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David S. Stern

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# LAMPADEPHORIA†

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## MANY PATHS TO HEAVEN—A COMPARISON OF LEGAL EDUCATION IN LATIN AMERICA AND THE UNITED STATES

DAVID S. STERN\*

It has been said that man's concepts of right and wrong and of justice are realized through his legal system; or to put it another way, that the law reflects the value judgments of the society in which it operates. More often than not, two societies will reflect two quite different images. The same can be said for legal education, another of the many mirrors in which societies can see themselves. To attempt to impose the forms and standards of one on another can obviously lead only to distortion.

Unfortunately, this fact is apparently not so obvious to United States educators who continue to point "superior" fingers at the Latin American law schools. They are, according to these gentlemen, "not up to standard." Specifically, they mean that (1) there are no admission standards, or tuition; (2) there is too much memorizing of codes, not enough training of the mind for analysis or an ability to think independently; (3) the students have too much power *inside* the universities, and are too involved in politics *outside* the universities; (4) both faculty and students are part-time; (5) facilities are inadequate—no libraries, no study rooms, et cetera; and (6) there is no "academic community" with which the student can identify.

To the interested American, all of this at first sight makes perfectly good sense. How can you possibly run a good law school without full-

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† This section of the *Review* is devoted to short, provocative pieces dealing with problems or opinions which do not readily lend themselves to traditional law review treatment.

\*B.S., Harvard University, 1939; LL.B., Harvard Law School, 1947; LL.M., New York University, 1949; Doc. Cien. Soc. y Der. Pub., University of Havana, 1957; S.J.D., New York University, 1960.

Visiting Professor David Stern has used his extensive experience in Latin America as a background for this essay. He served for many years as Director of Inter-American Legal Studies at the University of Miami School of Law. Over the last quarter century, he has spent nearly a decade south of the border and calculates that he has taught at more than a dozen law schools from Mexico to Chile. He plans, on leaving the University of Washington in June, to spend more than a year doing research and teaching in Mexico.

time professors, without some way of choosing the qualified students? The answer is that such questions are unrealistic because you are talking about cabbages and kings.

The United States and Latin America have very little in common, other than the Western Hemisphere. Their history, their peoples, their culture, and their law have grown from different sources rooted in different traditions. The United States today, as we all know, is industrial and egalitarian; Latin America is agrarian and still intensely feudal. The peoples of North America are sharply divided along color lines; in the southern continent, the colors have merged to create the mestizo race.

Culturally, the Latino society is oriented to the individual as a part of a larger whole which places its highest value on the dignity and the uniqueness of the individual. He is a member of a series of interlocking groups, but always as a human being in his own right and to be treated in all relationships as such. On the other hand, the United States society is oriented to the mass, and historically no mass society has maintained respect for the individual. He has no value in himself and no singularity. He can be replaced in any job or function without difficulty. He is embedded in a "thing" environment where the choices are predetermined. Only his "samenesses" are acceptable; seldom his "differences."

Historically, the Spanish New World inherited a strictly authoritarian system with all the power of decision concentrated at the top. When the conquistadores invaded Mexico and Peru and spread across the great southern continent, law and all authority rested in the person of the Spanish king and diffused downward from him. In contrast, the northern European adventurers and settlers who came to North America had already robbed monarchy of any real significance. Their tradition was one of local responsibility with the power moving upward by a grant of limited authority from the lower structure to the higher.

The church was always important in the development of Latin America. Colonial governments were highly autocratic and highly centralized, and they were bound to honor the merger of church and state. At the local level, government *was* the parish priest. All of the schools and universities were designed solely to serve God and the king, long taken to be the same thing. In the United States, almost from the beginning, the church and the state have been carefully separated. The colonies were a product of protestant protest, but the

sectarian character of the universities and colleges mainly disappeared before the 18th century.

The settlers of North America brought with them traditions of local government, the idea of universal education, a constitution and equality. The Spanish tradition, on the other hand, was one of obligation *for* others, not equality *with* them. Education was the responsibility of the church-state, and not of the people themselves. Even today, higher education is regarded as a privilege, for members of the achieving group who become the "elite." Paradoxically, higher education in the United States has also become the privilege of an elite, in this case the upper middle class, although it is not openly acknowledged as such, since we continue to proclaim equality for all.

The great Latin American revolutions of the 19th century uprooted the king and the absolute authority of the republic was substituted for the absolute power of the monarch. Ever since that time, Latin America has attempted to substitute a series of great charismatic personal leaders for the invested institution. Loyalties are to individuals rather than to establishments or organizations. The leader is a "man on a white horse" who will solve all problems. Latinos would rather wait for Santa Claus than work together to produce what is needed.

It is the willingness of the North American to work for what he wants which not only gives him a great advantage, at least materialistically, over the Latino, but also separates the one from the other in an important psychological area which has had some far-reaching effects. The North American is efficient, purposeful, direct and single-minded. *Within his own scheme of values*, he is vastly superior to his Latino neighbors and, unfortunately for our relations with Latin America, he continues to say so either directly or indirectly.

What he forgets is the value of the humanistic tradition which seems to him, since he has discarded it, so anachronistic in the 20th century world of automation, leisure-time activities, and material well-being. United States law schools, sharing this attitude, base their criticisms on exactly this reasoning. But if the values of the Latin American society are applied, quite a different picture emerges.

Higher education in South America is founded on two premises: the value of the individual and the obligation of the individual. In his book, *Ten Keys to Latin America*, Frank Tannenbaum has said that for Latinos:

[B]usiness is a part of the total scheme of things: the family, the com-

padre relationship, and of the Church. Business is done among friends in a leisurely and understanding way. Material success is at the bottom of the scale. First of all comes the protection of the family, the compadres, the friends. Every relationship, no matter how unimportant in business, is important on the human side, for each man must be treated with courtesy and dignity, almost as a member of the family.

The law-trained person, also, will conduct his business on a personal basis. His clients will choose him as their friend, and he will deal with them as a friend. He will practice law as an individual, rather than as a member of a firm. In fact, there are no large law firms in Latin America, no group practice of law serving the interests of the propertied, managerial class as in the United States.

His law school, then, prepares him for this kind of life. On the basis of his interest and his willingness to assume the many obligations of the educated man, he will be accepted as a student, without any admission standards other than his expressed desire. He will be charged no tuition. What he receives, he will give in return to the next generation. The Latin American student is the inheritor of a long tradition which began with the first church schools where the monks and nuns taught all who came as a matter of voluntary, unpaid service. In the modern, revolutionized societies (Mexico, Bolivia, Cuba) this traditional "passing on of knowledge" has somehow been transmuted into an obligation, a social responsibility. As payment for the privilege of education, the educated transmit their knowledge to the young.

It is out of this sense of responsibility that the non-professional part-time faculty has evolved. The professor is a practicing lawyer, with a full-time career in law. Often he is, in addition, an active politician, a member of some government commission, counsel for a bank, a writer. This busy man gives, voluntarily, some percentage of his time each week to teaching the young people who, in their turn, also work at full-time jobs.

Students go to school in the early mornings and in the evenings. During the day they are expected, rich and poor alike, to be not only self-supporting, but also to be learning their profession. They may work for the city government, hold a position with some national government department, act as counselors to a Social Welfare division, or any of a thousand law-related jobs. As a natural evolution of this arrangement, the student has a considerable voice in the internal affairs of his university. Hours, curriculum, even the professors are matters of urgent and immediate concern to him and he wields a corresponding

influence on them. Even more naturally, he is deeply involved with both local and national politics. He is, unlike his United States counterpart, never disinvolved. He is a citizen, participating actively in the role of citizenship at all times.

The Latin American legal system is rooted in Roman Law, not the English common law as in the United States. Historically oriented, it deals with organized, local, systematic codes which grew out of the Roman tradition. Court opinions are not used as primary sources of law; nor is the law judge-made as in the United States. The Latin American student must, then, memorize the codes; his mental agility is developed independently through experience rather than systematic training.

The Latino studies the context of the law, rather than cases. He is concerned with its relationship to the other humanities and social studies: history, sociology, anthropology, psychology. He learns the human factors from which the law has come and which, either directly or indirectly, determine its course and shape. His practical grasp of the law is in action, not in the applied how-to-do-it law taught in the United States. He learns "how to do it" on his job, not in the classroom. He also needs far fewer books.

His university usually is a building among other government buildings, in the center of the city, perhaps next to the court house or the city hall. It assumes no responsibility for housing, feeding, supervising or entertaining him. The university is quite simply a place where young people come to be taught during those hours that they can. In contrast to the United States system, the student is never isolated from the community—or prohibited from bringing the more "suspect" activities of community life into the sacrosanct academic world. His loyalties do not lie with the university. As previously mentioned, he is a practicing citizen and his loyalty is to his country.

Within its own scheme of values, then, the Latin American law school is eminently successful, and perfectly adapted to the needs and desires of its culture. Even if there were some real value, which is dubious, to be gained by imposing United States standards, this would cost a great deal of money which is being used more significantly to bring electricity and water, medical facilities and primary education to an exploding mass of people desperately in need of these services. Such an imposition, also, might destroy the humanistic value so crucial to the Latin culture.

In his article, *The Iberian Sense of Time*, Gilberto Freyre, the Brazilian sociologist, has used the concept of time as a symbol of the differing values and the conflict between the kinds of cultures discussed. He has noted that industrialization and the mass society have created "human life in harmony with clock time rather than with nature or with tradition associated with nature." "Automation," he goes on to say, "has given the West European and even the Anglo-American conception of human well-being different direction, with leisure as a tremendous reality. . . . Extreme idealization of toil has become an archaic tendency. Therefore, it is not the Iberian conception of time that is now archaic, with regard to the most advanced forms of civilized life, but the Anglo-Saxon conception that went to the extreme of identifying time with money."

Hopefully, the differences in attitude, values and aspirations which separate the Latin American culture from that of the United States can somehow be bridged for their mutual enrichment. Hopefully, the United States law schools will want to re-discover some of the human values they have abandoned, and Latin American law schools to incorporate some of the legal ideas of the United States which would speed their process of modernization.

Whether or not the humanistic tradition *can* survive under the impact of change in Latin America—indeed, whether or not it is *ever* compatible with an industrialized, urbanized, mass society—is unanswerable. The question remains: should not the ideal legal system, in every society, place its highest values on the individual?