

***WHAT IS A GIRL LIKE YOU DOING IN A PLACE LIKE THIS?:
Description and reflection at the beginning of a Legal Clinic at
Universidad Carlos III de Madrid (SPAIN)***

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**SUMMARY: I. Doubts, reflections... and provocation. II. Reflections:
1. Reflections. Legal Education in Continental/Civil Code Tradition.
2. The Bologna Process. 3. The Bologna Process and Legal Education.
III. Description of the experience: 1. Legal Education at Universidad
Carlos III de Madrid. 2 The Bologna Process challenges (among
others). 3. Clinical Experiences. 0. Organization. 1. Research. 2.
Teaching. A) Degree. B) Postgraduate. C) Other studies.**

I. Doubts, reflections... and provocation.

In my case, preparing this communication on clinical legal education to such an audience (experienced clinical faculty) and in these circumstances (the reform of the legal education in the most competitive system) had been really complicated and difficult. Music is always a great help in this cases, especially in this mid-thirties of mine, when you are not young enough to keep current, and too young to here classics or oldies. And trying to remember another times without communications to prepare, deadlines to fulfil and meetings to go, I played some of my “undergraduate-times” records.

Since late 70’s and during all 80’s, Spain knew one of the most creative, positive and exciting moments of the modern history of the nation. From the political and constitutional point of view, it was called «LA TRANSICIÓN». At the same time, the end of the long, very long dictatorship, the peaceful and civic leadership in the establishment of democracy and economic development promoted a social and cultural revolution called «LA MOVIDA».

In a very short time, Madrid, Barcelona and other of the biggest cities in Spain, turned their traditional and grey life into cosmopolitan, ultramodern cities, with the

most long and excited night life of Europe, where all kind of music, fashions, drugs, personal and sexual behaviour were highly socially tolerated, and even promoted. Years later, everybody discovered that in fact the «*Movida*» was a great struggle to recapture the experiences that Spanish as European society had lost during the past decades..., even sometimes led to overkill, or nonsense.

In opinion of some specialist, the «*Movida*» started with the *première* of a film based in a pop-rock-song, played by one of the hundreds of bands in Madrid of the moment, which will be converted in one of the icons of those times: *¿Qué hace una chica como tu en un sitio como este? What a girl like you is doing in a place as this?*

What is doing a girl like you in a place like this?

*What kind of adventure...
are you looking for?
Your years denounce you, girl.
You are out of place.
You are hunting
Who are you going to trap?
Don't use your games with me,
Femme Fatale.
Always with problems,
Femme Fatale.
Always with problems.*

*What is in your eyes, girl?
Or is it are you going to cry?
Know that someone tread on your pride in a dark arcade.
But don't try to catch me
Because I learnt how to fly
What is doing a girl like you in a place like this?
What is doing a girl like you in a place like this?*

Burning, Madrid- (1978)

Listening to this song, I discovered the sense and essence of my communication. First of all, it is necessary to understand and to make you know that I belong to this new generation post-dictatorship. In this sense, probably the need for reform of legal education, and in general of university education, is part of this cultural revolution I mentioned. Obviously, this part of the changes has been later in time, because my generation is reaching nowadays the chance to lead this change.

Notwithstanding, we should learnt something about our own generation experience to avoid the mistakes of the past. In some cases, some of the changes, some of the defeats to the traditions were unjustified exercises of excess; and in other cases, we were discovering the “wheel” that in other times and places others had passed through. In this sense, sometimes we were going beyond others had gone with the *fanatical faith of the converse*. From other point of view, we should be very conscience and modest, preventing us to reach the same place as the others in half the time...

From a more general perspective, European Academy, especially in Social Sciences as legal studies, is seen from the exterior, as this Femme Fatal of the song: matured, aged, attractive... but arrogant, trying to solve her own problems complicating other's life. With such brilliant eyes, that it is not possible to know if she is ardent of desire or much better if she is almost crying of sorrow.

I wouldn't like to be seen in this Conference as this women, and I found incorrect to use such an image of the old European University. On one hand, I came to this Conference to explain the problems and challenges of traditional legal education in continental Europe, but not to feel self-pity, and make everybody loves me because of the attractive of my history... I came here because I consider interesting Clinical Legal Education, as one of the methodological tools used in the north American system of legal education.

However, an interpretation of my generation experience is that not everything have to be new. Not everything coming from outside is good for us..., and not everything coming from outside is usable or available in our circumstances. And finally, if you take something from others experience you have to learn from their previous experience. Probably all this could be the way to avoid be out of place as the Femme Fatale.

1. Legal Education in Continental/Civil Code Tradition.

In a very similar Conference organized by American Association Law Schools in 2000, one of the speakers talking about Legal Education in Germany, started his contribution talking about the Holy Roman Empire. Probably it was an excess, but it is true that maybe the main characteristic of the legal education in Europe is its antiquity. Since the evolution of the Roman Law each medieval reign or nation in Europe developed their own Law and theirs own lawyers. And given the fact that the only possible Law to study and to practice was the Roman Law, the training of the jurist was to learn the Roman Law texts and how to interpret them. The judicial commitment was to practice justice, which for some centuries were some different from Law, which basically was an instrument to organize and legitimate royal or imperial power¹.

With the enacted of the Civil Code, Justice and law were the same, because, as MONTESQUIEU wrote, from this moment the judge would be the speechless mouth that pronounces the words of Law. If this was the destiny of judges..., what to think about lawyers and other legal professions? Because of that, old Law Faculties did little change. Instead of teaching and commenting Roman Law or Royal Acts, they started with the same method to explain the Codes and Substantive Law.

In this sense, it is worthy to remember so clear and illustrative statements as French jurists BUGNET (1794-1886): "I do not know of any civil law; I just and only know French Civil Code", or DEMOLOMBE (1804-1887): "(...) the text over the rest...". And truly we can affirm that this has been and still is the mainstream legal methodology in Civil Code tradition schools of Law.

¹ CONFERENCE OF INTERNATIONAL LEGAL EDUCATORS (May 24-27, 2000 Florence, Italy) REPORT ON LEGAL EDUCATION IN GERMANY Joerg M. Mössner, University Osnabrueck, Germany.

2. The Bologna Process.

With the signature in 1998 in Bologna, by the way, the first School of Law in Europe, of the Joint declaration on harmonisation of the architecture, started the so called process to create the European Higher Education Space, based on the following ideas, as least as been understood and implemented in Spain:

- *the “self-learning” as “matter of reference”*
- *professional guidance*
- *learning and students perspective*
- *Social adaptation and professional requirements*

Another objective of this process of reform, expressly mentioned in the original Declaration, but sometimes hidden in later documents, is to compete internationally.

All this of course is very complicated to develop in institutions born some three quarters of a millenium ago... and was especially difficult to implement in Schools of Law, because the reasons explained above.

3. The Bologna Process and the Legal Education.

Since early 1999, the ELFA (European Law Faculties Association) has been discussing the issue². Final position was defined in the Board letter to EU Commission and EU Education Counsel (31 May 2002) based on the consensus on four objectives:

- to promote effective quality assurance systems;
- to promote system based on two cycles; and,
- to promote mobility of students and faculty
- to improve the recognition system of degrees.

From a pragmatically perspective, the discussions and agreements were about questions as who, to whom, how much, or how long was going to be the new era in the legal education in European Union. In the same way, it was assumed a common structure based on a double cycle “bachelor+master” in Law... But never it was

² <http://www.elfa-afde.org/html/frameset.html>

discussed what type of education was going to develop... when all four main core original proposals of the EEES policy was to change the kind of university education. However, contrarily the institutions were concentrated in burocratical agenda, with a very inward vision of the mobility and losing in their mind the international competitiveness aim.

III. Description of the experience:

1. Legal Education at Universidad Carlos III de Madrid.

Carlos III University of Madrid was founded in 1989 with the objective of offering an efficient, high quality public service. A service which would further the Right to Education as it is set out in our Constitution. A model of educational integration within the global, unifying concept of Science and Culture. The philosophy that has guided the University since its beginnings is one of creating fully responsible, free-thinking people with a sensitivity to social problems and an involvement in the concept of progress based on liberty, justice and tolerance.

Respecting Law Degree, the University option was to create a new curricula, being the first university in Spain in abolishing the old study plan from 1953 (still updated in some schools). As opposed to the old study plan of 1953, the new [study plan](#) of Carlos III University now offers, in accordance with the nee directives, a number of core subjects accompanied by a wide variety of optional subjects and free-choice subjects from the different degree courses given at the University (with their corresponding obligations and limits) , allowing students to form their own curriculum.

Additionally, the teaching of each subject consists of one hour of practical training for every three hours of theoretical classes, allowing for a better assimilation of the subject matter and putting emphasis on the connection between theoretical

knowledge and future professional practice. Apart from this practical training, the study plan has an obligatory subject, titled Work Experience in Public and Private Institutions (Practicum)– which is taken in the second term of the third or fourth year – the objective of which is for students to obtain their first job experience and to put into practice the knowledge obtained during the course.

Another relevant peculiarity of legal studies at Carlos III is that it takes part of the Social Sciences Faculty, so there is no separate Faculty of Law. But legal departments are part of the Social Sciences Faculty. All tenure professors, must be with exclusive labour occupancy at the University, excluding private professional exercise. In order to attract to the University the best scholars but also competitive practitioners, the University create the *Estudio Jurídico*, university's own law firm, in which law professors can participate as associates. It is the only University in Spain with this institution.

2 The Bologna Process challenges (among others).

Based in this background, the degree in Law at Carlos III wanted to maintain its original innovative and leading position. Because of that, the Presidency promoted a pilot –experience since 2003/04 to develop Bologna program in Law. But it is very important to highlight that Bologna Process was not the only challenge.

Recent researches (vid. Powerpoint presentation) proved that Legal education were considered by students far (5/9) from their own professional experience, that Satisfaction with Law studies among former students were lower than among other students (5.7 vs.7). In general, diverse students from different Universities proved that Students demanded more practice and more specialized education.

At the same time, professionals appreciated skills and knowledge exactly in the contrary sense as skills and knowledge were given by the different degrees in law at national level.

3. Clinical Experiences.

0. Organization.

Using the Estudio Jurídico structure, a group of Professors members of the Instituto de Derechos HUMANOS “Bartolomé de las Casas”, started to develop clinical programs. It is very important to explain that we do not have a clinic... We use clinical legal education as a methodology to work with our students. In other case, we would be violating the legal framework about professional practice.

1. Research.

Some research contracts are interesting opportunities to includes in the research teams postgraduate students. This was the case of the FIPSE report on HIV related discrimination in Spain in 2005, in which we included. At the present moment, we have a report about the tentative changes in the Spanish law due the ratification of the International Convention of Disable People Rights.

2. Teaching.

A) Degree.

Using the experience of very important American schools, in 2004(05, we develop a Street Law Program, to promote peaceful school relation through a human rights training programs in high-schools. At the present moment, we have an agreement with the Getafe City Hall to expand this program to all the public system High Schools of the city (12+1 in the northern campus). We have around 60 law students each years, and 5 faculty members get involved. We offer 6 fellowships to postgraduate students to support the activity.

During this past fall semester , recently finished, we runned a Law Clinic on AIDS Legal issues. The Clinic was finned bu the National MInistru of Public Health and coorganized with the main NGO of the field (CESIDA). We enrroled around 200 students, with 12 faculty members and five teaching or researching assistant.

As a is a project of collaboration between the civil society and academic world, financed by the *National Plan against AIDS* with a double scope:

- prestational , in two differents services:
 - o Legal Service, with the aim to assist NGO and particulars with a service of legal consultation.
 - o Promotion of solution to given problems establish in agreement with CESIDA, based on clinical legal education.
 - This questions are:
 - A report The reform of the social security decree about degrees of disability in the case of people living with HIV/AIDS
 - A report respecting the difficulties to access to full economical benefits of the Social Security for people living with HIV/AIDS in prison
 - The study of the “model case” of labour exclusion
 - A report for the National Ministry of Public Health respect the possible inclusion of the plastic surgery to remove the efectos of the Lipodystrophy in the quirurgical services of the National Service of Health.
 - A guide of juridical resources for people living with HIV/Aids
 - A report about the constitutional grounds to regulate prostitution as an example of balance between fundamental rights and public health.
 - A documentary comparing legal provisions respecting equality and no-discrimination and interviews with people living with Aids, relating the rol that media could play in preventing or in causing this situations
 - An administrative process to reclaim an improvement of public service conditions
- Inclusion of HIV/AIDS topics in academic agenda.
 - o Promotion of research in socio-juridical sciences in topics related with AIDS. All profesors involved in the clinic will have to present a paper to publish in an academical periodical respect the question developed in his/her clinic.
 - o Sensibilisation of the students with the social situation of the people living with HIV/AIDS in Spain.

B) Postgraduate.

Respecting Postgraduate studies, at the present moment all the clinical activities are concentrated in the Master Degree in Human Rights, run by the Instituto de Derechos Humanos, in which we run four clinics:

i. International Law on Human Rights.

A. Universal scope protection on Human Rights. The "CIA flights" Case. A group of students worked last year in the factual investigation with the accusing lawyers in this case. As a very positive result of the clinic, one of the student was enrolled in the legal team, as the expert in the process of evidences. We have 1 faculty an non associate lawyer, and three students

B. American scope protection on Human Rights: amicus curiae IAHC. We prepare 2 different amicus for the IAHC. We use 1 faculty member and 5 students

C. European scope protection on Human Rights: report about the national judicial effects of the ECHR. This is one of the most controversial technical issues in the Spanish system of protection of Human rights, and a tradition complaint of the Human Rights NGO. A group of three faculty members in the different subjects involved worked with six students to prepare a Memorandum presented to a ad hoc commission invited together by the Instituto and the APDH, the partner NGO, formed by one of the judges of the Constitutional Court and one of the members of the Procedural Law Drafting Commission

iv. Human Rights education programs: local program to promote pacific **convivence** in high-schools. 6 students and two faculty members develop a law street program to strength the efficacy of the high schools one, oriented to fathers and mothers, teachers, staff and public officers involved in juvenile policies (social worker, local psicologist, police forces...)