as United States, are focus in the law application from a dynamic perspective. In that country is more important to solve the legal disputes than the law itself.¹⁰

⁸ According to Magaloni's research, that is what owners of law firms expect in new lawyers. Magaloni, *Supra* note 2.

⁹ Luis Fernando Pérez Hurtado, "The Lawyer as a Problem Solver: A Challenge for Mexican Law Schools", *Stanford Law Review*, May 2003, Page 4.

¹⁰ El pragmatismo legal es una corriente de pensamiento que tuvo un gran arraigo en los Estados Unidos. Surge como una reacción al formalismo jurídico y a la creencia de que el Derecho puede constituir una ciencia, según Ana Magaloni, "el pragmatismo americano reacciona en contra del viejo sueño de la filosofía de que el conocimiento parte de un conjunto de creencias fundamentales e indudables, que se manifiestan en forma de intuiciones razonables (racionalismo) o que llegan a la mente a través de los sentidos (empirismo). Los pragmáticos sostienen que no existen verdades inmutables; todo conocimiento humano es contextual, se sitúa en el hábito y en la práctica, y además está condicionado por el entorno social, el lenguaje y las creencias colectivas. No existen estructuras racionales puras basadas en premisas indubitables." *Holmes and the legal pragmatism*, in Ana Laura Magaloni, *El precedente constitucional en el sistema judicial norteamericano*, Madrid, 2000, Page. 90.

To solve a legal problem it is necessary to analyze the political, social and economical context. For that reason, the juridical decisions are found in the effectiveness of the law not only in abstract concepts.

In conclusion, in this legal paradigm, the study of rules and abstract concepts without its application context is not enough to comprehend the law.¹¹ That is why it is necessary to understand the law since a dynamic perspective¹².

In United States it is important to develop in lawyers several abilities related with the solution of problems and creative thinking. The training of student's character is an essential part of their preparation. In that country, an appropriate method to develop these qualities in law student has been the case method.

Case law method is an education model based in juridical problems¹³. First, a practical problem is given to the students. Then, he or she has to solve it with all the available

¹¹ Magaloni, Id. Page. 98.

¹² Ana Magaloni argues that: "The study of normative effectiveness has been outside the dominant theoretical paradigm through which Mexican academics have studied the law (legal formalism). For that reason, in order to develop a research agenda that allows for the analysis of this normative effectiveness and, in particular, the ways in which norms transform their meaning based on the context in which they are applied, it is necessary to leave aside the theoretical assumptions of legal formalism, and to adopt some of the theoretical premises that common law jurists, particularly North American jurist, have developed to understand the dynamic of law in action. The author argues that, contrary to a common assumption among jurist, the study of the law from a dynamic perspective does not depend on the general characteristics of the legal system (codified or of common law), but rather of lens through which the jurist observes and defines his object of study. Ana Laura Magaloni, "Por qué estudiar el derecho desde una perspectiva dinámica", Work Paper, CIDE, November 2003.

¹³ Perez Hurtado, Supra note 9, Page 11.

information (rules, abstract concepts, facts). Finally, the professor guides the discussion and emphasis the important issues that has to be learned by the student¹⁴.

Howard Barrows believed that is important to teach law since this method for the following reasons: (1) in the law it is important the procedures, that is why the way to solve the problems has great relevance; (2) the student develop sensibility and ethical responsibility; (3) law is a science of problems¹⁵.

In the creation of better lawyers, universities have a great responsibility, mainly because “law universities are in better position to teach and developed abilities. Universities are a control environment where mistakes do not produce terrible consequences in clients”¹⁶.

Even if case method it is related of the common law systems, it can be adopted in civil law countries as a pedagogical tool. The written law should be seen since a new perspective. The law does not have a unique solution for any legal dispute. In occasions, the rules are ambiguous, vague or even contradictories. To solve a legal dispute, judges have to analyze many others factors, such as economic or social context. Also in civil law (as well in the common law system), facts have a principal role. The final decision depends of the law alleged but also on the characteristics of the case. In conclusion, civil law can be seen since from a dynamic perspective and this is the way that has to be taught.

¹⁴ Magaloni argues that “the law case method is a way to acquire solid juridical knowledge. In order to solve any problem it is important know but not memorize, the normative material and legal doctrine. However, besides knowledge, the law case method stimulates the development of other analytical abilities very important to practice of law. For example, identify the relevant juridical questions; identify the relevant facts; organize and summarize the information; among others”, Magaloni, *Supra* note 2, Page 87.

¹⁵ Thomas D. Barton, *Creative Problem Solving: Purpose, Meaning, and Values*, in Perez Hurtado, *Supra* Note 9, page 34.

¹⁶ Posadas, *Supra* Note 4, Page 9.

V. Conclusion.

The quality of Mexican legal education directly affects the quality of the legal profession and even more important, the quality of the rule of law. There are a few studies that reveal that a new kind of lawyer is needed (the stateman lawyer ideal). For this porpoise it is necessary to develop practical wisdom in the law students. A way to provide this ability in the students is the law case method. This method it is not exclusive of common law. In civil law systems, this method can developed different abilities in students, such as prudence and practical wisdom.