



## WHAT CAN MEXICAN LAW SCHOOLS LEARN FROM THE AMERICAN LEGAL REALISTS?

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**ABSTRACT.** *This article offers (a) a basic exposition of what some members of a certain generation of legal scholars said with regards to legal education; and (b) an effort to link those ideas with a specific issue of legal education in general, and Mexican legal education in particular. With regards to these points, the idea is to go beyond the traditional approach to theory and practice, i.e., that theory is independent or even irrelevant in some cases with regards to matters of practical knowledge. Contrary to this approach, it is assumed that there is a strong relationship between theory and practice, and that they both complement each other. The purpose is to show: (a) that the ideas of the legal realists regarding training for practice during legal education is useful for general legal education; (b) that the implementation of some of these ideas in Mexican legal education would invariably help to graduate more conscious and prepared legal professionals; and (c) that the implementation of these ideas does not require much effort, only the willingness of universities and faculty to go beyond traditional, localist approaches to legal education, towards a more realistic view.*

**KEY WORDS:** *Legal education, social sciences, legal realism, professionalism.*

**RESUMEN.** *Esto no es más que: a) una exposición básica de lo que algunos miembros de cierta generación de juristas dijeron con respecto a la educación legal, y b) un esfuerzo por vincular las ideas con un tema específico como la educación jurídica en general, y la educación legal mexicana, en particular. Con respecto a estos puntos, la idea es ir más allá del enfoque tradicional de la teoría y la práctica, es decir, que la teoría es independiente o incluso irrelevante en algunos casos con respecto a asuntos de conocimiento práctico. Contrariamente a este enfoque, se supone que hay una fuerte relación entre la teoría y la práctica, y que ambos se complementan entre sí. El propósito es demostrar: a) que las ideas de los realistas legales en materia de formación para la práctica durante la formación jurídica es útil para la enseñanza del derecho en general; b) que la aplicación de algunas de estas ideas en la educación jurídica mexicana invariablemente pueden ayudar a graduar profesionales del derecho más conscientes y*

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*preparados, y c) que la aplicación de estas ideas no requiere mucho esfuerzo, sólo la voluntad de las universidades y de la facultad de ir más allá de los enfoques tradicionales, localistas a la educación legal, hacia una visión más realista.*

PALABRAS CLAVE: *Enseñanza del derecho, ciencias sociales, realismo jurídico, profesionalismo.*

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I. MEXICO: LEGAL CULTURE, AND LEGAL  
EDUCATION REFORM

A 2006 survey, carried out by the Center for Economic Research and Teaching (CIDE) in three states of Mexico, shows that 80% of those accused never actually faced or spoke before a judge. In addition, 82% of the accused were “prosecuted for offenses against property and for amounts under 5,000 pesos (about USD 4009).”<sup>1</sup> Mexican legal culture is characterized by being excessively formalistic. Criminal proceedings (and the trials themselves) can take years to get finally solved. And, while cases get solved, most accused remain in pre-trial detention, as in Mexico one is guilty until proven otherwise. “The accused is considered an object under investigation rather than a subject with rights.”<sup>2</sup>

Public defense is a right. Unfortunately, public attorney’s salaries are very low, and they are not part of civil service career. An accused that cannot afford a private, independent lawyer would receive, more likely than not, insufficient legal advice by public attorneys. As most accused do not defend themselves properly, public prosecutors generally do not professionalize in

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<sup>1</sup> MARCELO BERGMAN, ELENA AZAOLA & ANA L. MAGALONI, DELINCUENCIA, MARGINALIDAD Y DESEMPEÑO INSTITUCIONAL. RESULTADOS DE LA SEGUNDA ENCUESTA A POBLACIÓN EN RECLUSIÓN EN EL DISTRITO FEDERAL Y EN EL ESTADO DE MÉXICO (CIDE, 2006).

<sup>2</sup> CRIMINAL JUSTICE CONSTITUTIONAL REFORM, CHAMBER OF SENATORS AND CHAMBER OF DEPUTIES, MEXICAN CONGRESS, 2008.

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