Hope without optimism: Legal education in Spain at the threshold of Bologna Plan

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Introduction

European higher education is moving through a wholesale reform called the Bologna Process, or the New European Space of Higher Education (EEES).\(^1\) This process attacks the deepest foundations of university systems. In most member states, the university systems resemble moribund coral reefs. Over centuries, living, thriving scholars built the universities to support human flourishing. The calcified support structure remains, but the ecosystem has changed. The structure is no longer useful; instead the structure cramps scholarship, forcing thought to repeatedly retread the path of the long-dead. The university stands tall and elegant, but the mind is trapped. Unless the mind can be freed to grow a new structure, the mind will die. Meanwhile the dead coral stands elegant and hollow.

The hollowness of the old systems is apparent from these universities’ lack of competitiveness. The best minds no longer choose them. For example, the world’s hundred best universities are overwhelmingly not European according to University Jiao Tong of Shanghai (China).\(^2\) Of the hundred best institutions of higher learning, more than half are in the United States of America; Britain is a distant second place with about ten entries. In contrast, the top hundred include only a very few Japanese, German, or French universities.\(^3\) Yes, all such classification systems are simplifications which selectively exaggerate certain quantifiable features. But despite ranking systems’ systemic flaws, one must take notice when multiple ranking systems uniformly support loss of status.\(^4\) Empirical evidence allows only one conclusion: continental European universities, especially schools in the south of Europe, such as my Spain, are no longer qualitatively the best. For decades, primacy has belonged to United Status institutions, or by extension, Anglo-Saxon schools.

All must recognize the degeneration of the long tradition, history and even prestige of many European universities. This degeneration must be interpreted, paradoxically, in conjunction with the economic importance of the regions where these institutions are located. All must recognize the poor level of students, faculty, research activity and publications these universities sponsor. Focusing solely on Spain, the incongruity between the commercial and academic spheres is even greater. Spain’s rate of economic growth is
much higher than the European medium.\(^5\) Apparently, the economic development has not transferred over to universities. But such transfer is possible, as demonstrated by the Spanish private business schools that have achieved international recognition.\(^6\)

Unfortunately legal education is not an exception to this dire situation. The legal sector is very conservative, hence, extremely hesitant to adopt changes. Many law schools, both Spanish and European, are like elegant old ladies, well dressed but unable to walk without obvious pain. They no longer dance, merely sit against the wall watching others’ joyful motion. Why? These schools insist on retaining ineffective, obsolete methodologies. They celebrate their disconnect from social phenomena. Having refused eye surgery, their severe myopia prevents their recognition of the increasing globalization of the legal market-- a market they are too arthritic to partner.

Spanish law schools exemplify these problems in a severe form. As discussed below, Spanish legal education has yet to escape the pattern imposed upon it during the late period of the Francoist dictatorship, especially as to university organization and curricular design. This public and centralized structure incapacitates the Spanish university system from launching the reforms necessary to free law schools from the personal fiefdoms of bureaucratically entrenched professors -- even those who do not meet minimum standards of academic quality. Without the disempowerment of the mediocre, the law schools cannot obtain excellence.

When the Bologna process is applied to the Spanish system of legal education, it will run into all the barriers and impediments that I have just noted. Nevertheless, law schools must accept the challenge of overcoming these negative factors and put into effect deep reforms. Adaptation is imperative because they no longer have a captive, local job market. The Spanish legal job market has been globalized already. The formation of elite legal professionals occurs at the postgraduate level in the United States and the United Kingdom. To a smaller extent, a candidate may substitute training from one of the private institutions related to the more prestigious local business schools.\(^7\) Without deep change, Spain’s entire system of public legal education will be locked into marginality and second rank status.

To analyze the context of the problem, I have divided this article into two parts. The first analyzes the evolution of legal studies in the last fifty years, which will permit me to demonstrate the development of the situation that I have just lamented. In the second part, I will describe the directives established by the


\(^6\) The prestigious London publication THE ECONOMIST puts out an annual world ranking of full time MBA programs under the title of *Which MBA?*; it is prepared by a specialized group, the Economist Intelligence Unit (EIU). In both 2006 and 2005, IESE Business School of the University of Navarra earned first place. It is the first European institution to lead an educational ranking. The Instituto de Empresa is listed as 16th in the 2006 computation. See <http://mba.eiu.com> (visited July 20, 2007).

The United States newspaper THE WALL STREET JOURNAL also ranks international business schools. In 2006, first place is occupied by the Spanish ESADE Business School, followed by the Swiss IMD (which was first in 2005). In 2006, three Spanish business schools were among the fifteen best in the world, the aforementioned ESADE, the Instituto de Empresa, and IESE.

\(^7\) The foreign studies program of Fundación Caja Madrid shows that 60% of Spanish students select the United States, followed by 25% who chose the United Kingdom. In effect, they chose institutions such as Columbia, Harvard, Stanford, Cambridge, Oxford or the London Business School. See [http://www.mastermas.com/Reportajes/P1.asp?Reportaje=869](http://www.mastermas.com/Reportajes/P1.asp?Reportaje=869) (visited August 10, 2007).
Declaration of Bologna, and other European Union documents, and will reflect on the future challenges faced by Spanish universities.

**Part I: A History Of Spanish Legal Education During The Last Fifty-Years**

1. The University During The Francoist Dictatorship: An Instrument In The Service Of Dictatorship. The Opening Of The University System As A Result Of The Villar Palasí Law In 1970.

During the Francoist dictatorship, in July of 1943, the government enacted an organic law that regulated the university system. This law remained in force until the enacting of the Villar Palasí law of 1970. However, before I analyze the content of the first Francoist law, I must mention the great intellectual exodus produced by the outcome of the Spanish Civil War (1936-1939).\(^8\)

During this period, an important part of the Spanish intellectual class was forced into exile, moving principally to France, Mexico and Argentina. The Spanish university system suffered in an irreparable loss, which was even more critical in the legal sector, given that the great legal figures of the time had participated in the modern and vanguard design of the second Spanish Republic (1931-1939).\(^9\) With the exile of so many law professors and the firing of many of those who chose to remain, Spanish universities were left completely tied to anti-democratic and backward attitudes toward intellectualism, approaches related to fascism,\(^10\) traditional

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\(^8\) The Spanish Civil War was fueled by ideological aggression allied to the sectional, political, and economic factions. See Sebastion Balfour, *Spain From 1931 to the Present*, in *Spain: A History* 243, 265 (ed. Raymond Carr, Oxford Univ. Press 2000) (“The overt objective of [Franco’s] repression was to rid Spain of the systems and ideologies that had ‘corrupted’ here ‘true identity’. Among these were democracy, atheism, and at least in the early years of the regime, capitalism as a liberal market system.”). General Franco’s post-victory pacification, therefore, required obtaining control of the educational system. See *id.* at 266. Franco’s government, therefore, imposed hierarchical control and ideological cleansing of educational institutions, including universities (which obviously have the most potential to fertilize and grow minds capable of leading anti-state forces). Franco’s regime, therefore, installed a repressive apparatus which cleansed all educational institutions of any independent thought. The most complete study of this educational repression is Jaume Claret Miranda, *EL ATROZ DESMOCHE: LA DESTRUCCIÓN DE LA UNIVERSIDAD ESPAÑOLA POR EL FRANQUISMO, 1936-1945* (Crítica 2006). The title of Miranda’s book refers to the famous epithet for the Francoist university in Pedro Lain Entralgo, *DESCARGO DE CONCIENCIA* (1975). As discussed in horrifying detail by Miranda, the Franco regime was brutally thorough in “cleansing” Spain’s universities. Many university professors were assassinated. Most were overawed into silence. The repression triggered a massive exodus of the intellectual elite which left an unquestionable vacuum with profound consequences for Spain’s research and university system. See Miranda, *supra*, passim.


\(^10\) Falange Española (FE) is the Spanish political movement founded on October 29, 1933 by José Antonio Primo de Rivera, a lawyer, son of general Miguel Primo de Rivera. The ideology of Falange national syndicalism was worded as if it were a concept based on revolutionary workers’ movements (such as Communism); it included important elements of Catholicism and was very close to Italian fascism. General Franco would later appropriate the ideological structure of the syndicate, transform it for his own purposes, and utilize it with the theory of national-Catholicism – the theory providing his regime with its theoretical claim to legitimacy. See Balfour, *supra* note 8, at 251, 253-54, 264-73.
Catholicism and the principles of the Movimiento.\textsuperscript{11} Administrative powers were centralized in the rector, centrally appointed by the Ministry, who by force had to be a professor and party loyalist. Administrative rigidity, as well as central control and hierarchy became the norm; as a result, the Francoist regime created a new retrograde and downgraded institution of higher education as another instrument of its central control.\textsuperscript{12}

This new university of the first decades of the Francoist dictatorship (during the 40s and 50s) became elitist and subject, as pointed out above, to the fierce political control of the regime. Legal education was to be distinguished, additionally, by a return to the 19th-century university model in which the study of natural law, principally based on the writings of the Scholastic fathers, became central to legal studies, with civil law kept free of “bad influences” of a public law too close to Democratic constitutionalism.\textsuperscript{13}

These backward-looking Spanish universities timidly began to dream of modernity during the 1960s, leading in 1970 to a modestly more modern legal framework pursuant to the Villar Palasí law of 1970 (L.G.E.).\textsuperscript{14} To summarize, the L.G.E. gave each university a small measure of autonomy with regards to teaching and research. The effect was an important thrust forward, including a certain flexibility in curricula, including the appearance of elective classes. On the other hand, university schools and institutes took on new roles as research units.\textsuperscript{15} Moreover, we must not forget the developments of May of 1968,\textsuperscript{16} which echoed throughout Europe, including Francoist Spain. As a result Spanish universities became the locus of a new anti-Francoist movement which, naturally, Franco vigorously attempted to repress.\textsuperscript{17}

Nevertheless, we must recognize that the above-mentioned legislation of 1970 was very significant, because it permitted a different University model to take root, which was freer and at least timidly democratic.

\textsuperscript{11} The only political party allowed in Franco’s Spain was the Movimiento National which included and dominated all organisms, official unions, sports teams, and associations that supported the Francoist regime. See After Franco: Hope and Fear, Time Magazine, Monday, Nov. 3, 1975, available at http://www.time.com/time/magazine/article/0,9171,913618,00.html (visited July 21, 2007).

\textsuperscript{12} See The Law of University Planning (July 1943); see also James B. McKenna, University Reform in Spain: New Structures for Autonomy and Accountability, 29 COMPARATIVE EDUC. REV. 460-70 (1985); See also POLÍTICA Y REFORMA UNIVERSITAR ( J. Mª. Luxan de ed., (1998)).

\textsuperscript{13} See Antonio Serrano-Gonzalez, UN DÍA DE LA VIDA DE JOSÉ CASTÁN TOBEÑAS (2001) (describing preferential treatment given to instructors in civil and natural law because these support the regime’s ideology).

\textsuperscript{14} See generally, McKenna, supra note 12.

\textsuperscript{15} See generally, McKenna, supra note 12.

\textsuperscript{16} In the Spring of 1968, student riots rocked France, then under the government of President Charles De Gaulle. Student rioters and police clashed in numerous universities and other educational institutions. De Gaulle responded by reinforcing the police. This, however, inflamed the hostilities. At the height of the disturbances, some two-thirds of French workers backed the students. President De Gaulle was forced to dissolve the National Assembly and announce new elections. De Gaulle’s government came close to collapsing, but the situation dissolved almost as quickly as it had arisen. Partly due to the intervention of the unions and the French Communist Party, the government improved working conditions. The strikers returned to their jobs. The elections held on June 23, 1968 resulted in a Gaullist government as strong as that before the riots. The disturbances had an international flavor, many focused on the War in Vietnam. In retrospect, the riots were seen as a turning point in educational reform and the sexual revolution of the sixties. See generally, A Chronology of ‘May ’68’, METROPOLE, May 4, 1998, available at http://www.metropoleparis.com/1998/318/chron318.html (visited Sept. 7, 2007).

\textsuperscript{17} See Balfour, supra note 8, at 271.
as well is more dynamic and open. This development in Spanish universities heralded in some measure the
devolution of democracy in 1978, which would be crystallized in the law of university reform of 1983, when the
total country was caught up in the economic, social, cultural maelstrom which followed the end of the
Francoist dictatorship.

2. Current Plans: The Regulation Of The Study Of Law In Spain After The Constitution Of 1978 And
The Enactment Of The LRU In 1983

With the death of the dictator in 1975 a process of political change and democratic reform culminated
with the enactment of the 1978 Constitution which established a social and Democratic state based on equality
and liberty for all citizens under the rule of law.\textsuperscript{18} Additionally, the 1978 Constitution also led to a process of
state decentralization, with effects on university institutions in the sense that the educational reference point
becomes the autonomous community.\textsuperscript{19} The administration and management of universities was transferred,
accordingly, from the centralized government of the entire state to these autonomous, regional units. Spain
swung, thus, from a centripetal liberal tendency to one that is more centrifugal, closer to the diverse social
problems felt in each distinct region.

In tandem, new university institutions sprout out all over the Spain in great profusion, due to political
conditions (administrative decentralization) and social factors (a growing demand for higher education). A large
number of students, of both sexes and diverse social class extraction, attended schools and universities, which
opened their doors in the 1970s, and increasingly so in the 1980s and 90s. As a result, a greater diversity of
schools and degrees became available than ever before in Spain. In 1984 there were thirty-four universities in
Spain, with a total of 700,000 students. In 1995 there were fifty-one such schools, with almost 1,500,000
students enrolled; in 2000 there were already sixty-one universities in Spain, both public and private.\textsuperscript{20}

As a consequence, most universities no longer have influence over as wide a geographical area as
formerly, except in cities such as Madrid and Barcelona which possess the human and economic capital
necessary to attempt to convert themselves into magnets for students from all over Spain or into private schools.
These reach out internationally. On the other hand, the influence of the more traditional schools and
universities has receded into their respective local areas within Spain. Well into the 1960s, Valladolid was the
third university of the Spanish state measured by the number of students enrolled, behind only Madrid and
Barcelona. Beginning in the 1980s, again solely considering the number of students enrolled, Valladolid has
slipped to the fifteenth place and Salamanca the twentieth place in the country, a startling development.\textsuperscript{21}

\textsuperscript{18} See id. at 273-82.

\textsuperscript{19} The Spanish state is divided into autonomous communities, understood as territorial entities that, within the constitutional order,
have legislative autonomy and executive competencies, as well as the power to administer themselves through their own
representatives. The structure of the Spanish state in autonomous communities is recognized in the Spanish constitution of 1978, to be
precise in article 2 which recognizes and guarantees the right autonomy of the nationalities and regions that compose the state. Spain
is politically and administratively divided into seventeen autonomous communities, in addition to Ceuta and Melilla. See Spain

\textsuperscript{20} See Luis E. Rodríguez-San Pedro. Historia de la Universidad en España, available at \url{http://universidades.universia.es/info-
general/historia/historia.htm} (providing both current statistics and a bibliography of works on the history of Spanish universities)
(visited Sept. 7, 2007).

\textsuperscript{21} See id.,.
The basic degree necessary to become a lawyer in Spain is that of Bachelor of Law, which requires the student to have completed a university course of studies (the first cycle) and undergraduate studies at a law school (the second cycle). After obtaining a Bachelor of Law degree, a student may continue his or her graduate academic studies until reaching the pinnacle degree -- Doctor of Law, which requires oral defense of one’s expertise before an academic tribunal.

In the Spanish educational system, legal studies are homogeneous in their structure with required core and elective courses. A bachelor’s degree in law is part of the program of the social sciences. The curriculum leading to a basic legal degree shares common requirements with bachelor’s degrees in economics, business, political science, sociology, and other branches of the social sciences.

A student who successfully completes “legal” studies obtains access to a considerable range of employment possibilities, not just the legal profession. The basic legal degree, furthermore, is a necessary but not a sufficient condition to engage in the practice of law. For some legal practice, the additional requirement is not tied to merit. To merely be called to the bar, a university graduate must be inscribed on the official role as a member of the bar association; this necessitates payment of the fee, but does not require passing any qualifying examinations. In order to qualify for a judicial or notarial career, however, students are required to pass highly competitive examinations.

Most Spanish universities are public, i.e. they belong to the state. In practice, the regulation of Spanish universities has been transferred to the autonomous communities established by the Constitution of 1978. Therefore, each university has multiple masters. It must answer to the Spanish central state though the Ministry of Education and Science. It must also answer to the local autonomous community. Article 149.1.30 of the Constitution guarantees to the central state “exclusive jurisdiction” to regulate “the conditions for the granting and legalizing of academic and professional degrees and the issuing of basic norms” for the implementation of the fundamental right to education established in article 27 of the Constitution, which appoints the state as its maximum guarantor.

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25 “Article 27.
1. Everyone has the right to education. Freedom of instruction is recognized.
2. The objective of education shall be the full development of the human personality in respect for the democratic principles of coexistence and the basic rights and liberties.
3. The public authorities guarantee the right which will assist parents to have their children receive the religious and moral formation which is in keeping with their own convictions.
4. Basic education is obligatory and free.
5. The public authorities guarantee the right of all to education through a general educational program, with the effective participation of all the sectors affected, and the creation of educational centers.
6. The freedom of physical and legal persons to create educational centers which respect constitutional principles, is recognized.
7. Of Teachers, parents, and in some cases, the students, shall participate in the control and management of all centers maintained by the Administration with public funds, under the terms established by law.
8. The public authorities shall inspect and standardize the educational system so as to guarantee compliance with the laws.
The status of the university as a “public” institution not only refers to the legal condition of the
institution governed by the public power of the state, but also refers to the means with which schools are
financed from tax revenues. Even now, the payment of tuition fees only constitutes a small portion of the
income of Spanish universities.26

Pursuant to the 1978 Constitution, the Law of University Reform (LRU) was enacted in 1983. The LRU
provides the legal framework for the spectacular growth in the Spanish university system during the last thirty
years. This growth is multifaceted. In human terms, the number of students enrolled in higher education has
almost doubled and equals approximately 1,500,000 as of 1995. In institutional terms, Spain had only twelve
universities in the 1950s; now Spain now has almost eighty universities and professional schools.27

The LRU also authorizes the establishment of private universities. This profusion of private schools,
specifically the multiplication of institutions granting the basic degree of Bachelor of Law has had an
unfortunate side effect. The academic level of students has dropped substantially.28 In order to qualify for entry
into a bachelors of law program, a student must complete a high school degree and pass a standardized test for
university admission, Pruebas De Aptitud De Acceso A La Universidad (PAAU). In contrast to other courses of
instruction (journalism, medicine, or engineering, for example) the passing grade necessary for entry into legal
studies is remarkably low.29 Many students, therefore, attend law school not because they are inclined to pursue
legal studies, but because they are unable to enter other fields. This creates an expectation that a large number
of students will abandon the course during their first year of law school. Additionally, a law degree is also
popular because it is the gateway to many different employment possibilities, not just those of a legal
professional.

Perhaps complaining about the number of Bachelors of Law who are not attorneys is professionally
myopic. Instead, we should celebrate the ability of even a beginning degree in law to increase the value of any
student’s human capital.

9. The public authorities shall help the teaching centers which meet the requirements established by law.
10. The autonomy of universities is recognized under the terms established by law.”

27 See Rodriguez-San Pedro, supra note 20.
28 See Miguel A. Quintanilla, El Reto De La Calidad De Las Universidades in LA UNIVERSIDAD EN EL CAMBIO DE SIGLO 89, 90 (ed. Jaume Porta y Manuel Lladonosa, 1998). (elaborating on the concept of the “University of the Masses” and associating this
concept with the proliferation of universities and the consequent decrease in the quality of graduates).

The average grade for those studying law in 2007 -- 2008, in most Spanish universities, is five out of ten while the averages in
medicine are eight out of ten in journalism six and one-half out of ten. Grades in engineering varies widely by specialty. See
http://www.mec.es/mecd/jsp/plantilla.jsp?id=3711&area=estadisticas (official web page of Spain’s Ministry of Education and
Science).
3. The Current Statute.

In 2001, after some fierce polemics, as the proposed projects failed to please both professors and students, the most recent educational reform act was passed. It was intended to meet the challenges posed by the recent changes in Spanish society as well as in the generation and transmission of scientific and technological knowledge.

This university reform reflects a joint effort of both universities and Spanish society. The reform seeks to update and systematize various academic matters, from teaching, to research, and management. Hopefully, the changes will permit universities to meet the demands of the information society and the challenges of the new economy. Regulation has been extended. In addition to the many matters already regulated, new rules have been established regarding hiring professors, allowing leaves of absence, organizing distance learning, enrolling students, enabling private foundations, and permitting the existence of other legal vehicles for the development of educational purposes. To improve the quality of teaching and research, the selection and treatment of professors has been transferred to a new objective and transparent system.

In part, the changes increase decentralization of control. For example, professors salaries are transferred to the jurisdiction of the autonomous communities. Communities also obtain control over accreditation of the quality of educational institutions. But national control has not been abdicated, a new national agency for school accreditation has been created the Agencia Nacional de Evaluación de la Calidad y Acreditación (ANECA). The national agency has power to allow the creation of similar institutions in the autonomous communities.

On the other hand, the new legislation also pursues the directives of European integration, and emphasizes the creation of a university system in the best possible condition to support the creation of a common European marketplace. One central feature of this new community engagement is the promotion of mobility. Students, professors, and researchers are provided with mobility within the Spanish system, the rest of Europe, and the international community. The expectation is that mobility will encourage educational improvement. As part of the new drive to ensure mobility, students are given the freedom to choose both which universities to attend and which degrees to take in order to best fulfill their personal and professional objectives. This choice is enshrined as a legal right. This reform is highly positive; it introduces an element of competition within the university system.

30 See The Conference of Presidents of Spanish Universities was against this new statute See http://www.crue.org/leyuniversid_universidades.htm. See also http://civil.udg.es/pagina/especial/lou.htm (providing university agreements and articles against the law of universities). These materials assert that the new law is defective because, among other problems, it does not meet the requirements of either the European Union or the digital age; it does not provide instruction according to the needs of the marketplace; it does not increase the number of scholarships available. Another criticism is that the governing councils of the universities are allowed to participate in sectors outside their scope.


33 See Law 1/2003 of the 19th, of the universities of Catalonia (published in the official cassette of Catalonia 3826, on February 20, 2003) (granting the agency of quality of Catalonia the powers to promote and guarantee the quality of University education in the Catalonian university system).

34 See Article 42, of the organic law 6/2001, of December 21, on universities.
4. The Requirements For A Spanish Bachelor’s Degree In Law.

Legal education and surveying is defined within a general framework and directives contained in the LRU and the LOU, which establish the power and criteria for institutions to grant degrees. The directives of the LRU are essentially conservative in the sense that much of the curriculum designed in 1953 is still in force.\(^{35}\)

The required courses that must be taught in every law school are: civil law, criminal law, constitutional law, administrative law, commercial law (this includes company law), private international law, public international law, Roman law, European Community law, procedural law, legal theory, jurisprudence, legal history, tax law, employment law, and Social Security law. In addition, students are required to enroll in “Practicum” courses (for example, by competing externships at law firms, notary publics, clerking for courts, and in different public offices, etc.). These requirements are known as the “core courses”; they are defined by the Ministry of Education and Science, and must be taught in all Spanish law schools.\(^{36}\)

The curriculum currently in force, however, is more flexible than that established in 1953. Currently, law schools are allowed to order their students to take some additional “required courses” and, more importantly, the schools are permitted to offer elective courses as well.\(^{37}\)

A total of three hundred credits are required for graduation with a Bachelor of Law degree. The courses are organized into two cycles, each usually requires two-years of study.\(^{38}\)

5. The Spanish Post Graduate Law Course.

Legal degrees must be understood in connection with the university system as a whole. In Spain, the doctorate, or third cycle, requires an additional number of credits to be obtained through the successful completion of classes and the successful the defense of a thesis, which is a major research and writing requirement. Postgraduate studies combine specialization in a specific scientific, technical, or artistic field with formation in basic research skills. In order to qualify for these postgraduate programs, one must have an undergraduate degree.

The availability of doctoral courses of study is very wide (for example, the Universitat Autònoma de Barcelona offers more than ninety different doctoral programs).\(^{39}\) Law is classified as within the social sciences. The legal specialties available are heterogeneous in response of the increasing demand provoked by a society immersed in a process of constant changes that require new laws and regulations. The following areas

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\(^{35}\) See Official cassette of the state number 241, August 29, 1953.

\(^{36}\) See Royal decree 1424/1990 of October 26 (Official Gazette of the state November 20, 1990) (establishing the university degree of Licentiate in Law and the general syllabus of study required for the degree).

\(^{37}\) See id.

\(^{38}\) The system of credits is established by royal decree 1267/1994 of June 10, modifying royal decree 1497/1987 of November 27 (establishing the general guidelines for programs leading to officially recognized university degrees).

of concentration are available in “legal” doctoral programs: history of constitutional culture, European integration and the Constitution, fundamental rights both in theory and practice, commercial contract law, penology, bioethics, federalism, and legal sociology.

Educators generally agree, on the one hand, that a high degree of specialization is important, and on the other, that both theoretical and practical courses should be combined. The programs tend to be divided into general parts, one consisting of core courses required for everyone, which assure at least basic knowledge and a second part composed of more specialized subjects that seeks to delve more deeply into some targeted area.

A first conclusion with respect to our survey of third cycle postgraduate studies is that there is great diversity in the programs available and that this diversity is a function of the need for continuing education. We live in a world of growing complexity. This world requires ever greater degrees of legal regulation.

Part II. The Bologna Process

1. The Declaration Of Bologna And Legal Education.

Traditionally the teaching of law has lagged behind other disciplines in Spain, not only as compared to other social sciences, but compared to other areas as well. In this author’s experience, magisterial lectures by the professor and compulsive note taking by the silent students represented, until very recently, the principal method of teaching law. The physical and temporal space of the classroom produced a passive manner of learning. Study stressed memorization as opposed to the analytical skills necessary for a legal professional (who must be able to reason and to expose arguments with clarity). The study of law had been transformed into a system of rote learning, with the inevitable result that instead of training a competent legal professional capable of meeting the challenges of the legal marketplace, we trained a specialist in passing exams utterly disconnected with reality.

The reforms proposed by the Bologna Process\(^40\) are directed to improving student preparation for reality through, among other mechanisms, forcing innovation in teaching methodology. The architects of the Bologna project recognized, as a grave problem, universities inducing students to sit quietly in class, to memorize and to repeat their mentors’ thoughts. The reforms try to change instruction into a skill based (as opposed to mere knowledge based) approach to education. Professors are urged to attempt to foment reasoning and argumentation skills in their students. Professors are encouraged to use new technologies, to teach co-operatively, and to model teamwork to their students.

As the above shows, the Bologna Process is principally concerned with the quality, transparency, and mobility of higher education in Europe. The process should increase the competitiveness of European institutions of higher learning in preparation for a world of growing globalization. The ultimate objective, increased quality of European academia, is tied to mobility. Mobility is key because it should result in competition. Simultaneously, the process hopes to lower the rates of dropout and failure in law schools. The creation of the European space of higher education (EEES), as set out by the Declaration of Bologna, must be embarked upon in parallel with the needs of the Spanish marketplace, as I have already explained. The two are not merely compatible, they are symbiotic.

For legal education to be usable within the entire unified European market place requires recognition of foreign law degrees. In once sense, recognition already exists, lawyers’ freedom of mobility is already regulated by European directives 89/48 and 98/5. Europe needs to go further to unify legal education. It needs to set minimum academic and professional standards for legal professionals. Today there are distortions that limit competition in the exercise of law, related to different requirements and differing time periods necessary to compete legal studies in different member states of the European Union.

In unified Europe, the duration of university studies is generally associated with a model of study of 3/5/8 years for the granting of diplomas of higher education. This model has the advantages of simplicity and transparency but may not be totally compatible with the needs and conditions of legal education. The Declaration of Bologna makes it possible to obtain the university diploma (“bachelor”) in law, as with other subjects, with three years of higher studies. This system already exists in the United Kingdom and France, but is not accepted in the majority of European jurisdictions. Therefore, some member states and law schools denigrate the possibility of students obtaining a Bachelor of Law Degree after three years, as a form of “fast-tracking.” The nay-sayers overstate the problem; this abbreviated degree would not give access to legal professions (lawyers, judges, bureaucrats, or business or private entity counselors).

To obtain mobility, disparate universities need to create a system of credits -- similar to the system of the ECTS\(^4\) (European Credit Transfer and Accumulation System) -- to permit greater student mobility between institutions giving degrees in law. The ECTS credits represent, in numerical format (between one and sixty) the volume of work that a student must complete an order to pass the course. The ECTS is based on the total volume of work that a student must complete and is not just a reflection of academic hours which the student spends sitting inside a classroom.\(^4\)

However, Spain’s credit system is based on a different approach. According to current Spanish regulations, credit units are defined as units of accumulation calculated in class hours (both for theoretical and practical


\(^4\) The European system for the transfer and accumulation of educational credits (ECTS) is a student centered system, based on the workload that he or she must fulfill. These objectives are specified preferentially in the results that must accompany learning, i.e. the competence that is to be acquired. The ECTS was adopted in 1989, in the frame of the Erasmus program, and has now been integrated in the Socrates program. It is the only system of credits that has been tried and utilized with success across all of Europe. It was initially established for the transfer of credits from one institution to another; the system originally facilitated a recognition of credit for study abroad, and helped increase the mobility of students and the quality of educational opportunities throughout Europe. The ECTS has now become a system of accumulation that can be applied at the international, regional, national and European levels. As discussed above, mobility is one the key objectives of the Declaration of Bologna in 1999. See http://ec.europa.eu/education/programmes/socrates/ects/index_en.html.

\(^4\) These translate the amount of work that each unit of a course requires in relation to the total volume of work necessary to complete a year of studies in the center, that is, magisterial lectures, practical works, seminary, practice oriented instruction, fieldwork, research – both in class and at home – as well as exams and other methods of evaluation. ECTS credits represent the worth of the student in relative, not absolute, terms. The norm is that sixty ECTS credits represent an academic year; thirty credits represent a semester; twenty are the equivalent of a trimester of study. See id. Assuming a student works full-time, forty hours per week, over a forty week academic year, the student labors approximately one thousand six hundred hours over an academic year. If the work done by the student over one academic year yields sixty credits, each credit represents between twenty-five and twenty-six hours of academic work.
courses). Credit units do not reflect the amount of work performed by the students. Spain, therefore, needs to modify its approach to awarding credits in two ways. First, the credit must be based fundamentally on the work that the student must complete an order to be minimally competent, and with a precise definition of the requirements. But students are not independent. The extent of the student’s knowledge depends on the content of theoretical classes, practical classes, seminars and tutorial evaluations. Therefore, the Spanish approach to credits must be modified in a second way, to reflect the work of the professor, because the professor’s effort is very relevant to the student’s preparation. This proposal should not negatively impact professors’ dedication. On the contrary, this should increase their incentives to work with their students.

Professors should be expected to work toward the integral academic formation of the student through a learning that permits the student to develop the capacity for analysis, and independent thinking. Students develop the capacity for independent thought by integrating theoretical and practical teaching, and other academic activities directed by the instructor, and the student’s independent work. This synthesis requires students to be dedicated, actively involved, in their own maturation. This change in educational method forces educators to work in terms of “skills.” The student must be able to apply skills and knowledge in order to be competent at problem solving. In addition, viewing education in terms of skills permits us to evaluate the degree of preparedness, sufficiency and responsibility of students. Skills may be classified as “generic,” “basic,” and “specific.”

In learning by skills the student becomes the active protagonist of a virtual, interactive, shared, and distributed learning. The acquisition of generic skills permits the student to use previously-acquired skills in any new area of learning the student chooses. To function as a professional, the student must be capable of managing knowledge independently (without the crutch of a professor following him or her to every new task). The professional must be able to update what he or she has already absorbed -- selecting from a wealth of information, and understanding that he or she must integrate the new material into her (or his) pre-existing knowledge base. Otherwise, the new material cannot be applied. In sum, the student must have learned how to learn without an external instructor.

2. The Challenges Faced In Light Of Current Changes In Spanish Law And Society.

The birth of the Bologna Process requires not only a fundamental change in legal education, but an even deeper change in outlook and mentality to allow higher education to meet the challenges demanded by modern changes in society.

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44 See Real Decreto 1267/1994, supra note 38.

45 Generic skills can be transferred. They are not tied to a single discipline but may be applied to a variety of subjects and situations (communication, problem-solving, reasoning, leadership skills, creativity, motivation, teamwork, and especially learning how to learn). See E. Corominas. “Competencias genéricas en la formación universitaria” en Revista de Educación (235), páginas 299-321.

46 Basic skills and aptitudes are those which enable the student to adapt to the workplace (reading, writing, calculus, information-technology, foreign languages, cultural sensitivity). See Consell Superior d’Avaluació del Sistema Educatiu, Departament d’Ensenyament de Generalitat de Catalunya, RELACIÓ DE COMPETENCIES BÀSIQUES( 2003).

47 Specific skills are those which are specific requirements for the degree, specialization and work profile. See J. Goody, Competencies and Education: Contextual Diversity, in ), DEFINING AND SELECTING KEY COMPETENCIES ( D.S. Rychen & L. H. Salganik, eds. 2001).
With respect to law, we observe diverse phenomena such as the exponential expansion of the legal market place and the introduction of new technologies that are redefining the basic concepts of European law. As demonstrated by Marta Poblet, the Spanish legal market place has experienced the greatest growth in Europe.\textsuperscript{48} In 2003, the estimated market value of legal services in Spain was €6.4 billion, which represents more than the legal market places of South Korea, China and Japan combined. In comparison, the legal market place in the United States was 140.3 billions, that of the United Kingdoms 28 billons, and that of France was 14.7 billons.\textsuperscript{49}

These economic statistics reflect, as Poblet well explains, the transformations that are occurring regarding the market’s structure:

Despite the traditional predominance of solo practitioners, the market has undergone profound changes. On the one hand, formal and informal networks of lawyers in medium and small size firms are becoming more frequent. On the other hand, the influx of multinational law firms has contributed to create an elite of firms mainly specialized in commercial/tax/corporate law that provide legal services to the biggest Spanish corporations, which also have grown trans-nationally and have faced demands for legal services in other countries.\textsuperscript{50}

In my view, the establishment in Spain of large multinational law firms attracted by economic growth should force Spanish law schools to offer legal education of high caliber capable of forming legal professionals with the ability to compete with their colleagues educated in other university systems. Spanish law schools must rise to the challenge of this competition, otherwise they risk permanent second rank status.

With respect to the introduction of new technologies, Pompeu Casanovas has described phenomena of convergence between the standards and practices of the common law and civil law. This convergence forces schools to break with the old structures and disciplines as defined by dated curricula. In Casanovas words:

\textit{It is important to make the students understand that either in the technological legal landscape (the Semantic Web use) or in the European legal context there is an increasing convergence between American, Common Law and Civil Law standards and practices. This is affecting legal reasoning as well because argumentation and negotiation are more important now than in the immediate past.} \textsuperscript{51}

Casanovas also describes how technological transformation has opened up the legal market, which has experimented huge changes between 1960 and 1990.\textsuperscript{52}

In Spain, the effects of modernization and the opening up of the market took place later than in the rest of Europe. Therefore, in Spain these changes are occurring at greater speed and creating deeper disturbances. We can only hope that the Spanish university system will adapt both in order to assure quality and excellence and in order to be of assistance to Spain as the country works through future changes. A positive outcome will

\textsuperscript{48} Marta Poblet,Exploitation Strategies For The Spanish Legal Market at 9, EU-IST Project IST-2003-506826 SEKT (Semantically Enabled Knowledge Technologies). In addition to this economic fact, Poblet points out that between the 1980s and 90s in Spain there has been a great growth in the number of lawyers. This growth is significant especially in comparison to other European countries. Spain has 146,214 registered lawyers, while each of Italy, Germany, and the United Kingdom have only 100,000. See id.

\textsuperscript{49} See id.

\textsuperscript{50} See id. at 12.

\textsuperscript{51} Pompeu Casanovas, Teaching Artificial Intelligence and Law in Spain at 4 (unpublished position paper on file with author).

\textsuperscript{52} Id..
depend on the success of the Bologna Process; the Bologna Process’ success depends on the strong will of the agents involved, including universities, bar associations, courts, and notaries public.

Conclusion

With the rest of Spain, I look to the future with guarded optimism. As this article discusses, Spanish legal education faces problems with its very institutional organization. The organizational problems have negatively effected output, both scholarly and human. Spain, however, has a history of greatness. The potential for renewed greatness rests on a deep commitment to using the Bologna Process to change from the core outward.