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Reflections on post-modern and post-pandemic legal education

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In recent years, higher education in Brazil has experienced exponential growth, especially due to social inclusion programs such as FIES and PRONATEC, among others. This allowed for a substantial increase in students in higher education, with long-term government funding. From 2007 to 2015, private universities experienced moments of increase in the number of students, caused by these programs, a period when overcrowded classes with more than 110 students were common. This generated a boom of students, universities private, and hired teachers.

Parallel to that political-legal event that took place in Brazil, there is another concause to which a departure from an educational culture that has flourished worldwide since World War II: andragogy and didactics scholars begins to develop a somewhat different approach to higher education, in particular focusing on active learning methodologies.

Indeed, new didactic-andragogical proposals are not “problems” per se, but the educator must be attending to them, with a critical eye. It is a fact that education as a whole has been and is constantly being rethought, but should the higher education model for the Law School adhere to all andragogical proposals? And why does suggest criticism this kind of proposal, considering many of them, in the face of a new educational model, have shown empirical evidence of improvements in learning? Would it be Law School differentiated comparing to others, *gauche*? Puns aside, why does Law

School would not adapt to the extensively studied educational new models?

The answer to all those questions seems less linked to an idea that the Science of Law is somewhat special or “differentiated”, elitist or “blasé”, but justified in the evaluation model adopted by the Brazilian State / economic market for the new law professional’s applicants. Unlike the vast majority of higher education courses, a bachelor's degree in Law does not grant the possibility of automatic professional practice, requiring to the applicant to be approved in exams in a public tender - usually multiple-choice and dissertations - in order to be

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able to act professionally as a lawyer, judge, prosecutor, sheriff, public defender, among other careers. Without adherence and overcoming this evaluation model, the bachelor will be (singularly) a bachelor, unable to perform the professional activities described above. Even the evaluative model in Law School must observe this reality.

With this in mind, briefs critical reflections are made on the most common didactic-andragogical proposals commonly implemented in Law School.

1. Flipped Classroom: This teaching model is quite valid. The student tends to assimilate better if he performs as a teacher, which is explained by Bloom's taxonomy. However, the following problems are pointed out: the student is physically and mentally tired due to his/her daily activities; it is not uncommon the lack of motivation (of the student) for the research and presenting it to the class; it is also noticed that the students’ audience does not seem to be interested in the presentations of their colleagues, preferring a classroom with traditional exposure made by the professor. In



addition to the active commitment of all students, the flipped classroom demands also a much longer period for developing the activities.

2. Prevalence of practice over theory: Law Schools have increased the number of disciplines focused on legal practice. It is very common, in addition to the traditional elaboration of lawsuits and petitions, role-plays, and simulated judgments. The legal philosopher Bobbio teaches that concerning the protection of Rights, the priority should be in the actions than in discussing them. However, theory is important as well as praxis: as so, the problem seems to be on the lack of balance between theory and practice. The superficial and mass knowledge culture turns professionals into hard workers, not artisans. Both are important in each area, but the hard worker replicate legal content and the artisan are able to understand and to create legal content and this is only possible with theory. The criticism is not for the practical teaching, but to the lack of dosage between theory and practice. Practice without a theoretical foundation is a mere repetition of information, not a production of knowledge.

3. Modularization of the curricula: Science of Law presupposes staggering learning, which makes it difficult to modularize knowledge between the most and least advanced levels. The Fordism educational model has its advantages, through certain standards of educational practices: it gets easier and more flexible to compose the curriculum for the period to each student. The problem arises when this advantage generates a real trampling from the superposition and the anticipation of legal content. It does not seem logical to establish advanced content i.e. of civil law or criminal law before a propaedeutic class. Modulation has many advantages, but it must to be understood as a hard level puzzle, in order to produce the proper positive effects on learning.

4. Use of technologies for classes: This aspect is not something new for the academy, but its dissemination became a *sine qua non* tool during the pandemic. The problem is not the use of technologies *per se*, either in distance or in traditional learning models (for example, videoconferences, in the first case, and the use of slides in classes, in both cases); the problem is how these technologies should find the needs of each student and

the class as a whole. Concerning videoconferences, a point that must be overcome is the difficulty of a real bilateral connection between humans; overcoming it becomes more difficult in the distance since the student's body language is a form of non-verbal communication perceived more easily by the professor in the traditional model, which creates a pavement for this connection. It is also worth mentioning another adverse effect on videoconferences use, the so-called "zoom fatigue", a condition that has been noticed in recent studies, which is highly harmful to teaching. Another precaution to be taken is the excessive use of slides, whether in traditional or at distance education: in addition to the excess, presentations outside the norms of etiquette recommended for their use can make the class uninteresting and discouraging, precisely because it isolates the educator if he is teaching in a traditional expository model. Traditional or distance learning should be lively and adaptable, as much as possible, *tête-à-tête*, built on dialogues, and the technologies, whenever are available, should be an additional element to facilitate learning, not a crutch under which the professor lands and plaster all his classroom dynamics.

All of these critical reflections over the some mentioned proposals are not completely disruptive. It is not a *delenda Cartago* policy, but rather a one to establish the use of these (and other) proposals applied in a balanced and conscious manner to the realities of each School. These criticisms intent to provocation reflection, nothing more than this. The call is to the reconciling the new with what already exists and is effective.



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This article is a result of the author's ascertainment and analysis, without compulsorily reflecting CEST's opinion.