



# Tuning

Latin America

Higher Education  
in Latin America:  
reflections and  
perspectives on  
**Law**

Loussia Penha Musse Felix (ed.)





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Law



Tuning Latin America Project

# Higher Education in Latin America: reflections and perspectives on Law

**Loussia Penha Musse Felix (editor)**

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2014  
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This publication has been put together with the financial assistance of the European Union. The authors of this document are solely responsible for its content and it should in some way be considered to reflect the stance of the European Union.

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Cover design: © LIT Images

Translator: Philip Cooper

© Deusto University Press  
Apartado 1 - 48080 Bilbao  
e-mail: publicaciones@deusto.es

National book catalogue No.: BI - 93-2014

Printed in Spain

# Index

<b>Tuning: past, present and future. An Introduction</b>	<b>9</b>
1. Introduction to the area of Law: brief summary of actors and socio-pedagogic context	17
2. The area of Law within the ALFA Tuning Latin America Project	23
2.1. Phase I of the Tuning Project in the area of Law - 2006/2007	25
3. Law meta-profile: meta-profile for the legal professional in Latin America – construction, objectives and perspectives	29
3.1. Scenarios and methodology for designing the meta-profile	29
3.1.1. Phase II of the Tuning Project in the area of Law - 2011/2013	29
3.1.2. Prominent generic competences	31
3.1.3. Specific competences in Law	32
3.1.4. Meta-profile: definition	34
3.2. Presentation of the key aspects of the meta-profile designed in the area of Law	34
3.2.1. Description of the key components	34
3.3. Contrasting the meta-profile in different countries: coinciding elements and perspectives	36
3.4. Some conclusions	38
4. Teaching, learning and assessment strategies for generic and specific competences	41
4.1. Introducción	41
4.2. Definition and description of the capacities selected	44
4.2.1. Generic competence: ability to identify, consider and deal with problems	44

4.2.2. Specific competence: ability to reason, argue and take decisions from a legal standpoint	44
4.3. Level of competence development, corresponding learning outcomes and assessment strategies for learning outcomes	45
4.4. Progressive learning outcomes for the student in the two competences: generic and specific	46
4.5. Methodological suggestions for competence-based learning-teaching and assessment	47
4.6. Conclusion	50
5. Student workload	53
5.1. Introduction	53
5.2. Definition	54
5.3. Semi-direct method	55
5.4. Possibilities in planning and carrying out student learning activities	56
5.5. Difficulties faced in carrying out student learning activities	56
5.6. Tuning research: perceptions of teaching staff and students regarding student time	58
5.7. Compiling of data	58
6. Future scenarios for the legal professions	65
6.1. Brief description of interviewees' profile	67
6.2. Features of the future scenarios proposed	68
6.2.1. Scientific and technological methodology	68
6.2.2. Conditions for human life (aspirations)	68
6.2.3. Human coexistence	69
6.3. Impact of changes within the professional context	70
6.4. Competences that the new professional context will require	71
7. General conclusion	75
8. Bibliographic references	79
9. List of contacts	81



# Tuning: past, present and future

## An introduction

Major changes have taken place worldwide in higher education over the last 10 years, although this has been a period of intense reflection particularly for Latin America, insofar as the strengthening of existing bonds between nations has been promoted and the region has started to be considered as being increasingly close. These last 10 years also represent the transition time between Tuning starting out as an initiative that arose as a response to European needs and going on to become a worldwide proposal. Tuning Latin America marks the start of the Tuning internationalisation process. The concern with thinking how to progress towards a shared area for universities while respecting traditions and diversity ceased to be an exclusive concern for Europeans and has become a global need.

It is important to provide the reader of this work with some definitions of Tuning. Firstly, we can say that Tuning is a **network of learning communities**. Tuning may be understood as being a network of interconnected academic and student communities that reflects on issues, engages in debate, designs instruments and compares results. They are experts that have been brought together around a discipline within a spirit of mutual trust. They work in international and intercultural groups and are totally respectful of independence on an institutional, national and regional level, exchanging knowledge and experiences. They develop a common language to problems in higher education to be understood and take part in designing a set of tools that are useful for their work, and which have been devised and produced by other academics. They are able to take part in a platform for reflection and action about higher education - a platform made up of hundreds of communities

from different countries. They are responsible for developing reference points for disciplines that represent a system for designing top quality qualifications which are shared by many. They are open to the possibility of creating networks with many regions of the world within their own field and feel that they are responsible for this task.

Tuning is built on each person that forms part of that community and shares ideas, initiatives and doubts. It is global because it has pursued an approach based on worldwide standards while at the same time remaining both local and regional, respecting the specific features and demands of each context. The recent publication: *Communities of Learning: Networks and the Shaping of Intellectual Identity in Europe, 1100-1500* (Crossley Encanto, 2011) takes all the new ideas into consideration which are developed within a community context, whether of an academic, social or religious nature or simply as a network of friends. The challenge facing Tuning communities is to gain an impact on the development of higher education in its regions. Secondly, Tuning is a **methodology** with well-designed steps and a dynamic outlook that enables different contexts to be adapted. The methodology has a clear aim: to build qualifications which are compatible, comparable, are relevant to society and with top levels of both quality and excellence, while preserving the valuable diversity deriving from the traditions of each country involved. These requirements demand a collaborative methodology based on consensus which is developed by experts from different fields who are representatives of their disciplines, and who have the ability to understand local, national and regional situations.

This methodology has been developed around **three core themes**: the first is the **qualification profile**, the second is the **syllabus** and the third refers to the **trajectories of those who learn**.

The **qualification profile** enjoys a key position in Tuning. After a lengthy period of reflection and debate within Tuning projects in different regions (Latin America, Africa, Russia), the qualifications profile may be defined as being a combination of forces revolving around four core points:

- The region's needs (from local issues to the international context).
- The meta-profile of the area.

- The taking into consideration of future trends in the profession and society.
- The specific mission of the university.

The question of **social relevance** is essential for the design of profiles. Without doubt, any analysis of the relationship existing between university and society lies at the heart of the matter of relevance in higher education. Tuning's aim is to identify and meet the needs of the production sector, the economy, society as a whole and the needs of each student within a particular area of study – measured by specific social and cultural contexts. With a view to achieving a balance between these different needs, goals and aspirations, Tuning has consulted leading people, key local thinkers and experts from industry, both learned and civil society and working parties that include all those interested. An initial period of this phase of the methodology is linked to general competences. Each thematic area involves the preparation of a list of general competences deemed relevant from the standpoint of the region concerned. This task ends when the group has widely discussed and reached consensus about a selection of specific competences, and the task is also performed with specific competences. Once the means of consultation has been agreed and the process completed, the final stage in this practical exercise involving the search for social relevance refers to an analysis of results. This is done jointly by the group, and special care is taken not to lose any contributions from the different cultural perceptions that might illustrate understanding of the specific reality.

Once lists of the general and specific agreed, consulted and analysed competences had been obtained, a new phase got underway over these last two years that is related to the **development of meta-profiles for the area** under consideration. For Tuning methodology, meta-profiles represent the structures of the areas and combinations of competences (general and specific) that lend identity to the disciplinary area concerned. Meta-profiles are mental constructions that categorise competences in recognisable components and illustrate their inter-relations.

Furthermore, thinking about education means becoming involved in the present, while above all also looking towards the future – thinking about social needs, and anticipating political, economic and cultural

changes. This means also taking into account and trying to foresee the challenges that those future professionals will have to face and the impact that certain profiles of qualifications is likely to have, as designing profiles is basically an exercise that involves looking to the future. Within the present context, designing degree courses takes time in order for them to be planned and developed and their approval obtained. Students need years to achieve results and mature in terms of their learning. Then, once they have finished their degree, they will need to serve, be prepared to act, innovate and transform future societies in which they will find new challenges. Qualification profiles will in turn need to look more to the future than the present. For this reason, it is important to take an element into consideration that should always be taken into account, which are future trends both in terms of the specific field and society in general. This is a sign of quality in design. Tuning Latin America embarked on a methodology so as to incorporate an **analysis of future trends into the design of profiles**. The first step therefore involved the search for a methodology to devise future scenarios following an analysis of the most relevant studies in education by focusing on the changing role of higher educational establishments and trends in educational policies. A methodology was chosen based on in-depth interviews with a dual focus: on the one hand, there were questions that led to the construction of future scenarios on a general society level, their changes and impact. This part needed to serve as a basis for the second part, which dealt specifically with the features of the area in itself, their transformation in general terms in addition to any possible changes in the degree courses themselves that might have tended to disappear, re-emerge or be transformed. The final part sought to anticipate the possible impact on competences based on present coordinates and the driving forces behind change.

There is a final element that has to be taken into account when constructing the profiles, which is linked to the **relationship with the university where the qualification is taught**. The mark and mission of the university must be reflected in the profile of the qualification that is being designed.

The second core theme of the methodology is linked to **syllabuses**, and this is where two very important Tuning components come into play: on the one hand, students' work volume, which has been reflected in an agreement to establish the Latin American Reference Credit (CLAR), and all studies are based on this and, on the other, the intense

reflection process into how to learn, teach and assess competences. Both aspects have been covered in Tuning Latin America.

Lastly, an important area is opened up for future reflection about the **trajectories of those who learn** – a system that proposes focusing on the student leads one to consider how to position oneself from that standpoint so as to be able to interpret and improve the reality in which we find ourselves.

Finally, Tuning is a **project** and as such came into existence with a set of objectives and results and within a particular context. It arose from the needs of the Europe of 1999, and as a result of the challenge laid down by the 1999 Bologna Declaration. Since 2003, Tuning has become a project that goes beyond European borders, in so doing embarking on intense work in Latin America. Two very specific problems faced by the university as a global entity were pinpointed: on the one hand, the need to modernise, reformulate and make syllabuses more flexible in the light of new trends, society's requirements and changing results in a vertiginous world and, on the other, which is linked closely to the first problem, the importance of transcending limits imposed by staff in terms of learning, by providing training that would enable what has been learnt to be recognised beyond institutional local, national and regional borders. The Tuning Latin America project thus emerged which, in its first phase (2004-2007), sought to engage in a debate whose goal was to identify and exchange information and improve collaboration between higher educational establishments, with a view to developing the quality, effectiveness and transparency of qualifications and syllabuses.

This new phase of **Tuning Latin America (2011-2013)** started life on already-fertile terrain – the fruits of the previous phase and in view of the current demand on the part of Latin American universities and governments to facilitate the continuation of the process that had already been embarked on. The aim of the new Tuning phase in the region was to help build a Higher Education Area in Latin America. This challenge takes the form of four very specific central working themes: a deeper understanding of agreements involving **designing meta-profiles and profiles in the 15 thematic areas** included in the project (Administration, Agronomy, Architecture, Law, Education, Nursing, Physics, Geology, History, Information Technology, Civil Engineering, Mathematics, Medicine, Psychology and Chemistry); contributing to **reflections on future scenarios for new professions**; promoting the

joint construction of **methodological strategies in order to develop and assess the training of competences**; and designing a **system of academic reference credits (CLAR-Latin American Reference Credit)** to facilitate recognition of studies in Latin America as a region that can be articulated with systems from other regions.

The Tuning door to the world was Latin America, although this internationalisation of the process wouldn't have gone far if it hadn't been for a group of prestigious academics (230 representatives of Latin American universities), who not only believed in the project, but also used their time and creativity to make it possible from north to south and west to east across the extensive, diverse continent that is Latin America. This was a group of experts in different thematic areas that would go on to study in depth and gain weight in terms of their scope and educational force, and in their commitment to a joint task that history had placed in their hands. Their ideas, experiences and determination paved the way and enabled the results which are embodied in this publication to be achieved.

Yet the Tuning Latin America project was also designed, coordinated and administered by Latin Americans from the region itself, via the committed work carried out by Maida Marty Maleta, Margarethe Macke and Paulina Sierra. This also established a type of *modus operandi*, conduct, appropriation of the idea and of deep respect for how this was going to take shape in the region. When other regions decided to join Tuning, there would henceforth be a local team that would be responsible for considering what to emphasize - specific features, the new elements that would need to be created to meet needs which, even though many of them might have common characteristics within a globalised world, involve dimensions specific to the region, are worthy of major respect and are, in many cases, of major scope and importance.

There is another pillar on this path which should be mentioned: the coordinators of the thematic areas (César Esquetini Cáceres-Coordinator of the Area of Administration; Jovita Antonieta Miranda Barrios-Coordinator of the Area of Agronomy; Samuel Ricardo Vélez González-Coordinator of the Area of Architecture; Loussia Musse Felix-Coordinator of the Area of Law; Ana María Montaña López-Coordinator of the Area of Education; Luz Angélica Muñoz González-Coordinator of the Area of Nursing; Armando Fernández Guillermet-Coordinator of the Area of Physics; Iván Soto-Coordinator of the

Area of Geology; Darío Campos Rodríguez-Coordinator of the Area of History; José Lino Contreras Véliz-Coordinator of the Area of Information Technology; Alba Maritza Guerrero Spínola-Coordinator of the Area of Civil Engineering; María José Arroyo Paniagua-Coordinator of the Area of Mathematics; Christel Hanne-Coordinator of the Area of Medicine; Diego Efrén Rodríguez Cárdenas-Coordinator of the Area of Psychology; and Gustavo Pedraza Aboytes-Coordinator of the Area of Chemistry). These academics, chosen according to the thematic groups to which they belonged, were the driving forces behind the building of bridges and strengthening of links between the project's Management Committee of which they formed a part and their thematic groups which they always held in high regard, respected and felt proud to represent. Likewise, they enabled there to be valuable articulation between the different areas, showing great ability to admire and listen to the specific elements attached to each discipline in order to incorporate, take on board, learn and develop each contribution – the bridges between the dream and the reality. Because they had to carve new paths in many cases to make the ideas possible, design new approaches in the actual language of the area and the considerations proposed, and to ensure that the group would think about them from the standpoint of the specific nature of each discipline. Following group construction, the process always requires a solid framework based on generosity and rigour. In this respect, the coordinators were able to ensure that the project would achieve specific successful results.

Apart from the contribution made by the 15 thematic areas, Tuning Latin America has also been accompanied by a further two transversal groups: the Social Innovation group (coordinated by Aurelio Villa) and the 18 National Tuning Centres. The former created new dimensions that enabled debates to be enriched and an area for future reflection on thematic areas to be opened up. Without doubt, this new area of work will give rise to innovative perspectives to enable those involved to continue thinking about top quality higher education that is connected to the social needs of any given context.

The second transversal group about which one should recognise the major role played comprises the National Tuning Centres – an area of representatives from the highest authorities of university policies from each of the 18 countries in the region. These centres accompanied the project right from the outset, supported and opened up the reality of their national contexts to the needs or possibilities developed by Tuning, understood them, engaged in dialogue with others, disseminated them

and constituted reference points when seeking genuine anchors and possible goals. The National Centres have been a contribution from Latin America to the Tuning project, insofar as they have contextualised debates by assuming and adapting the results to local times and needs.

We find ourselves coming to the end of a phase of intense work. The results envisaged over the course of the project have succeeded all expectations. The fruits of this effort and commitment take the form of the reflections on the area of Law that will be provided below. This process comes to an end in view of the challenge faced in continuing to make our educational structures more dynamic, encouraging mobility and meeting points within Latin America, while at the same time building the bridges required with other regions on the planet.

This is the challenge facing Tuning in Latin America.

July 2013

*Pablo Beneitone, Julia González and Robert Wagenaar*



# 1

## **Introduction to the area of Law: brief summary of actors and the socio-pedagogic context**

In the middle of the second decade of the 21<sup>st</sup> century, the challenges facing higher education in Latin America are essentially linked to two pillars: meeting the demands established in public policies in order to increase access, student numbers and quality of academic training processes, and emphasizing the social and professional relevance of institutional pedagogic and specific degree programmes.

The consolidation of public policies that have been adopted to enable access to higher education for a growing number of students from different social and ethnic strata has also entailed specific challenges for the field of legal education – one of the areas with the largest number of places offered both at universities and at different educational establishments throughout the continent.

Thus, education in Law can be identified by some features which are present to a greater or lesser extent in all countries. It is an area with a long historical tradition that has clear specific features at both a national and inter-regional level.

Law degree courses were first offered in Latin American countries between the 16<sup>th</sup> and 19<sup>th</sup> centuries. In Mexico, the first Law Faculty emerged with the setting up of the Real y Pontificia Universidad de México, founded on 21<sup>st</sup> September 1551 and currently known by the name of the Universidad Nacional Autónoma de México. In Ecuador,

study and teaching in Law emerged at the first Ecuadoran university in 1586. The first Law Faculty was set up in Chile in 1758, established by the Real Universidad de San Felipe. The Jurisprudence Faculty at the Universidad Real de Argentina emerged from the setting up of the Cátedra de Instituta on 26<sup>th</sup> February 1791. In Nicaragua, Law

Notwithstanding the above and despite the apparent differences, it is important to take similarities into account, such as the fact that Law students represent a significant percentage of enrolments in higher education in both the state-run and private systems. A significant percentage of national elites also pursue Law degrees at educational establishments of greater scientific and academic renown, and a considerable percentage of Law students can also be found in places with little or no institutional reputation. As a result, graduates in the area evidence marked differences in terms of the quality of education received and, accordingly, the opportunities available to them to enter the job market will be determined by the quality features or shortcomings found in the teaching provided.

The area of Law joined what we may refer to as the Tuning experience from the perspective in which, despite its long tradition, models based on a formalist<sup>1</sup> approach to legal knowledge have reached saturation point. In terms of the predominant pedagogic structure, at least in most of the activities pursued in the area of Latin American legal education, the main actors – teaching staff and students – play a limited role in which one of them “teaches knowledge” and controls pedagogic procedures while the other others “absorb” and follow theoretical proposals defended by the part that is supposedly in possession of legal knowledge.

Tuning pedagogy, methodology, project or experience – whatever one wishes to call it – constituted a fascinating chance to observe the education process for the area of Law from another standpoint. Over a five-year, non-successive period, during which time the group

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<sup>1</sup> The concept of formalist law identifies the legal system with the law and considers it complete, consistent and organic, and also able to provide uniform solutions to problems in the political community. Its basic version associates the rules of formal validity with justice – formalist legal education that reinforces and reproduces the concept of formalist law, and is based on curricular encyclopaedism, memorising and conceptualism (Bonilla Maldonado, 2013, p. 262).

worked on the methodological proposals received from the Tuning Project management committee, an exercise was carried out above all in otherness. This exercise has involved focusing all possible attention and reflection on those whose voice has been silenced in pedagogic processes by those who still believe they are in possession of all knowledge, and have established procedures deemed necessary for training their listeners. Irrespective of whether they speak Spanish, Portuguese or indigenous pre-Columbus languages, Latin American Law students need to be recognised as playing a key role in the teaching-learning process of which they form a part. This means that teaching staff also need to experience pedagogic relations actively by reflecting on them permanently in their practices and attitudes as educators. The chance to pursue teaching in which they are recognised as valuable professionals in helping to consolidate democratic society in Latin America also implies that higher educational establishments should understand this, and provide the means and structure required to ensure that the pedagogic sphere of activity constitutes a meeting point and place in which bonds of trust, mutual responsibility and commitment between and among students and teaching staff are established.

Tuning provides us with some possible ways of achieving this objective. At the core of the project lies the notion that sharing experiences, expectations, projects and methodologies among teaching staff from different countries can lead to new, more relevant pedagogic proposals.

The aim of this publication, which we are now offering as the result of group work that over the two phases of the Tuning Latin America project has involved 13 countries and 19 institutions represented by 18 members of teaching staff, is to both recount the experience and provide results of what the Tuning project has meant for the area of Law. These results are associated with the different subject areas of made up the project and that throughout this period faced the same tasks. For all the academics who shared the experience, it was a privilege to learn that, despite the specific features of each subject, the interdisciplinary meeting point has always been a fruitful one. The exercise involved in devising the specific competences that should be proposed at the core of university education was based firmly on the generic competences attached to Latin America, which are common to all subject areas. Following this phase, the challenge was then tackled of envisaging professional scenarios for a future which most of us who

have taken part in Tuning Latin America will not be around to witness, although generations of young people who are today accompanying us in their capacity as students will go on to experience. There was reflection about the number of hours of preparation and work carried out by students, in addition to the number of hours set aside for classes. An attempt was made to identify new teaching-learning and assessment methods based on capacities and, lastly, to establish what the general coordinators of the project referred to as the meta-profile but which, as was subsequently discovered, is the synthesis of all this – of the competences, the future and our ability to open up new pedagogic opportunities. This constituted our tasks, our privilege, and also our difficulties.

This recounting of our experiences and proposals with the Tuning project is not intended to take the form of an exhaustive table of concepts, methodologies and pedagogic processes in which we became involved in our capacity as participants from the area of Law. Neither does this publication aspire to establish a dialogue confined to specialists - professionals who are familiar with legal academic discourse which is, broadly speaking, based on theoretical arguments that seek support from a review of literature on the subject. Rather, our arguments are based on the trajectory experienced and shared with regard to the pressing need to offer perspectives that are both comprehensible and innovative for Latin American legal education. Our aim throughout this journey has been to raise awareness about what we have been able to achieve and persuade other teaching staff, students, administrators, leaders of the Latin American academic community and any other interested parties, to progress still further and delve deeper into the education processes they pursue. What we were able to envisage is a future that links knowing, being and sharing knowledge, attitudes and values within a local and global sphere of activity.

We are all familiar with the age-old lesson repeated here: thousands of candles can be lit from a single candle, and the life of the candle will not be shortened. And we suggest here that in contemporary society, the shared flame refers to the knowledge embraced by those who bring their candle, light the flame and pass it on to others who also embrace it in a chain of light that reveals places that the first candle would never be able to reach.

We offer our work in the hope that this flame may reach places that we have never hitherto been able to discern. However, to do this we

obviously depend on other hands and other eyes to take on the task of lighting it. We dedicate the work we have carried out to all those students, teaching staff, all those individuals who are interested in legal education whom we still do not know, to all those who will keep the flame that we offer today alight in the future.

*Loussia Penha Musse Felix*

Coordinator of the area of Law in Phases I and II  
of the ALFA Tuning Latin America Project



## 2

# The area of Law within the ALFA Tuning Latin America Project

The process involved in expanding formal education areas, which can be seen in globalisation processes currently underway, has found a privileged space in higher education. Few institutions offer better effective internationalisation conditions than universities. Internationalisation as a mission to be pursued by the university means that the latter will be in a position to generate academic mobility of students and teaching staff by seeking to reinforce joint, integrating projects; lending a greater dimension to training, search and innovation activities; administering its own agenda of university cultural diplomacy; and contributing to the consolidation of integrated areas of knowledge (Santos; Almeida Filho, 2012). Generally speaking, the individuals within them boast a high degree of formal education, have an intellectual interest in social and cultural processes from other regions, countries and continents and also have a command of foreign languages, which facilitates communication. Local or national problems are also understood to be universal ones, such as environmental issues and the need for the inclusion of growing sectors of the population in education processes. Scientific research is in turn developed more often via networks of collaborators who may even be located on different continents, and some concepts such as globalisation or internationalisation are intensely introduced in education processes – not only elites, who could always make use of intellectual exchanges among their members, but also some actors in Latin America who have been historically excluded from the chance to become immersed in other cultures and countries. For example, in signing up for the globalisation and internationalisation process in higher education, the

Brazilian Federal Government launched the “Science without Borders” programme in 2011. 101 scholarships were announced over a four-year period to graduate and pre-graduate students in order to place them within differing contexts. The long-term aim of the project is to raise the standards of scientific research to levels which are closer to those seen in international higher educational establishments of excellence, as well as encouraging Brazilian innovation. Available at: <[www.cienciassemfronteiras.org.br](http://www.cienciassemfronteiras.org.br)>. Accessed on: 4<sup>th</sup> Oct. 2013. Access to other ways of understanding areas of knowledge, research methodologies and relations between the job market and the academic community have also entered the world of university students, who benefit from academic opportunities that would have been unimaginable less than a decade ago.

Within this context, the area of Law provides a potential for integration that is almost inexhaustible. The idea that closed or impermeable legal systems are enough for the purpose of favouring access to justice by the citizens and foreigners subject to their jurisdiction is experiencing positive splits due, among other factors, to the reinforced dissemination of human rights. The latter has an undeniable international dimension as a regulatory and reflective source regarding the scope and ways of pursuing justice<sup>2</sup>. And within this context of the need for reinvention of legal education, among other aspects, the area of Law was included in the ALFA Tuning Latin America Project after 2006 in addition to national internal systems.

Analysis of the area, the outcomes achieved and the ways of adopting the theoretical and methodological proposals put forward by the Tuning project general coordination will not be embarked on in a non-linear manner, but rather, using a chronological approach, as the project was put into practice in two well-defined temporal phases. This option enables the outcomes and their very nature to be more easily understood, given that the objectives set out in each phase were also specific, despite being complementary.

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<sup>2</sup> Along these lines of international cooperation in the area, special mention should be made of the Human Rights and Higher Education Network Project, an ALFA (European Commission) project that brings together 7 Latin American universities, 3 European ones and also 3 collaborating universities in Latin America and 1 in Europe. To access project outcomes and publications, please consult <[www.upf.edu/dhes-alfa](http://www.upf.edu/dhes-alfa)>.



## 2.1. Phase I of the Tuning Project for the area of Law - 2006/2007

The Tuning pilot project was launched in the year 2000 when, by virtue of the objectives outlined in the Bologna Declaration (a document signed by countries to commit them to reforming and incorporating higher educational structures in the European area), a group of European universities was formed in order to conduct research, nurture debate and provide teaching and learning guidelines that had by agreement been deemed to be relevant to the quality of higher education in the area of the European community. Following on from this experience, the ALFA Tuning – Latin America project was launched in 2004 with a view to promoting reflection and agreement about relevant issues for higher education in the region, and was developed in two phases (<http://www.tuningal.org>). The first phase of the project between 2005 and 2007 consolidated some adopted principles such as the statement that pedagogic processes should be student-centred, that the construction and consolidation of competences should form the basis for these processes, and that education should become a lifelong learning process for the student. Above all, the purpose of contemporary education should be to educate a professional in intellectual and methodological autonomy, with the ability to interact with others in their capacity as both citizen and professional as an expression of their integral development. In the case of the Tuning methodology, competences are worked on from two complementary angles. In the case of the first, broader approach, we have what we refer to as generic competences<sup>3</sup>, which are the ones common to any academic degree or programme and over which all those who complete higher education should develop a command, irrespective of the degree programme or area of knowledge to which they are linked. Generic competences are acquired and consolidated at different levels or qualification stages ranging from a simple academic degree to a PhD, for those who reach this level of higher education. It should be mentioned that, according to the TUNING glossary, a competence can

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<sup>3</sup> Tuning draws a distinction between three types of general competences: instrumental competences – cognitive, methodological and linguistic capacities; interpersonal competences – individual capacities such as social interaction and cooperation skills; and systemic competences – capacities and skills related to global systems (combination of understanding, sensitivity and knowledge). Prior acquisition of instrumental and interpersonal competences are required in order to gain a command of systemic competences (González; Wagenaar, 2006, p. 35).

be defined as a dynamic combination of knowledge, comprehension, capacities and skills. The aim of education programmes is to promote these competences, and they take shape in various course units and are attained at different stages. They can be divided into competences related to areas of specific study and generic competences (common to any degree or course) (González; Wagenaar, 2003, 255). Generic competences were established both at a European level, when Tuning was still confined to that continent, and in Latin America. It is interesting to note that we find generic competences which are characteristic of one continent or the other. Among the generic competences that differ between Europe and Latin America, we find the ability to recognise the need for equal opportunities and gender issues<sup>4</sup> (generic competence No. 6 in Europe) and ethical commitment<sup>5</sup> (generic competence No. 26 in Latin America), which are specific to each continent. Apart from this distinction, we find great similarities in most of the generic competences established on the two continents.

Specific competences, which constitute the link to the generic ones, are identified with a specific qualification or subject area. In the case of the Tuning methodology, the 15 subject areas that made up the project in Latin America each defined their specific competences.

The area of Law in Latin America joined the project at the 1<sup>st</sup> General Meeting<sup>6</sup> in Costa Rica, and consisted of a group of lecturers from 13 different countries<sup>7</sup>. These lecturers were representatives of

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<sup>4</sup> <http://www.unideusto.org/tuningeu/competences/generic.html>

<sup>5</sup> <http://www.tuningal.org/en/competences/generic>

<sup>6</sup> Two general meetings were held in the 1<sup>st</sup> phase: the 1<sup>st</sup> general meeting took place in San José de Costa Rica (22<sup>nd</sup> to 24<sup>th</sup> October 2006), the 2<sup>nd</sup> general meeting in Brussels (14<sup>th</sup> to 16<sup>th</sup> June 2006), and the 3<sup>rd</sup> general meeting in Mexico (21<sup>st</sup> to 23<sup>rd</sup> February 2007). To consult the reports from the 1<sup>st</sup> phase, please access: <[http://tuning.unideusto.org/tuningal/index.php?option=com\\_docman&Itemid=191](http://tuning.unideusto.org/tuningal/index.php?option=com_docman&Itemid=191)>.

<sup>7</sup> The following countries, educational establishments and representatives took part in the 1<sup>st</sup> Phase: a) **Argentina**: Universidad Nacional del Litoral, represented by Graciela Barranco de Busaniche and Universidad del Museo Social Argentino, represented by Ricardo Balestra; b) **Bolivia**: Universidad Autónoma Juan Misael Saracho, represented by Carlos Francisco Pérez Rivero; c) **Brazil**: Universidad de Brasília, represented by Loussia P. Musse Felix and Universidad Presbiteriana Mackenzie de São Paulo, represented by Ademar Pereira; d) **Chile**: Universidad Católica de Temuco, represented by Rodrigo Coloma Correa; e) **Colombia**: Universidad Externado de Colombia,

educational establishments with different profiles comprising 5 state-run universities (1 in Argentina, 1 in Bolivia, 1 in Brazil and 2 in Mexico) and 12 private universities (7 Catholic, 1 Presbyterian and 4 secular). Their academic and professional training was also varied, their having taken part in different areas and subjects in Law<sup>8</sup>. In accordance with the objectives set out in Phase I of the Tuning project in Latin America, the specific competences for the area were defined that encompassed a great number of objectives.

On this first occasion on which a group of teaching staff got the chance to devise professional and academic competences which, in theory, might be implemented in a wide range of educational scenarios and with specific objectives, the natural trend was to put together quite an extensive catalogue.

Consequently, 24 specific competences<sup>9</sup> were defined which are associated with generic competences for Latin America, and four groups of stakeholders – teaching staff, students, graduates and employers – were consulted in each of the Tuning member countries in the area of Law. The process achieved all the objectives that had been set out for this first phase, and the discussion and reflection about the

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represented by José Luis Benavides; f) **Ecuador**: Universidad del Azuay, represented by Juan Morales Ordoñez; g) **El Salvador**: Universidad Salvadoreña Alberto Masferrer, represented by Julio Alfredo Rivas Hernandez; h) **Mexico**: Universidad de Colima, represented by Salvador Ventura del Toro; Universidad de Guadalajara, represented by Nauhcatzin T. Bravo Aguilar; i) **Nicaragua**: Universidad Centroamericana, represented by Eva Romano; j) **Paraguay**: Universidad Autónoma de Asunción, represented by Júlío Américo Ocampos; Universidad Católica Nuestra Señora de La Asunción, represented by Josefina Ovelar; k) **Peru**: Universidad de San Martín de Porres, represented by Ernesto Álvarez Miranda; l) **Uruguay**: Universidad Católica del Uruguay, represented by Martín Risso; m) **Venezuela**: Universidad Católica del Táchira, represented by Mayerling Lisbeth Cantor Arias.

<sup>8</sup> The area of Law was the only one among the 15 areas of knowledge that took part in the ALFA Tuning project that was coordinated by a representative from Brazil.

<sup>9</sup> The following volume was published as a result of Phase I: “Final Report of the Tuning Latin America Project: Reflections and Perspectives on Higher Education in Latin America”, which contains the 24 original specific competences for the area, their validation, and a map of professions and qualifications on Law degree courses. Available in Portuguese, Spanish and English via the following link: <[http://tuning.unideusto.org/tuningal/index.php?option=com\\_docman&Itemid=191&task=view\\_category&catid=22&order=dmdate\\_published&asc=DESC](http://tuning.unideusto.org/tuningal/index.php?option=com_docman&Itemid=191&task=view_category&catid=22&order=dmdate_published&asc=DESC)>.

methodology used to develop competences in education processes set aside for training graduates in Law started to gain momentum.

The specific competences were disseminated in seminars, publications, (Felix 2006, among others) congresses and scientific meetings within the area of Law. Notwithstanding, interruption of the Tuning Project during the years following Phase I, which ended in 2007, meant – as was to be expected – that the group and transnational discussions were put on hold.

Thus, during the period from 2007 to 2011, when the 2<sup>nd</sup> Phase of Tuning took place, the area of Law focused on the task of reflecting about how the competences could be developed and disseminated in their own higher educational establishments. One example of action during the transition years between Phases I and II was the curricular change which took place at the Universidad Católica Dámaso A. Larrañaga, in Uruguay, which adopted the 24 specific competences as a paradigm for the pedagogic processes implemented at its Law Faculty in 2010.

# 3

## Law meta-profile: meta-profile for the legal professional in Latin America – construction, objectives and perspectives

### 3.1. Scenarios and methodology for designing the meta-profile

#### 3.1.1. *Phase II of the Tuning Project in the area of Law - 2011/2013*

Phase II of the ALFA Tuning Latin America project began in terms of group work in May 2011, with a general meeting held in Bogotá, Colombia, that brought together the project's general coordinators, representatives from national Tuning centres and members of the subject area groups. There were changes in the make-up of the Law group both regarding some representatives and in terms of institutional presence<sup>10</sup>.

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<sup>10</sup> The group of lecturers that make up the area of Law underwent changes between Phases I and II of the ALFA Tuning Project. Of the 17 previous representatives (from 13 countries), the following countries, teaching staff and educational establishments remained in the project: **Argentina** – Graciela Barranco de Busaniche – Universidad Nacional del Litoral; **Brazil** – Ademar Pereira – Universidad Presbiteriana Mackenzie, and Loussia P. Musse Felix (confirmed as group coordinator) – Universidad de Brasília; **Chile** – Rodrigo Coloma Correa – Universidad Alberto Hurtado; **El Salvador** – Junio Alfredo Rivas Hernández – Universidad Salvadoreña Alberto Masferrer; **Mexico** – José Salvador Ventura del Toro – Universidad de Colima; **Nicaragua** – Eva Romano Urbina – Universidad Centroamericana. Four new representatives joined the group after the

In this phase, which was geared towards focusing on methodologies and advances made in Phase I, an attempt was made to establish what was referred to as the meta-profile – a concept under construction that tried to highlight and summarise both the competences required of the professional in each area and how to envisage a future scenario for each area that took into account the transformations expected in higher education. The purpose, components and concept of the meta-profile were discussed in each subject area. As a consequence, representatives of the 15 thematic areas who met in Bogotá adopted a range of methodologies in order to obtain the result that had been hoped for. A close correlation between methodological practices that prevail in these areas and the form adopted by groups of representatives in designing their meta-profile can be noted. In the case of Law, the starting point turned out to be an assessment of the work carried out during Phase I of the project, in which 24 specific competences had been established for the subject area (Beneitone et.al, 2007, pp. 113-114). Consensus was reached regarding the need to fine-tune the competences that had been defined five years previously (in February 2006), as they were considered too broad, and limited the possibilities of them being effectively adopted.

The agenda regarding the meta-profile was therefore worked out by reviewing the specific competences attached to the area of Law and by providing a synthesis of the generic competences for Latin America.

Focusing attention on generic competences takes on great relevance in legal education, as they will also create a favourable environment for relevant focus on systemic, instrumental and interpersonal terms for those graduates who will not be pursuing their careers strictly within the legal profession. Although tasks related to the subject area of Law may never be performed, as is the case with many graduates, a command of generic competences constitutes a positive outcome from the years spent in higher education and may ensure specific

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general meeting held in Bogotá: **Argentina** – Eduardo Víctor Lapenta – Universidad Nacional del Centro de la Provincia de Buenos Aires; **Ecuador** – Santiago Jaramillo Malo – Universidad del Azuay (following the meeting in Guatemala, Juan Morales Ordóñez once again became the representative); **Paraguay** – Eugenio Jiménez Rolón – Universidad Autónoma de Asunción (following the meeting in Guatemala, Guillermo Delmas); **Uruguay** – Carlos Barbé Delacroix – Universidad Católica del Uruguay “Dámaso Antonio Larrañaga”.

possibilities for entering the job market in diversified areas. In addition to this perspective, the area of Law has recognised the growing need to work alongside other areas of knowledge in solving legal problems. Reflecting on generic competences also constitutes a way of epistemologically and methodologically engaging in dialogue with other subject areas.

A summary was then put together based on the original generic competences that had been defined by the Tuning Project in 2005. Of the 27 original, previously-established competences, a consolidated version of 15 generic competences was provided. Viewed from the area of Law, these competences should be developed by all students enrolled in higher education in any discipline. Evidence was also shown that specific competences attached to Law fully overlap with the generic competences.

### 3.1.2. *Prominent generic competences*

1. Ability to identify, consider and deal with problems by applying knowledge.
2. Ability to organise and plan.
3. Social responsibility and citizenship.
4. Ability to pass on discipline-specific knowledge within different contexts.
5. The skills required to search for, process and analyse information from different sources.
6. Ability to learn and keep constantly up-to-date.
7. Critical and self-critical capacity.
8. Ability to act creatively in new situations.
9. Ability to take justified decisions.
10. Capacity for teamwork, motivating and steering towards common objectives.

11. Interpersonal skills.
12. Commitment to conservation of the environment.
13. Appreciation and respect for diversity and multiculturalism.
14. Ethical commitment.
15. Commitment to quality.

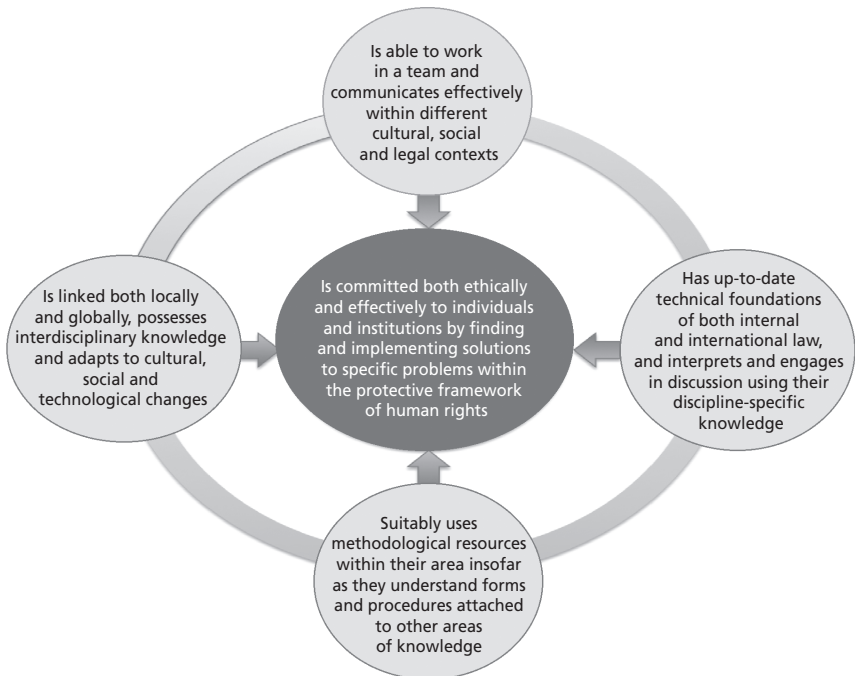
### 3.1.3. *Specific competences in Law*

1. Identify, interpret and apply the principles and regulations governing the national and international legal system in specific cases.
2. Axiologically assess possible courses of action in accordance with the legal system.
3. Be committed to human rights and the democratic rule of law.
4. Ability to work in disciplinary or interdisciplinary teams, thus enriching an understanding of the law and solving complex cases.
5. Ability to reason, argue and take decisions from a legal standpoint.
6. Nurture a culture of dialogue and the use of alternative means in solving disputes.
7. Have a command of the language(s) required to pursue their professional practice within a globalised and multicultural context.
8. Apply the methodology common to research within the legal sphere of activity.
9. Ability to critically analyse legally relevant situations and help set up institutions and legal solutions in both general and specific cases.
10. Ability to draft texts and express oneself orally in fluent, technical language, using precise and clear legal terms.



11. Ability to act in a valid and effective way in different administrative and legal situations.
12. Ability to decide whether the actual circumstances are sufficiently clear so as to be able to take a decision founded in Law.
13. Act ethically in exercising their professional duties.

These new competences broaden outlooks regarding undergraduate degree-level education, as they potentially offer greater resistance in terms of the different theoretical, political and even ideological approaches that remain in Law education. They also show fine potential in terms of their adoption by the different national education systems, by teaching staff involved in many different cultural and legal contexts, and also by national education authorities who are responsible for governmental directives regarding degree courses in higher education.



**Figure A**  
Meta-competences for the graduate in Law in Latin America

#### 3.1.4. *Meta-profile: definition*

Legal professionals are committed to defending and promoting the interests of individuals within a multicultural, local and global context.

On a cognitive level, they are characterised by possessing basic knowledge about both National and International Law, and also knowledge deriving from other areas, which enables them to act relevantly, critically and creatively in the legal system.

On a procedural level, they need to know how to represent, defend and deal with lawsuits and disputes efficiently by establishing links between what the legal system stipulates and the specific case being dealt with. Therefore, they interpret regulatory texts using a methodology based on their body of knowledge, and they also axiologically assess possible courses of action, take suitable decisions and convey them in a persuasive manner. They are able to engage in dialogue, negotiate and work as part of a team in order to seek out the best possible solutions to the problems in which they are involved, in addition to adapting to cultural, social and technological changes.

In terms of values, they are committed to human rights and the consolidation of a democratic rule of law, acting in accordance with ethical principles and assuming social responsibility for this.

### **3.2. Presentation of the key aspects of the meta-profile designed in the area of Law**

#### 3.2.1. *Description of the key components*

The aim is to seek a suitable balance in the meta-profile between the nature of professional services demanded by citizens and a series of variables that depend on the quality of functions performed by lawyers, judges, prosecutors, members of public ministries and many other legal professions. The legal professional is placed within a context of interests that are defended by individuals, invoking what is acknowledged as being the law currently in force. On the other hand, the knowledge, skills and values expected of individuals who practice in legal professions are also taken into consideration – in short, to

determine which competences need to be recognised in those who have decided to focus their careers on the field of law.

A suitable understanding of the meta-profile requires a reflection on the current and future role in terms of what should be expected from legal professionals. In this respect, phenomena such as tension between globalisation and multiculturalism compel one to focus attention on what takes place both at a local and international level.

Bearing in mind the proliferation of forms of specialist regulation in different areas of social life and the speed with which regulations change, the knowledge required of legal professionals should not go beyond basic or fundamental aspects. Professionals will according to this be able to keep their knowledge constantly up-to-date and even engage in dialogue with other disciplines, thus enriching their perspective and establishing suitable links in areas they need to know about.

Thus, there is recognition of the fact that it is impossible to be in possession of encyclopaedic knowledge although, nonetheless, an analysis of a systemic or specialist nature is not disregarded. It is especially important at present and in the near future that we take into account the exponential increase in access to the information as a result of the Internet and the growing demands for transparency from citizens and bodies that defend rights, as well as international human rights organisations.

Despite the fact that it has been a key variable in establishing differences between good and bad professionals, the importance of strengthening procedural skills and virtues was rarely made explicit in the education process as being essential for professional success or failure. Assuming the inappropriateness of this omission, the professional meta-profile being sought reflects an emphasis on the ability to perform the tasks which are normally required of legal professionals. Likewise, the ability to administer disputes, negotiations and lend meaning to regulatory texts is recognised as being essential for the satisfactory performance of professional tasks. The ability to establish links between different situations in daily life and what is stipulated in regulatory texts is what ultimately determines to what extent a graduate becomes integrated in the professional community and is recognized by peers. On this point, the different expectations attached to the competence models come to the fore, in which

specialist knowledge takes on importance only to the extent that responses are able to be given to problems of a practical nature.

An evaluative perspective of the tasks being performed most likely pervades in these expectations. Law is explained by a commitment to human rights both at a national and international level and the democratic rule of law. The tools available to lawyers assume adherence to models of society that are satisfactory in terms of the current state of human development.

It can be stated that, broadly speaking, the meta-profile takes into consideration a balance between the different types of competence. As would be expected in an area of applied social science, there is no prevalence of competences that are related merely to the cognitive level. The procedural elements attached to competences are relevant, however, highlighting the need detected by many critics of the legal education system in Latin America for the graduate to be educated to suitably perform their functions. Within this context, an important point is to take interpersonal competences into consideration, which breaks away from a very deep-seated paradigm that the jurist's work is a solitary, isolated activity that is carried out in contexts that favour individual performance.

### **3.3. Contrasting the meta-profile in different countries: coinciding elements and perspectives**

The contrasting phase for the meta-profile was confined to the institutions represented in the subject area group of Law. A national comparison exercise would have been impossible within the time set aside and with the resources available – even for sampling purposes. The results obtained are therefore merely illustrative.

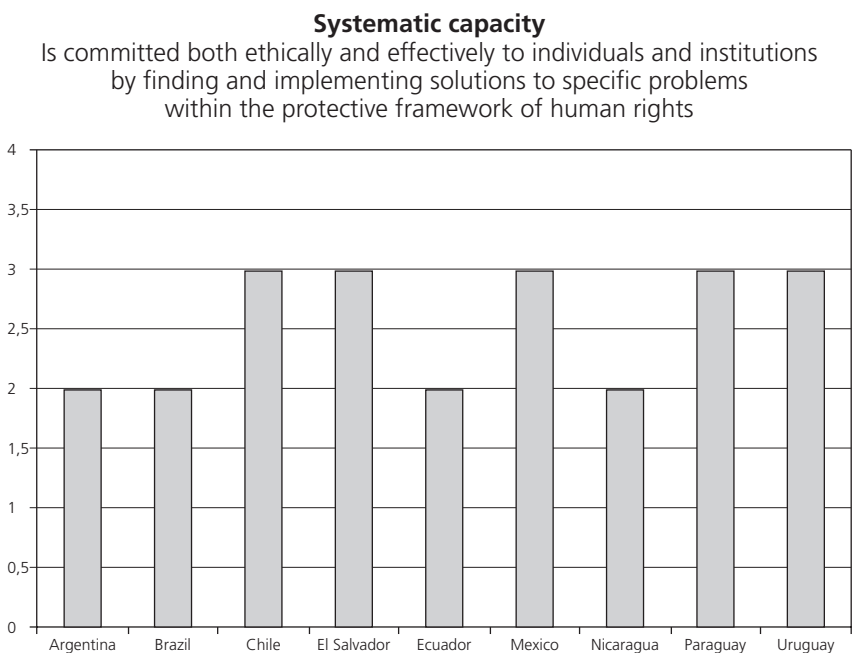
The following continental geographic configuration was provided in drawing up the map of profiles, with the participation of 11 institutions: South America (Argentina, Brazil, Chile, Ecuador, Paraguay and Uruguay) and Central and North America (El Salvador, Mexico and Nicaragua).

Contrasting was carried out by each institutional representative, thus transforming it into a self-assessment. The data provided was also analysed from a strictly qualitative standpoint by the area coordinator. An attempt was also made to ensure that the design of the meta-

profile is on a medium-term basis (around 5 years) to enable institutions to evolve within the desired parameters.

Five competences contained within the meta-profile as shown in Figure A were selected for assessing the degree of correspondence of the meta-profile and the current pedagogic scenario in the participant institutions.

Adopting the premise that the comparison carried out at this stage can only be illustrative, and that the limits imposed on space in this chapter do not allow a specific analysis according to country or of all the meta-competences, we decided to conduct an analysis of a meta-competence that structures the rest from the perspective of area coordination. Hence, the systemic competence shown in the following comparative graph was chosen.



**Graph A**  
We find the following degrees of development for each class:  
1 – Undeveloped; 2 – Partially developed;  
3 – Developed at a suitable level; 4 – Highly developed

The specific results obtained reveal a tendency (to be confirmed) that those educational establishments that provide a BA programme in Law which are represented in the Tuning project show at least partial development of the core systemic competence attached to the meta-profile. Attention should be paid to the fact that Argentina and Brazil have two participant institutions each, and the qualitative analysis carried out sought the *average*, thus acknowledging the methodological shortcomings of this approach. The graph represents a single institution in the case of the other countries.

The different institutions shared common ground regarding the subjects they offer, practice in human rights clinics and the development of cognitive and instrumental competences to back up their assessment that there is a specific commitment on the part of the graduates under the terms proposed. Yet none of the institutions is able to effectively point to major progress in the competence. It can also be stated that the competences related to values and interpersonal skills are still far from the institutional context in legal education across the entire continent.

### **3.4. Some conclusions**

The meta-profile established seeks to lend support to projects involving change, innovation and relevance in higher education for the area of Law. These changes are essential to ensure that lawyers contribute effectively and positively to the social transformations that are currently underway on the continent, in expressing a common yet also plausible idea, revealing a pedagogic, political and social reference point in Law degree courses that is necessary in order to train new Latin American lawyers.

The attempt at comparing the meta-profile with what effectively takes place in each of the participant institutions revealed how much progress still needs to be made. The meta-profile for the legal professional in Latin America is therefore a legitimate horizon that can be made out in the aspirations of all those who seek socially relevant legal education. It can also provide the comprehensive development of an ethical person who is capable of responding suitably to the challenges faced in a field that is increasingly encroaching on more interdisciplinary borders in seeking its ultimate goal – to obtain justice.

In terms of values, the meta-profile covers the growing dissemination of the notion of human rights as integral parts of legal systems, both at an internal and international level. Legal activity as pursued by different professionals in the area is acknowledged as also being necessary for the purpose of consolidating democracy on the continent and, consequently, in defending the democratic rule of law.





# 4

## Teaching, learning and assessment strategies for generic and specific competences

### 4.1. Introduction

Over the years during which the Tuning methodologies were discussed in the area of Law, the teaching, learning and assessment of capacities has been one of the core themes of the analysis. One of the considerations that can be made is that adopting either generic or specific capacities in degree course teaching in Law in Latin America is one of its most difficult challenges, despite the growing recognition of its relevance and importance. The culture and practice involved in the pedagogic processes used in legal education are, to a large extent, still linked to the excessive priority given to a command of theoretical content. At present, what mainly exists is the nurturing at all levels of students who are totally dependent on the instructional situation and are in possession of either little or a great deal of conceptual knowledge about different disciplines. However, they also have few cognitive tools or instruments at their disposal to enable them to independently face new learning scenarios linked to different areas of their formal learning experience that may prove useful in different situations.

The need for permanent transformation and reflection about what legal education is, how it should be organised and offered and what the objectives should be is still being dealt with unsatisfactorily. Another relevant aspect in competence development is the fact

that the deep-seated pedagogic culture attached to Law degree programmes does not suitably assess teaching processes involving teamwork. Moreover, the implementation and consolidation of new ways of learning and teaching require dialogue and the effective capacity for collaborative work among teaching staff. Owing to the fact that capacities are necessarily developed in different activities and periods, it cannot be clearly stated that just a few subjects or research and extramural activities will themselves develop capacities effectively at least at an intermediate level. Therefore, it is essential for adherence to competence based curriculum to be the result of an institutional decision that may assign different teaching groups to the attainment of this common goal. The different types of subject ranging from what are known as propaedeutic – which focus on providing the student with a critical view of the ways of constructing and acquiring knowledge in humanities, applied social science, relations between Law and other epistemological fields that use distinct methodologies – to subjects which are more geared towards the practical elements, may all be associated with the pedagogic option involving the development of both varied and complementary competences.

It is necessary to recognise which subjects constitute historic constructions, objects of knowledge that are transformed and whose provisional status should form the backcloth for their existence. In this respect, more traditional aspects and the permanent chance to progress in what may be deemed problematical or controversial go hand-in-hand within their content, i.e. in what may be considered a form of dissent that also forms a part of the subject. All discipline-specific knowledge is therefore liable to historical and social contextualisation, and compartmentalising knowledge in subjects is merely the result of scientific and academic conventions that are susceptible to change. Thus, teaching and learning methods need to encompass plurality in terms of techniques and paradigms by inter-relating areas of knowledge in order to deal effectively with problems.

Likewise, the fact should also be highlighted that the integration of different types of pedagogy such as extramural studies and research are being increasingly considered essential in higher education. Research provides the student with a critical and problematizing perception of the social, political and economic reality facing their own society and the regional and global context. Extramural activities give students the chance to act in social sectors that demand action or forms of citizen

intervention linked to the area of knowledge in which they specialise. They also favour the development of major interpersonal competences such as commitment to and respect for diversity and multiculturalism, among others<sup>11</sup>.

Briefly, we shall provide a summary of the reflection undertaken by the participant institutions with regard to the effort they have made to establish competence-based teaching, learning and assessment activities in spite of the prevailing pedagogic culture. As one of the project's objectives that were set out in Phase II, the general coordinators of the Tuning project requested that each area should select one of the generic competences and one of their specific competences for the purpose of conducting research into their application in the participant institutions<sup>12</sup>.

In the area of Law, the group selected the ability to identify, consider and deal with problems as a generic competence and, from among the specific competences, it was decided to analyse the ability to reason, argue and take decisions from a legal standpoint. The choice was made based on the fact that this had been the most prominent specific competence in the consultation carried out by teaching staff, students and employers in 2006.

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<sup>11</sup> The Law Faculty at the University of Brasilia formally approved a new pedagogic project involving competence-based curricula and the inseparable nature of teaching, research and extramural activities for the education of its graduates. This should start to be implemented after the second semester of 2014. For further information, please consult the following link: <[http://www.fd.unb.br/index.php?option=com\\_content&view=article&id=976%3Apublicado-o-projeto-pedagogico-da-faculdade-de-direito&catid=126%3Anoticias-slide&Itemid=2638&lang=br](http://www.fd.unb.br/index.php?option=com_content&view=article&id=976%3Apublicado-o-projeto-pedagogico-da-faculdade-de-direito&catid=126%3Anoticias-slide&Itemid=2638&lang=br)>.

<sup>12</sup> Institutional representatives from the following universities issued reports on this matter: **Argentina** – Graciela Barranco de Busaniche – Universidad Nacional del Litoral; **Brazil** – Ademar Pereira – Universidade Presbiteriana Mackenzie; **Chile** – Rodrigo Coloma Correa – Universidad Alberto Hurtado; **El Salvador** – Julio Alfredo Rivas Hernández – Universidad Salvadoreña Alberto Masferrer; **Mexico** – José Salvador Ventura del Toro – Universidad de Colima; **Paraguay** – Guillermo Manuel Delmás Aguiar; **Uruguay** – Carlos Barbé Delacroix – Universidad Católica del Uruguay “Dámaso Antonio Larrañaga”.

## 4.2. Definition and description of the capacities selected

### 4.2.1. *Generic competence: ability to identify, consider and deal with problems*

Broadly speaking, this competence means that the student should show they are able to correlate a specific case with a specific solution in accordance with certain suitability criteria. This entails a series of question marks related to the ability to distinguish between the relevant and irrelevant, between the sufficient and the insufficient (in order to adopt a perspective or course of action), and in accordance with the means for justifying their preferences.

### 4.2.2. *Specific competence: ability to reason, argue and take decisions from a legal standpoint*

This competence is recognised as being a key within the professional context but, it is difficult to accurately determine its meaning – in the sense that, on the one hand, someone who lacks a command in this competence is not recognised as being a competent legal professional and, on the other, it is not easy to establish what it really constitutes.

It can be understood that, with this competence, it is hoped that students who face either a real or fictitious problem will be able to suitably propose a response that implies the application of a rule or legal principle. In demanding that the rule or principle be applied, a legitimate type of connection will need to exist between the case under scrutiny and the solutions contemplated according to such rules or principles (not everything is applicable!). This type of connection will, by the way, meet basic demands shared by the community of judges and the community of plaintiffs. Not so long ago (mainly at the time of codification), the problem with connection was (apparently) solved by demanding that syllogism be linked or applied to this. Recently, the role that deductive logic may end up playing is by no means easy to envisage or defend (although theories persist that postulate the experience of a single correct answer). Thus, outlines for acceptance in terms of ways of acting on the part of those who will become legal professionals cannot easily encapsulate highly-standardised ways of producing answers.

Despite the fact that the *juridicity* feature may identify both the reasoning and the argument and decision, this does not mean that

such activities cannot be enriched by perspectives originating from other areas of knowledge. Indeed, the theory of argument – which does not constitute an area reserved solely for jurists – establishes a series of useful criteria for constructing good reasoning and argument within the legal sphere of activity.

Recognising the difficulties raised by the *Ability to reason, argue and take decisions from a legal standpoint* might be understood as referring to an individual's willingness to analyse a certain real or hypothetical problem by relating it to solutions that are formulated within the legal system via general and abstract rules, in addition to coherent decision-making in keeping with this analysis. This means the ability to identify what is relevant or irrelevant in a specific case, and to identify the regulatory formulations in force that may be potentially applicable to that case in order to embark on an interpretative process that is consistent with the ways of understanding Law in the prevailing area of legal culture. This also implies recognising the transformation processes involved in that same culture and the emergence of other paradigms.

#### **4.3. Level of competence development, corresponding learning outcomes and assessment strategies for learning outcomes**

There is a close connection between the competences selected, which lends itself to a joint analysis of their application and command. In the early years or periods of the degree course, we can take the subject *Introduction to Law* as an example, which forms part of the curricular structure of most degree courses. When categories are referred to in the example such as direct or indirect liability, the student will show a command of the competence in a basic phase once they are able to classify a simple case of direct or indirect liability. The corresponding justification exercise will not go far beyond what can be found in the texts studied or the in the basic bibliography for the subject, i.e. the discussions in class.

The level of development will need to undergo gradual sophistication. in the following phases of curricular progress, Thus, for instance, the problem here will allow for greater diversity in terms of approaches, require that clearer distinctions be drawn and a judgement as to whether something is relevant or irrelevant will, *a priori*, be much

less apparent. In the example of the Universidad Alberto Hurtado, in the advanced phase, it will be necessary in the subjects *Argument and Analysis of Jurisprudence*, *Legal Clinics and Strategic Litigation* to take strategic decisions, build argumentative chains, and investigate sources of Law that may be applicable together with their possible applications, among others. The context is already very close to the professional sphere of activity and, depending on the subject or activity, focuses on routine cases or what are referred to as difficult cases.

Likewise, taking the material produced by the Universidad Alberto Hurtado as a basis, the learning outcomes identified directly with the competences analysed can be listed. These outcomes are related to what the student may be able to pursue in progressive levels of command of the specific and generic competences selected. Attention should be drawn to the fact that these levels of the example that follows are linked to a contentious approach to legal objectives, in which the legal channel is chosen as a means for dealing with the dispute. The competences would be different in the case of a consensual channel for solving the dispute.

#### **4.4. Progressive learning outcomes for the student in the two competences: generic and specific**

1. Files a lawsuit in which the party's position is addressed and connections are established with the law in force.
2. Drafts a response to a lawsuit and looks into the weaknesses of the opposing party while at the same time strengthening the position of the party they are legally representing.
3. Drafts a ruling about a simple case in which the parties' positions are addressed, assesses proof related to the facts being argued, justifies the law being applied and takes a decision.
4. Draws up a report on the appropriateness of adopting a certain course of action in accordance with the legal system in force.
5. Draws up an opinion in which available proof is reasoned and established a connection with the law in force using persuasive arguments in favour of the party being represented.

#### 4.5. Methodological suggestions for competence-based learning-teaching and assessment

The details provided by institutional representatives resulted in a wealth of experiences and possibilities for the effective adoption of competences, although it would prove ultimately not to be possible to produce a reliable account of the content of these documents for the purposes of putting together this chapter. Thus, we decided to put forward suggestions made by three of these colleagues<sup>13</sup> who worked more directly on the proposal for teaching-learning and assessment methodologies. It is recommended that the lecturer should not overlook the following when planning work for the semester:

1. **Introduce the case study in class:** to facilitate compliance, the degree programme, faculty or department will offer guidance in preparing a real data bank put together by teaching staff. Cases will need to include moral recognition of copyright.
2. **Diversify tasks and learning exercises, both inside and outside class:** the practice of starting to consider traditional lectures as not being the sole teaching-learning method and gradually introducing participative tasks and exercises, such as:
  - 2.1. **Solving cases:** using at least 2 relevant cases per subject. This data bank can be obtained from the Internet.
  - 2.2. **Carrying out simulations:** performing at least 1 role play per subject about a relevant point in class, with a view to ensuring that students confront each other in dealing with complex problems.
  - 2.3. **Solving problems:** as far as possible, subject content will need to be studied by looking at the problems attached to it, in order to facilitate the application of values, theories, concepts, the building of arguments and the creation of scenarios and forecasts.

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<sup>13</sup> Salvador Ventura del Toro, who put together an excellent conceptual philosophical text about teaching and learning strategies, Graciela Barranco de Busaniche and Eva Romano.

- 2.4. **Giving presentations and seminars:** at least 1 presentation exercise will be done in small working groups about the content or problems covered in the subject, in order to carry out comprehensive appraisals.
  - 2.5. **Drafting reports:** at least one average-length report (5 or 10 pages) or several small reports (2 pages) will be drawn up in each subject, to ensure that the student puts their own ideas into words and uses a range of legal sources.
  - 2.6. **Screening films<sup>14</sup>:** At least one film will be used in each subject in order to analyse the content and problems covered during the degree course using artistic language. The aim is to recreate problems and make it easier for the student to take decisions and stances regarding a specific event.
  - 2.7. **Visits to institutions or other places:** wherever possible, it is recommended that some visit linked to the objectives set out by the subject and to the development of student competences be scheduled via coordination on the part of the faculty with specialist bodies (Supreme Court of Justice, courts, prisons).
  - 2.8. **Special subject project:** an attempt should be made in each subject to carry out some special work or project related to it that brings together the student's different areas of knowledge, by way of a conclusion to all the exercises completed and proposals made to solving real problems within the legal sphere of activity.
3. **Assessment tools recommended for the Law degree course:** the degree programme should recommend the following in order to improve the assessment of competences, rather than students' memorising capacity:
- 3.1. **Purpose of tasks and assessments:** the tasks and assessments guide and give meaning to the pedagogic

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<sup>14</sup> The proliferation of technological devices has made it easier for students and teaching staff to prepare films and videos, thus creating a relevant data base as a pedagogic source of research.



activities. Therefore, they need to focus on the fundamental aspects of the subject rather than on carefully-searched for or marginal problems - keeping in mind which competences need to be developed and to what extent (basic, intermediate, advanced or specialist).

- 3.2. **Degree course competences:** assessments need to focus on learning and knowledge via specific degree programme competences.
- 3.3. **Assessment criteria:** it is necessary for each lecturer to devise the assessment criteria for each task performed either inside or outside the classroom, expressing their assessment criteria and presenting it to students before putting them into practice.
- 3.4. **Performing a task:** all students need to perform a specific task (a piece of work, a summary either hand-written or done on the computer, case form, presentations, question guide, dossier, portfolio, photos, and oral and written reports on observation and research processes).
- 3.5. **Returning the task:** all tasks must be returned to the student with feedback, noting down and highlighting what has been done correctly, pointing out mistakes or limitations and offering guidelines for improvement, re-orienting other self-study activities until the student attains an acceptable level of learning appropriation.
- 3.6. **Assessment and correction (feedback):** assessment and correction of mistakes made in examinations and tasks is part of the teaching-learning process. It is necessary to set aside some time for sessions to do this.
- 3.7. **Awarding marks to tasks:** it is recommended that each task performed either inside or outside class should be given an accumulative mark in the final grade.
- 3.8. **Special subject project:** in the case of special projects that help to bring together all the knowledge acquired in a subject or set of subjects, it is recommended that multidisciplinary teaching group work be carried out.

- 3.9. **Handing in work:** it is recommended that the need to keep to the dates and times established for handing in work be highlighted. This helps to build and put into practice the value of responsibility and satisfaction in achieving the goal that has been set out – except for justified cases and within a reasonable deadline (the maximum deadline would be the next class), with a reduction in the original grade awarded.
- 3.10. **Final subject grade:** it is recommended that a single final semester grade be awarded: Tasks, course work and examinations as such are of a systematic and permanent nature.
- 3.11. **Punctuality and attendance:** these components will need to be assessed and rated according to what each lecturer considers, as they constitute an integral part of the formative process of the future professional.

## 4.6. Conclusion

The perspectives provided by participants from the area enable the conclusion to be drawn that to create a favourable environment for developing competences, emphasis on learning concepts and ways of acting would be relevant which, broadly speaking, are overseen by teaching staff and may coexist alongside effectively active forms of teaching. To ensure that there is a major break in teaching-learning and assessment processes away from hitherto prevailing ones in Law degree courses in Latin America, both a transformation of the perspective regarding pedagogic processes and a considerable insistence on institutional, intellectual, methodological and most likely political resources is necessary, given that education is a process that transforms social, economic and cultural relations.

By way of a conclusion to the chapter, we provide the analysis carried out by the Universidad Autónoma de Asunción (UAA), as it covers some situations which are common to most Law degree courses in Latin America.

“Many of the mistakes apparent in the previous paragraphs, such as the fact that the learning strategy is based

predominantly on traditional lectures with students in the role of recipients and lecturers with little available time are due to the social and economic features common to Paraguay. (...) higher education is not universal (...) a situation that derives from the fact that most private universities carry out their activities in the afternoons and evenings, enabling the student-worker to gain access to higher education. As would be expected, the student-worker has less time available for learning, whereby they easily accept the teaching strategy based on traditional lectures and class debate, as well as practical tasks that enable them to download and copy information quickly from the Internet without having to undergo a process involving preparation, organisation, learning, understanding, reflection, interpretation, application and self-assessment of the outcome.

On the other hand, given their business nature, private universities contract their teaching staff according to teaching hours, and in Paraguay this type of staff tends to be referred to as “teacher-taxi”. This practice reduces the quality of the means of passing on knowledge shared by a lecturer (...) firstly, given the few hours they have to develop the topics, they are compelled to give traditional lectures, thus depriving the student of interaction with teaching staff that the learning to learn process encourages – which is what one aspires to in training someone in competences and skills that will enable them to pursue their profession independently and with decision-making capacities. Secondly, the limited time does not enable teaching staff themselves to strengthen the four facets of the teaching-learning process: motivation, carrying out the didactic activity that helps to develop the content required, assessment and feedback”.<sup>15</sup>

Omissions from the original texts suitably express the effective conditions of the current scenario, and these should be understood to ensure that competence-based training does not merely constitute

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<sup>15</sup> Universidad Autónoma de Asunción – Paraguay, Faculty of Legal, Political and Social Science – Report on Competence-based Teaching, Learning and Assessment Strategies, Guillermo Manuel Delmás Aguiar, page 4.

one more major social inequality and also inequality in terms of access to cultural assets that have tended to dominate the history of higher education on the continent. It would be an unwanted and paradoxical outcome if competence-based training were fostered by institutions devoted to training Latin American elites, while the significant number of graduates who complete their Law degrees every year continued to acquire only knowledge which to a greater or lesser extent is linked to a command of content that is rapidly rendered obsolete by the dynamics of regulatory and academic production.

# 5

## Student workload

### 5.1. Introduction

One of the objectives set out in Phase II of the ALFA Tuning Project was to reflect on a topic that is going to become increasingly important for planning and carrying out pedagogic activities. The aim is to objectively define how much time students would need to complete the different learning activities in higher education, whether in the form of more conventional activities based on traditional lectures or more innovative ones in the field of legal education. This element of student workload, which should be familiar to teaching staff and educational establishments, actually tends not to be taken into consideration when planning activities.

Two wrong approaches are generally noted. There is a tendency to either underestimate or overestimate the real time available to students to carry out the many activities demanded of them in order to complete their study cycle. Traditionally, except for pedagogic activities identified as being Distance Learning, those that involve legal training only take into account teaching-student contact time. Without much risk of error, it can be stated that, despite the transformations that have taken place in all forms of access to information that affect teaching-learning methods, little has yet to be observed with regard to recognition of the fact that teaching-student contact has become simply one more form of access to knowledge provided by universities.

It must be assumed that, to plan activities and with a view to the future in which recognition of qualifications and pedagogic activities carried

out in different countries will be a more intensive process – there must effectively be recognition of the amount of time set aside by students for their study. Phase II of the Tuning project conducted research to gather together empirical data that could help to clarify the perception of teaching staff and students with regard to the amount of time required to pass a subject.

This chapter seeks to reveal the amount of time invested by the student in order to understand Law in its regulatory, social, political and cultural dimension – both from the theoretical-practical standpoint and in terms of its application, whether at an institutional level or within the different areas in which pre-professional practical training is carried out that will enable them to suitably pursue their career in administration and in the distribution of justice in Latin American societies in the near future.

Starting from the presumption that the student is at the centre of the education process, we place special emphasis on the time they will need to set aside in order to become familiarised with different areas of Law and be able to act professionally. There is special interest in the fact that those learning outcomes deemed to be significant<sup>16</sup> should be identified that students should take into account throughout their formative process.

## 5.2. Definition

Student time refers to the volume or workload that needs to be calculated (both individually and in groups, face-to-face and independent activities) in order to achieve the learning outcomes expected and develop the competences attached to the graduate profile. This time will depend on individual student capacities, accumulated experience, skills and the effective commitment on the part of their lecturers and on the learning, teaching and assessment strategies employed.

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<sup>16</sup> Significant Learning revolves around agreements signed by students and educators at each stage/module of the formative process in the form of a *pedagogic contract*, with rights and duties (in accordance with the Pedagogic Project of the Universidad Federal do Sul da Bahia – UFSB, Brazil, which should be commencing its activities in August 2014).

Student workload needs to be viewed objectively and realistically, i.e. by planning activities that are consistent with the real time required to perform them in order to allow time for leisure, culture, family commitments and sports, among other activities. The fact that a large number of students are enrolled on Law degree courses throughout Latin America should be taken into account. In addition to carrying out the activities required for curricular integration, students also pursue other educational interests that are shown to be necessary for the development of competences that will strengthen their future professional performance, such as studying a second or third language, among others.

Lastly, the fact should be taken into consideration that a significant proportion of students work in professional activities that bear little or no relation to their degree programmes throughout most of their higher education. As in most Latin American countries, classes only take place during a pre-determined period of the day, whether daytime or evening courses. Students work the remaining hours, even in professions that require full dedication. Thus, it is not uncommon for them to work 8 hours a day or more, and that their presence in class is the only part of the time that they effectively devote to the Law degree course. For example, an important fact about the Law student profile in Latin America is provided by the census on higher education in Brazil. Of the 957,686 students enrolled on Law degree courses in 2012, only 487,545 were in the age bracket of 18 to 25 years. The other 470,141 – i.e. 49.09% - were over 25 years of age. This can show that Law is both a second qualification for a professional from another sphere of activity and also a popular choice for mature students who are middle-level workers. (<http://portal.inep.gov.br/basica-levantamentos-acessar>).

### **5.3. Semi-direct method**

The methodology used in teaching Law needs to take diverse teaching strategies into account that include traditional lectures, seminars, debates, exchange, and theoretical preparation and practical work, both on an individual and group basis. These should include simulations, case-solving, reading, drafting of reports, lectures, internships in companies, work involving familiarisation with projects and research work (in class and field work), in addition to the use of information and communications technologies (ICTs).

#### **5.4. Possibilities in planning and carrying out student learning activities**

As the lecturer becomes experienced in taking on competence-based teaching, and becomes aware that the predominant role is that of the students and their learning processes, planning activities to ensure that students consciously intervene become feasible.

Among the activities scheduled are face-to-face classes, albeit not from the perspective that the lecturer is the only one in possession of knowledge. Rather, their role will need to focus on orienting, guiding and accompanying the class by applying interactive resources in which dialogue and didactic negotiation prevail<sup>17</sup>.

Within this scenario, attention should be drawn to formative research, starting from the initial steps such as observation, reflection, analysis, summarising and other learning processes which become more complex as they are applied. All the subjects and activities found in Law degree courses are suitable for the purpose of highlighting student work. This is true to the extent that, if a subject – whether basic or general, professionalizing or practical – accounts for a certain number of credits, these may imply direct activity with the lecturer and independent formative tasks that the student will need to perform.

#### **5.5. Difficulties faced in carrying out student learning activities**

One of the difficulties with this process is the fact that teaching is often concentrated in a single form, i.e. the traditional one, which focuses on the teacher and traditional classes without taking into consideration processes in which students should play a leading role. This method enables the student to fit into their comfort zone and always wait

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<sup>17</sup> Interactive pedagogic practices: Significant Learning; Learning based on Specific Problems; Practical Workshops based on Evidence; Active Learning Teams; Shared Learning Strategies (in accordance with the Pedagogic Project of the Universidad Federal do Sul da Bahia – UFSB, Brazil, which should be commencing its activities in August 2014 with the proposal to adopt innovative practices in the Brazilian scenario, even in its Law degree course).



for the lecturer to provide them with everything in an organised and systematic format, which in turn enables competences to be developed as it does not qualify the student to take on roles they will need to develop in the future.

It is important for the lecturer to be aware of the fact that new educational approaches demand a new educational culture both for them and for students. Therefore, it is necessary to adopt a new notion of teaching and learning. A highly relevant aspect when planning activities is to take into account the fact that there are major changes in pedagogic practices that take place by virtue of new technologies and immersion by students in networks and data bases that were unavailable as recently as a decade ago. For many experts, the changes we are experiencing are, in terms of a change of paradigm, equivalent to the invention of the printing press in the 15<sup>th</sup> century. These new practices lend new dimensions to time, as students and also teaching staff increasingly become multi-task individuals<sup>18</sup>.

For many lecturers, the task of educating has become increasingly complex by the fact that students are continually connected to their social networks, academic data bases and other forms of digital communication – even during more typical activities associated with the teaching-learning process. Time thus becomes a dimension that requires extreme flexibility, as one can no longer speak of successive or exclusive tasks. Simultaneous devotion to many tasks is in evidence, among which are those traditionally identified as pedagogic processes. The challenge on the part of teaching staff to organise and structure pedagogic activities in complex environments is therefore inevitable – environments in which different sources of information compete for one's attention.

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<sup>18</sup> According to Nicholas Carr (2010), the new forms of teaching-learning and research that extensively use information technologies imply an increase in creativity, but also have a bearing on the ways in which they are presented, which become more concise and direct.

## **5.6. Tuning research: perceptions of teaching staff and students regarding student time**

A survey was conducted in all subject areas of the Tuning project throughout 2011 among the teaching and student members in the third year of a range of degree programmes. They were asked about all the subjects taught during the sixth semester on degree programmes in the 15 subject areas taking part in the project. The aim was to gather data about out-of-school time set aside by students for tasks involving the preparation required to pass subjects. A comparative assessment was carried out of the perceptions of teaching staff and students regarding the time set aside for the typical activities required to pass subjects and the different forms of these activities.

## **5.7. Compiling of data**

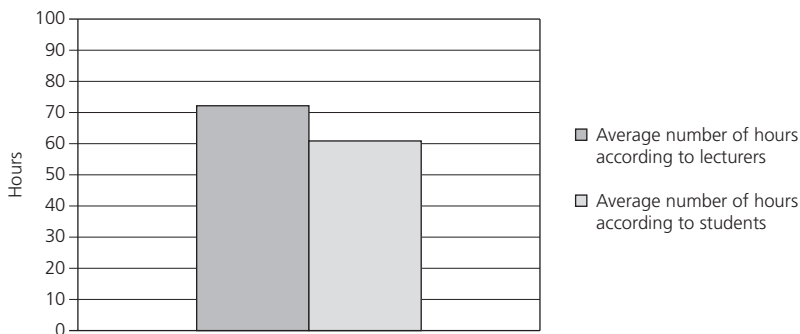
Forms were handed out with a view to obtaining data from at least 10 students in each subject, with different levels of pass. The aim was to obtain a response as to how the lecturer tackled the subject and how much time they set aside for this, via questionnaires with 10 direct questions that allowed single responses, as described below:

- Duration of the teaching period in weeks.
- How many minutes are there in a teaching hour in the subject?
- How many hours of face-to-face teaching activities were included in the subject?
- How many weeks of real face-to-face teaching activities were included in the subject, including assessments?
- How many hours of face-to-face teaching activities were included in the subject per week?
- How many total hours do you think you spent over the academic period to pass the subject, taking into account all face-to-face and non-face-to-face activities?

- From the following non-face-to-face activities, indicate which ones you carried out while studying the subject: Indicate the number of hours you think you needed to do them.
  - Reading texts and bibliography.
  - Preparing and developing work.
  - Field work.
  - Laboratory.
  - Preparing and developing written work.
  - Virtual activities.
  - Studying for examinations or assessments.
  - Others: specify.
- How many hours a week on average do you think you set aside for face-to-face and non-face-to-face activities in the subject?
- Did you plan the number of non-face-to-face hours you set aside for carrying out the activities?
- Did the lecturer contrast the estimate of non-face-to-face hours with the students?

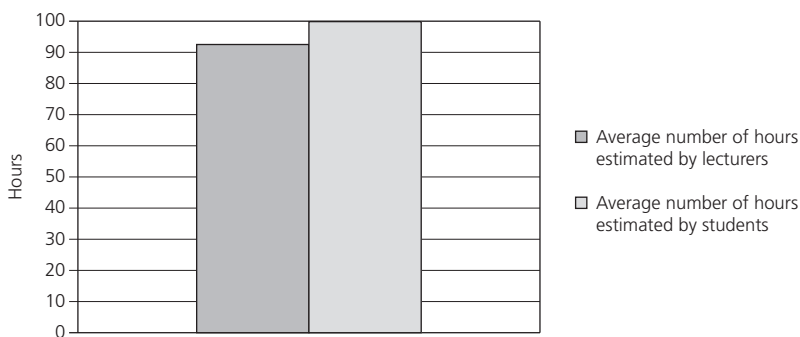
Attention should be drawn to the fact that the option “Don’t know” was included on the form, thus seeking to prevent distorted or incorrect details from being provided. The purpose of the research was to ascertain the amount of time set aside by students for subjects that they managed to pass, with different levels of performance and contrasting the results with the opinion given by teaching staff. The resulting data was compiled by representatives from each area and then sent online to the University of Deusto, where it was subject to statistical treatment. Part of the results obtained is reflected in the following graphs.

1. The first result (Graph B) shows a significant difference in perception of approximately 10 hours/class between students and teaching staff.



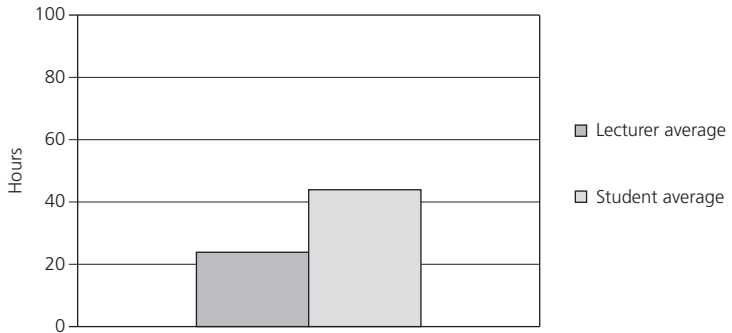
**Graph B**  
Academic hours set aside for face-to-face activities

- The second result (Graph C) shows a difference in perception between teaching staff and students of approximately 15 hours. In this case, students set aside more time than their lecturers imagined for achieving a satisfactory result in the subject.



**Graph C**  
Academic hours set aside by lecturers and students for face-to-face activities

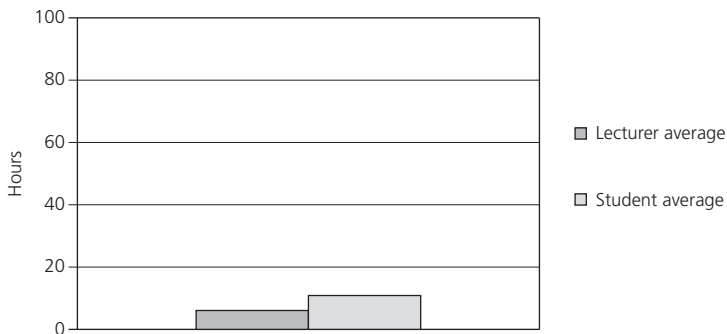
- The third result (Graph D) is linked to the typical activity carried out by the Law students, which involves reading texts (regulatory, theoretical, doctrinal) and bibliography or basic or complementary reference to the subject. The difference here is even more apparent, as students set aside double the amount of time estimated by lecturers. This datum is relevant for the planning of these activities.



**Graph D**

Reading texts or bibliography:  
average estimated by lecturers and students to carry out the activity

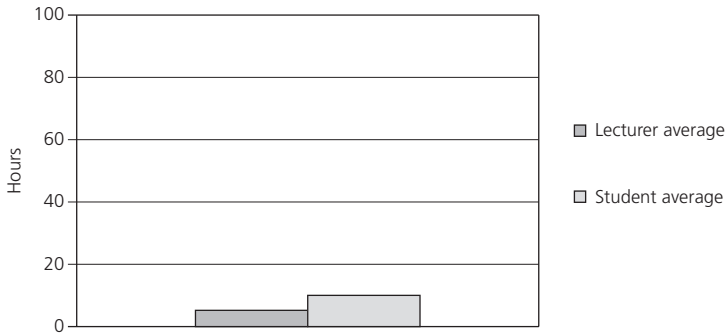
4. The fourth result (Graph E) highlights the comparatively little time set aside for typical activities overseen by lecturers and performed by students. Less than 20 hours per semester were set aside for activities embarked on without the direct participation of the lecturer.



**Graph E**

Preparing and developing work:  
average estimated by lecturers and students to carry out the activity

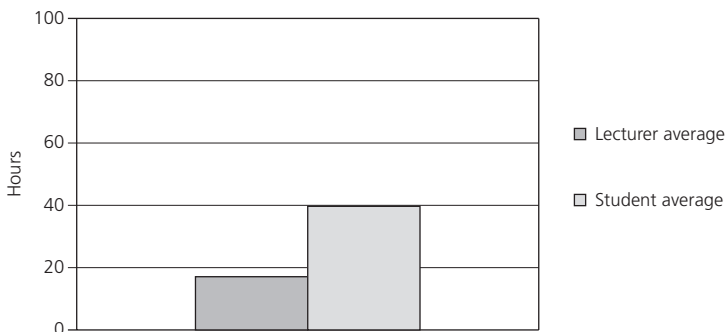
5. The amount of time set aside for preparing written texts, which is more typical in Law degree courses, was also proportionally low: less than 15 hours (Graph F).



**Graph F**

Preparing and developing written work:  
average estimated by lecturers and students to carry out the activity

6. The sixth result offered here (Graph G) is an illustrative example of the time the student still sets aside for activities that are organised and strictly controlled by teaching staff which are eminently geared towards assimilating knowledge taught in the subjects. Students set aside most of their out-of-school time for preparing examinations, which also highlights the relevance of proper planning of assessment activities in student performance. Another noteworthy point is that, according to the data compiled, teaching staff tend to underestimate the time students effectively set aside for their assessments.



**Graph G**

Studying for assessment purposes:  
average estimated by lecturers and students to carry out the activity

The result obtained from analysing the questionnaires enables the conclusion to be drawn that the time set aside for teaching is basically taken up by face-to-face activities - i.e. traditional classes given by the lecturer – to the detriment of other pedagogic options that would enrich the teaching-learning method, such as virtual activities that would complement the face-to-face hours set aside for subjects. Another benefit of the change in method would be students' exposure to real experiences, which would familiarise them more with decision-making capacities.

Taking into account the student workload, this needs to become a new culture for Latin American universities when planning the different subjects and objects overseen by teaching staff and which require the interaction of the latter to the benefit of students, in addition to the setting in motion and assessment of the teaching-learning-assessment process.

In our area, it should be possible for the Latin American Law student to be able to gradually gain awareness of their responsibility as a social individual who is integrated within educational contexts. Therefore, they will need to make their own contribution to this process once they are in a position to study independently, take an active part in group activities such as classes, seminars and workshops, feel satisfied with completing tasks and learning activities, assume their leading role with social responsibility and make independent use of didactic and bibliographic resources and the growing quality data bases available on the worldwide computer network.

Lastly, we would like to make a relevant observation regarding the ways of adopting criteria and methodologies about the impacts of student time on pedagogic processes. One of the aims of the ALFA Tuning project was to construct a Latin American Reference Credit similar to the ECTS (*European Credit Transfer System*), which has made student mobility possible within the European Higher Education Area. The so-called CLAR was constructed throughout the years that the ALFA Tuning project (Phases I and II) was set in motion by ministerial representatives from the national Tuning centres and by their general coordinators. It was conceived as a unit of value to estimate workload – measured in hours – which a student requires to achieve learning outcomes and manage to pass a subject or teaching period. Information about the CLAR and the methodology used to construct it can be viewed on the ALFA Tuning Project electronic data base.

Adoption of the CLAR in pedagogic processes in higher education may help facilitate the consolidation of systemic competences linked to mobility experiences between different systems. The fact is that we find ourselves immersed in a historic period that implies the need for university students to be able experience teaching-learning models and proposals in different educational establishments. Yet one of the major difficulties faced in achieving this objective is precisely that of taking advantage of credits between educational establishments – in other words, that pedagogic activities which are pursued at such establishments, like subjects, may be recognised by others. A system involving mutual recognition of credits, such as that upon which the CLAR proposal is based, without doubt constitutes major progress in creating a favourable environment for and encouraging student mobility between educational establishments within the same country or at an international level.



# 6

## Future scenarios for the legal professions

The purpose of imagining a future scenario for the legal profession in Phase II of the Tuning project was to define one of the project's pillars, namely that of its being linked to demands for innovation in higher education. Despite their immediate impact, education processes are necessarily linked to a future desired both by the society in which these processes are set in motion and by social agents who pursue them, such as educational establishments, students and lecturers. Education is a process in which aspects related to generational perspectives and social values are found, which can sometimes be contradictory. Whatever these perspectives may be, we need to try and understand them. With this aim in mind, research was conducted which adopted the interview technique, based on a questionnaire that was drawn up with the participation of all the coordinators and was therefore common to all areas. Seven questions were put to all interviewees as follows: 1. What changes do you think there will be in future society? (in approximately 20 years) 2. Regarding these changes, could you describe some possible scenarios? 3. Regarding these scenarios, what would be the implications for the legal area? 4. In this scenario, which professions or professional activities emerge? 5. Which competences are going to be required by these professions? 6. Can you imagine a possible, albeit highly unlikely, scenario for the future? 7. In this unlikely scenario, which professions and competences would be important for the legal area? The survey was carried out during the second semester of 2012 and at least two interviews were conducted by subject area representatives in their

respective countries, and an attempt was made to ensure that these interviews could, by virtue of their professional insertion, provide the qualitative elements of a future scenario. The research in Law is confined to an understanding of the views of prominent jurists, in the broadest sense of the word, so as to include professionals who are devoted to tasks involving the application and consolidation of the legal system in force in a specific society – not only figures of academic or professional authority in the area.. It is worth pointing out that several of those interviewed commented not only on the relevance of embarking on such research, as the future is always determined by changes that can be made in the present, but also the fact that, up until the time of the interview, they had not effectively imagined what professional relations, social dynamics and the problems that had become more acute in the field of knowledge in Law would be like over the next two decades.

Below we provide some of these predictions regarding possible scenarios in which legal professionals may find themselves over the coming years. As with all predictive activity, what will be said is open to a high risk of error, given that of course not all the dynamics inherent in the societies covered by the research can be envisaged. Despite this, within the context of an analysis of competences that will need to be encouraged in formative processes, forecasting future scenarios becomes something we cannot avoid. According to the project's own methodology, the opinions of relevant actors from our field of knowledge that have been analysed by this study group with a view to gaining some insight of general interest constitute an outstanding source for any reflection that may get underway.

Changes would seem to take place slowly in jurists' culture, even when there certain turning points in view of which legal systems undergo considerable changes within a short time span (new Constitutions, new codes, decisions made by high courts and rulings in cases that have a major impact. Legal practitioners are used to *having to adapt swiftly to a new set of knowledge*), and legal culture tends to react with caution by mitigating the split caused in the system of laws with regard to those changes that are deemed to be very radical. In this respect, the criticism levelled at jurists in the 1960s is not absurd, their being reproached for constituting an obstacle to social change. This way of being entails certain difficulties, as the era in which we live has been marked by major transformations which in few years have rendered a considerable amount of knowledge obsolete that had been

accumulated over long periods of history. Nonetheless, jurists' apparent conservatism does not necessarily constitute a negative aspect. Mistrust of changes makes it possible to preserve accumulated knowledge and applied methodologies whilst these may continue to be useful in new scenarios.

Despite the fact that the problems that will be dealt with below take some major transformations that need to take place in regulatory texts into consideration, they are fundamentally related to the need to rethink the tasks that will have to be performed by legal professionals. This is clearly not the first time this (i.e. new scenarios) will take place in history, although it will compel one to anticipate new types of relations with other professionals, an understanding of the internationalisation processes regarding services that will need to be rendered, greater dissemination of judicial decisions in pragmatic cases and other aspects.

## **6.1. Brief description of interviewees' profile**

This chapter contains a data base comprising a series of interviews conducted with 23 professionals involved in legal activity in seven countries. The interviews were conducted by representatives from the subject area of Law in the Tuning project in Argentina, Brazil, Chile, El Salvador, Mexico, Nicaragua and Paraguay. Among the different types of professional activity carried out by these respondents, the presence of the following was common: academics from graduate and post-graduate courses in Law (some at the most prominent level of the degree programme), judges (both from supreme courts and other courts), those holding positions in public bodies, university posts and posts in the general management of legal bodies.

Several interviewees have completed post-graduate (PhD) education and belong to a wide age group (even though not much information is provided about this, it is noted that the age of those interviewed ranges from approximately 30 to 75 years). Despite the fact that most of them are male, a considerable number of women were also interviewed, and although a certain feminization of the legal professionals can be noted in Latin America, the highest posts on degree programmes are currently occupied mainly by men.

## 6.2. Features of the future scenarios proposed

The opinions gathered with regard about future scenarios reveal many different perspectives. Some predictions of future scenarios are already taking place and it is mainly their increase in intensity which is being envisaged. Without prejudice to the previous comment, there is some confluence that might take place over the next 20 years. We provide a systematisation of all this in three major categories in order to facilitate understanding of those points of view that we consider particularly interesting, as follows:

### 6.2.1. *Scientific and technological methodology*

Broadly speaking, high levels of consensus are observed in terms of the fact that advances made in science and technology will mark the coming years. By way of an example, some of the most relevant manifestations to which we will no doubt bear witness can be mentioned:

- a) Exponential development of information technologies (increasingly simple and mass access, as well as possibilities for exchange in unsuspected speeds and dimensions).
- b) Scarcity of natural resources and pressure on the sustainability of development.
- c) Environmental problems.
- d) Increasing longevity of large sectors of the population.
- e) Huge advances in neuroscience and biotechnology.

### 6.2.2. *Conditions for human life (aspirations)*

Although the outlook may not necessarily be pessimistic for the interviewees, several of them express their concern about matters related to food, access to housing, growth of cities and unemployment. Some predict an increase in social inequality with greater disparity between rich and poor. At present, the capacity for production of goods and services exceeds population growth and it

is possible this may continue owing to technological advances. The difficulties pointed out are inequality in terms of distribution and tension between environmental protection and productive expansion (environmental damage, exhausting of natural resources, genetically modified foods, etc.). In both cases, it is hoped that Law will provide effective limits on the development of the economy and market. It is also hoped that it will regulate biotechnological and communication developments.

There is no express mention of the phenomenon associated with migratory movement as a relevant variable in future scenarios, despite the fact that it would be by no means unlikely that this will increase over the coming decades and imply a major impact on legal relations<sup>19</sup>, both internally and internationally.

### 6.2.3. *Human coexistence*

There will be greater demand for both formal and informal types of participation in public affairs. Political systems will appear weak. Some instances of tension are noted which are related to the worsening of some ethnic and cultural conflicts, greater detachment from rules and regulations and an increase in some types of highly complex, organised criminality. A growing demand for security is predicted alongside steady demands on the State for access to social rights (education, health and social security).

Regulation aimed at preventing devastation of the environment will increase and also to prevent flaws in the market that may affect considerable sectors of the population. There may be greater internalisation (and institutionalisation) of regulatory bodies.

The pressures of economic exchange and the movement of individuals will lead to the greater disappearance of borders between countries. There will be a steady increase in the relevance of international treaties.

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<sup>19</sup> "Without doubt, this phenomenon puts new and problematic cultural, political and legal dimensions at risk. Practical values, customs and representation in the world which are transmitted by migrants are not easily compatible with those of host societies" (Cárcova, 2008).

### 6.3. Impact of changes within the professional context

The elements that would appear to be common to professions and will have a major impact on the tasks performed by legal professionals will be as follows:

1. *Growing communication between subjects*: in this respect, the ability to establish fluid forms of communication between specialists in different subjects will take on a great deal of importance, without this affecting their level of sophistication. Thus, for instance, the ability to establish communication channels between different specialists in Law will not only be essential in order to deal comprehensively with problems, but a close link with specialists in areas subject to regulation will also be demanded (economists, scientists and IT professionals, etc.). This will also result in the boundaries of discipline-specific fields becoming vaguer.
2. *Depth in terms of knowledge and professional skills*: since access to information will continue increasing, the knowledge possessed by the legal practitioner will depend increasingly less on the literal nature of regulatory texts. Their knowledge will need to become more sophisticated via a more complex analysis of the problems that will be faced, as well as their ability to understand social reality and argue about specific cases. This will also have an impact on judges' knowledge and on the complexity of the types of decision they will need to take, in addition to the basic principles they will need to be able to offer to ensure social legitimacy.
3. *Control of the proper exercising of their functions*: there will be a growing appraisal of the ethical control of professions as a mechanism for offsetting an increase in and preventing abuse against the user of these services.
4. *Many of the problems will not consider the legal process to be a preferable system for solving disputes*: this option will lead to the intensification of use of alternative channels<sup>20</sup> for dealing with disputes.

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<sup>20</sup> From a perspective that can already be ascertained, so-called alternative channels for dealing with controversy or disputes such as mediation, negotiation and conciliation would end up becoming the classic ways of solving cases, relegating the legal channel to the alternative or secondary option.

#### 6.4. Competences that the new professional context will require<sup>21</sup>

The competences that will need to take on a leading role in the scenarios proposed will be as follows:

- a) *Ability to analyse reality*: power relations and other aspects that will enable one to deduce how regulations work in cases being considered.
- b) *Ability to select and process correct information* within an excess context of data of legal relevance. The almost unlimited availability of regulations, jurisprudence and doctrine compels the legal practitioner to carry out research work in order to summarise information that is relevant to the case. Error in performing this task implies improper professional practice.
- c) *Ability to effectively pass on accumulated knowledge and professional values*: this will imply significant changes in the form of communication between jurists and other professionals. Given that available information will enable any citizen to take firm control of jurist discourse, professional technical terms will cease to be a tool used to protect the *forbidden or protected area* of the profession. Thus, knowledge and professional values will need to be able to resist attack from other disciplines that will seek greater participation in the field recognised as being the jurists' domain. The value attached to time will favour a more direct way of conveying the message which, in turn, will effectively focus on problems and possible solutions.
- d) *Reasoning*: the impossibility of legitimising the tasks common to the jurist in the field of knowledge – which till recently were deemed to be exclusive to members of the discipline-specific community – will result in the argumentative capacity in favour of a particular aim requiring an increasing level of sophistication. This skill will become increasingly important and will strengthen the stages

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<sup>21</sup> In analysing what each of the competences referred to represents, the Law group did not confine itself strictly to what the interviewees proposed – so as to enrich the conclusions drawn from this part of its report.

involved in preparing cases which they will be entrusted to deal with to defend them in trials and negotiate agreements about which legally-reasoned decisions may have to be taken, etc.

- e) *Teamwork*: growing interdisciplinarity will force the fostering of dialogue in Law with other subjects. This will need to ensure that jurists not only express an interest in specialist studies at a post-graduate level (as is progressively occurring nowadays), but also that they should gain a command of a second or third subject. Such is the case that, to interact with doctors, engineers or other professionals, fluency will be required in the general language they may use to communicate with non-specialists as well as ensuring they have knowledge which will enable them to suitably deal with some proposals based on the respective area of expertise. Another aspect to be taken into consideration is that the growing demand for access to justice in Latin American countries, which implies necessary changes in how working methods are organised by the different practitioners, assumes a growing need for teamwork. As a general rule, the ways and methods in which legal education operates only enhance personal performance and individual work, which entails difficulties with joining working parties and adhering to collaborative methodologies in order to attain common goals. The development of interpersonal competences, such as the capacity for active listening, is a major component in the education of future professionals.
- f) *Command of foreign languages*: except in some very local practices that will be maintained in the future, the legal professional will need to be in possession of the tools required to communicate fluently in foreign languages. It is very likely that the change this represents will be facilitated by new technological tools that will reduce the distance between languages.
- g) *Self-learning that will facilitate the updating and acquiring of technical knowledge in areas regulated by Law (medicine, IT, engineering, etc.)*. In agreement with the previous point, jurists will need to study different topics in increasing depth, which will make the broadening of their self-learning capacity essential in areas that are not really discipline-specific. Accordingly, the tools required to understand what is being proposed in subjects that assume other basic knowledge will have to be made available during their training process.



- h) *Ethical commitment*: as scrutiny of citizenship increases with regard to what legal professionals do, the latter will become increasingly concerned about the negative consequences that the bad practices pursued by some colleagues may entail. Thus, ethical guidelines will be more tenuous without being confined to conduct deemed to be clearly outside professional codes of ethics.
- i) *Command of technology*: new technological developments will start to be considered a matter of great relevance in legal regulations. Likewise, new forms of distance communication will compel legal practitioners to gain quite a sophisticated command of available technology.
- j) *Alternative ways of solving disputes*: the speed that will be demanded in dealing with many of the problems arising and less consideration of the value represented by adherence to certain regulatory texts will increasingly foster non-formalised ways of managing disputes. Concern about greater symmetry between the parties intervening in processes subject to the judiciary will also contribute towards this. Therefore, as there will be no major inequality between the parties<sup>22</sup> (and better knowledge of rights), direct negotiation, mediation and other alternative ways of solving

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<sup>22</sup> The weakest party will be aware that, if they resort to the judiciary, they may be treated equally. Consequently, the more powerful party will be aware that it will not be easy to impose their own conditions. It is necessary to bear in mind that inequality is not only a consequence of knowing, but also that it emerges from the socio-economic condition. If inequalities are maintained or increase, there will always be a vulnerable subject who is unable to negotiate their rights because their need does not coincide with procedural time, whilst there will be one party in a more privileged position who takes advantage of this as a strategic or tactical advantage. At the present time, part of the growing relevance of adopting an alternative way of solving disputes is based on the judicial incapacity to provide a swift response, which enables one of the parties to take advantage to the detriment of the other's rights. It is easy to identify this: when the right of one of the parties is clear to see, the aim of the judicial process is not therefore one of *jurisdiction*, but rather, to take advantage of the situation that has actually been proposed. In such cases, the one who negotiates uses the difficulties imposed by the judicial system on the other party as a tool for applying pressure, in order to obtain a convenient or effective judicial decision. Mandatory mediation systems are based on a serious violation of rights when the State is unable or does not want to ensure jurisdictional protection, whether owing to difficulty in terms of access, the duration of lawsuits or devaluation of due credit, etc.

disputes will be used as faster channels that do not affect the rights of those involved.

Research with professionals who hold prominent posts in legal professions revealed a relevance of categories of competences encompassed by the area of Law attached to the ALFA Tuning project. Predictions about the future are based on ideas related to the development of generic and specific competences in some way that have already been referred to since Phase I of the project. What would seem to emerge as the most visible outcome is the demand for simultaneously accumulating cognitive, interpersonal and methodological competences. An understanding of the social context and a broad view of local and global inferences in the performance of many functions by jurists will also be a determining factor regarding their professional insertion.

# 7

## General conclusion

Throughout the years in which the area of Law has worked on the proposals emanating from the general coordination of the Tuning project, a considerable effort has been made to develop new possibilities and methodologies for legal education. The group that made up the project over the last three years, from 2011 to 2013, which comprised the lecturers Ademar Pereira, Carlos Barbé Delacroix, Eduardo Víctor Lapenta, Eva Romano Urbina, Graciela Barranco de Busaniche, Guillermo Manuel Delmás Aguiar, José Salvador Ventura del Toro, Juan Morales Ordóñez, Julio Alfredo Rivas Hernández, Loussia P. Musse Felix and Rodrigo Coloma Correa, was launched with a view to gathering together perspectives and concepts and to develop forms of dialogue and collaboration which were clearly daring in nature and, in many cases, difficult for each of them.

As teaching staff at educational establishments that demand major time and effort from us to ensure that we carry out the increasingly complex activities required of an academic degree programmes, developing a parallel project has led us to try out latent competences and to create many others. At the same time, as is often said, time goes by and the tight schedules that demand that deadlines are met and tasks performed, together with research with students, colleagues, professionals and reports to draft reminded us that, if from a subjective standpoint this left little or no time for other events – as often occurs – the fact of belonging to what is affectionately referred to as the Tuning family was always a breath of fresh air and stimulus for keeping going.

At the end of the day, we always knew that each completed report – and there were many of them – constituted a further piece in the multi-

faceted mosaic that is Tuning Latin America, which was built via the coming together of so many minds and hands. And each participant understood perfectly that completing the part of the mosaic they were responsible for, which would enable other scenarios to be envisaged for higher education on the continent, would not be a fruitless task.

That summer morning on 22<sup>nd</sup> February 2006 seems far away when, meeting at the University of Costa Rica in San José, we first heard Julia González explain one of the generic competences in terms of its concept, levels and types of development. The first competence with which our Law lecturers' minds came into contact via Tuning was the ability to work as a team. In her shrewdness and experience which had been gained within so many different educational and cultural contexts, Julia knew that much would depend on it – on our own willingness to discover other ways of being together, thinking, working and reflecting, on being patient and modest. And the most modest person existing, as Julia González has been defined, warned us that the project would demand much from us. Over the following years, we were always able to find points where support could be provided to enable us to understand each other about what we still failed to comprehend, notwithstanding our many differences. We have also learnt from it. To a certain extent, our collective ignorance also provided our chance for cohesion.

In working on topics over which we did not at first glance have a command, we all had to open up to different types of academic work. We did not meet to hear some idea or another, or theories and concepts over which we already had a command and only had to debate. In this respect, Tuning proved to be an exceptional academic experience. Our capacities and intellectual training proved without doubt to be valuable although insufficient in the way in which Tuning works together. Thus, other scenarios needed to be created and envisaged, and this meant showing daring and perhaps being mistaken, doing a great deal to discover what is even more difficult than we had imagined, but nonetheless more relevant than what we knew.

Our Law group faced an additional task. The fact that the coordinator did not speak the language of the other 9 group members compelled us to practice the competences even more via active listening. Over the years, *Portuñol* (a mixture of Portuguese and Spanish) turned out to be both our ally and our enemy, although it enabled us to engage in pleasant communication. And many words are now more familiar to both language groups. “Estimados” (*Dear...*), “abrazos” (*best wishes*),

“la fecha” (*the date*) became commonplace in hundreds of emails exchanged from Mexico to Argentina.

We worked a lot and quite a lot more could have been done, although that is the essence of Tuning. It will never have finished. Other interested parties will always be able to offer their valuable time and space to a project that came into being from the creative competence of a few, consolidated by the dedication shown by many and may be prolonged by the contribution of all those who are interested in sharing their premises and methodology. This does not mean that there can be no differences in terms of its many proposals and outcomes, as Tuning does not represent an institutional dogma. Some aspects can be accepted and others rejected. One may even disagree about the conclusions and coincide with the methodology. In the case of the outcomes deriving from the area of Law, the meta-profile designed by the group can, for instance, be rejected, albeit whilst accepting the idea that a meta-profile is useful for our continent, countries and institutions.

There can be disagreement about the competences that have been established, albeit whilst accepting the fact that the student is the main legatee of pedagogic processes and, thus, establishing other methodologies that qualify them as a professional, citizen and someone who will live in a society in which uncertainties are the only guarantee.

Lastly, some words of gratitude should go to those individuals who have contributed to the group in their capacity as students on the degree programme from the Law Faculty at the University of Brasilia. As their lecturer was put in charge of coordination, it was natural for much of the work to be developed there. Taynara Tiemi Ono provided an incalculable service in compiling and organising data. Without the excellent translation work done by Florisvaldo Machado, who tirelessly translated pages of reports from Portuguese into Spanish, communication among the group would have been more difficult and the outcomes would have materialised far more slowly. The patience and dedication of Deyse Araujo Medeiros proved decisive in the review and layout of the text.

Likewise, we should also like to mention the drawings by Joyce Teru Noia Sato (Figure B). She dared to demonstrate her creative competences in a seminar about research in Law in the subject *Legal Research*, during the first semester of the Law degree course. Thus, we consider it appropriate for this work to draw to a close with an

illustration of what the competences involved in training may be on a Law degree course in Latin America – an area where the idea prevails that we may be able to communicate creatively, in a stimulating way and with academic quality in order to strengthen our own diversity, talents and capacities.

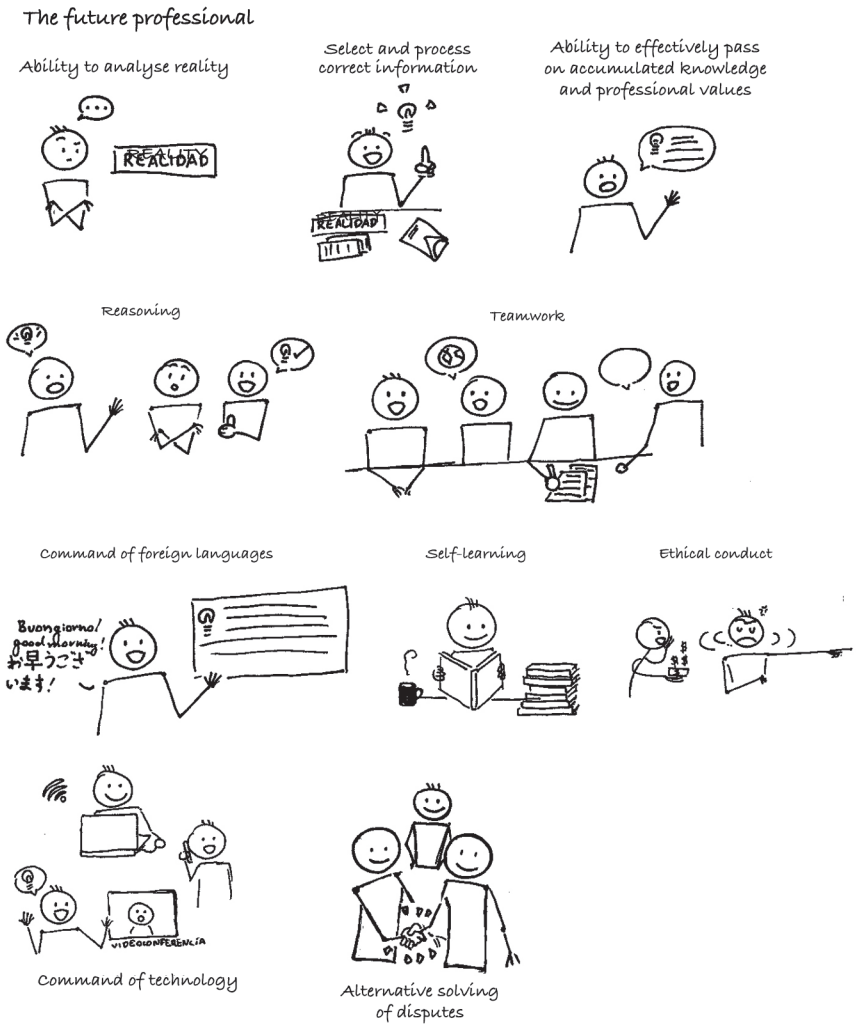


Figure B

Joyce Teru N6ia Sato, *Future perspectives for the legal professional.*

# 8

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# 9

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