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Review of legal profession in Latin America: The challenges and changes in the 21st century²

The profession of lawyers and judges in Argentina, and all over Latin-America, have been facing changes in relation with the new structure of the world today. In this work it will be examined some of the changes of the new century and how this has affected the legal profession in Latin-American countries.

María Inés Bergoglio is one of the authors who has one of the most extensive works on Legal Profession in Latin-America. That is why three articles of this author will be reviewed in this paper.

The first work that will be examine of María Ines Bergoglio is about recent tendencies in the juridical profession in Latin-America and about the expansion and segmentation of this one. In this article it is revised the modifications and radical changes that the legal profession has to face in the present. There are different contemporary processes that cause changes in the social organization of the juridical work. Some examples of this are a tendency of enterprise organizations that are directly related with the salary of the lawyers. Also, there are new ways of political activism and influence of cultural Anglo-Saxon models. Furthermore, the advances in the integration process has provoked the expansion of firms of Latin-American lawyers. There are new changes to the profession due to the advance of the digital technologies and, as other contemporary fields, the law has to adapt to these reforms.³

The notion of the author is that the legal profession has changed a lot over the years because it has to adapt to the changes in economic, political and social structures of the world. Bergoglio continues by establishing that the legal profession as we know it today is the result of the enforcement of the lawyers for defining the limits of its activity in respect with other social actors. Moreover, the author says that in the last decades the great number of lawyers has incentive the competence between them and has stimulated several strategies to position professionally, such as the specialization in one field or the tendency of associate between several professionals. Nowadays, lawyers exercise the profession in larger groups where the division of labor is accentuated. This division implies a tendency to a business organization of the lawyer's offices. This is caused also for the technological changes.⁴

The exercise of legal profession in Latin-America has many similarities but also a lot of differences. For example, in all the countries of Latin-America to exercise as lawyer the only condition to practice is to obtain the bachelor degree except in Brazil. An interesting data is that although is not Latin-America, in Spain is necessary to do a Master after the college degree to be able to exercise the profession.

Bergoglio also highlights the relation of the lawyers with political causes that have changes in the last decades. This commitment has been seen during the dictatorships of the Latin-American countries in the decades of the seventies and eighties. Many of the lawyers who fought in favor of human rights during these the “Facto” governments were killed or

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² This article has been written with the purpose of a future study about this subject.

³ Bergoglio, María Inés. “*Tendencias recientes en la profesión jurídica latinoamericana: Expansión y Segmentación.*” Text of a Conference of the National Academy of Law of Córdoba, 29 May 2018.

⁴ Ibid

disappeared. After the reinstatement of the democracy, the relation between rights and social change it was established in new terms in the juridical Latin-American debate. In many countries of the region, the reflections and propositions in favor of an alternative use of the right appeared in different ways.⁵

An example is the situation in Argentina with Milagros Sala. She is the leader of the movement “Tupac Amaru” in Jujuy, a state in the north of Argentina. She was imprisoned in jail. She was detained in 2016 while she was protesting against the government of Jujuy. The cause of detention was “instigation to commit crimes” and “melee in real contest”. Then, other causes were established against her. Since that date the leader of the movement “Tupac Amaru”, an indigenous peoples’ movement, has been imprisoned. The political part of this trial is that many lawyers and jurist are against her detention because they say that it is a political cause. Sala is supportive of the government that it is in power with the president Alberto Fernandez. Meanwhile, the governor of Jujuy Gerardo Morales is not in that political side and it is against of the political party of the government in power. Another problem with this case is that Sala was imprisoned a long time without a trial and that is violating her human rights. It is an infringement of a lot of Human Rights Treaties but mostly the article 8 of the American Convention on Human Rights that states the right to a fair trial and judicial guarantees.⁶ This is an example of the politic causes that lawyers can take a position to defend or stand against and how the legal profession has been politicized. Beyond the politicized situation it is important that human rights are always fulfilled and all the persons are equal before the courts. This is a case that shows how the politics can modify nowadays the legal profession. Lawyers may guide their work through ideals and not the law.

Currently, another change on the legal profession of the Latin-American countries is the influence of the model of the Anglo-Saxon juridical culture. This can be seen in the tendency of the business organization of the juridical work.

⁵ Ibid.

⁶ Inter-American Convention on Human Rights. Article 8: 1- Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

- a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;
- b. prior notification in detail to the accused of the charges against him;
- c. adequate time and means for the preparation of his defense;
- d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
- e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
- f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
- g. the right not to be compelled to be a witness against himself or to plead guilty; and
- h. the right to appeal the judgment to a higher court.

3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.

4. An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause.

5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

The second work that Bergoglio wrote and that it is important for this paper is about the inequality and diversity in the legal profession and the consequences on the role of the law in Latin-America. In this work the author establishes that the panorama of the juridical profession in Latin-America had been through relevant changes. There were several process at a regional scale like judicial reforms, the development of big juridical firms, the expansion of superior education and technological advances. Until these changes, the legal profession of the countries of Latin-America was coherent with the romans tradition.⁷

The author establishes that the increase in the number of lawyers in the countries of the region has caused the increase of the competition on the legal profession. The great firms of lawyers installed a different way of professional exercise. Their client's changes from regular persons to enterprises that requires very specialized services. Moreover, the specialization of lawyers in a field of the law is very common nowadays. The classic figure of the lawyer that works alone and in an independent manner ceases to be the dominant mode of professional practice.⁸

Bergoglio states that the diversity of the contemporary juridical labor insertions it is translated in an increasing stratification of the legal profession whose segments are significantly different in types of tasks, grades of specialization and levels of incomings⁹.

She highlights the modification of the occupational opportunities in the legal profession. These changes appeared in the private and public sector. It is safe to say that there is a variety of the occupational insertion of the Latin-American lawyers. The diversification was produced by the expansion of the judicial power, the increase of the size of the juridical firms and this caused a tendency to salarization. Currently, this situation causes that the exercise of the traditional independent practice of the profession is less frequent. Moreover, this is caused by the process of internationalization of the economy that were intensified in the decade of the nineties with neoliberal reforms.¹⁰

The third text to examine in this work is the one of María Inés Bergoglio and Jerónimo Carballo whom wrote a text about Segmentation of the legal profession in Argentina. This paper deepens the previous works describe above about legal profession in Latin-America. They analyze the segmentation on the practice of the profession of lawyers. The work deals, among other topics, the evolution in the legal profession in Argentina in the last fifteen years. The authors states that there was an increase of the number of lawyers and of the juridical firms. This was the cause of a diversification in the profession.¹¹

Bergoglio and Carballo mention as an important source of its research the classic sociological theories used to contemplate the juridical profession as a homogenous category and in the structure of inequalities. In the text there is an interesting quote of Parsons who said: *“the legal profession is a kind of line of secondary defense against the organizing*

⁷ Bergoglio, María Inés. “Diversidad y desigualdad en la profesión jurídica: consecuencias sobre el papel del Derecho en América Latina”. P: 12-28. *In: Revista VIA-URIS, N° 6, January-June 2009*. Fundación Universitaria Los Libertadores, Bogotá, Colombia. 2009.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Bergoglio, María Inés- Carballo, Jerónimo.” Segmentación en la Profesión Jurídica: Cambios ocupacionales de los abogados argentinos, 1995-2003”. P. 201-222. *Work published in Year 3, N° 5, Fall 2005, Faculty of Law. University of Buenos Aires. Academia Centro de Investigaciones Jurídicas y Sociales. Universidad Nacional de Córdoba.*

consequences of the conflict".¹² It is a phrase that sums up the legal profession as trying to fix the unavoidable consequences of the conflict that human beings has to go through every day.

In early and mid XIX century, the social origin of lawyers came from high or middle levels of society and the strong coherence of the juridical education caused the homogeneity in the profession. The great majority of them insert in the labor market as independent professional.¹³ There was little justice for the lower classes and very few lawyers that came from this social stratum.

Bergoglio and Carballo highlights how the conditions of the legal profession have changed in the XXI century. There is a tendency to the increase of the size of the juridical firms and this provoke what they called "the legal factory". This means that there are bureaucracies of half size that process conflicts massively and inaugurate a style that cause an impersonal relation with the clients. The authors follow what the famous doctinaire Mills established about segmentation: the contrast between the modes of professional exercise of the lawyers of big firms and the ones that keep exercising the profession in an independent form causes the segmentation that it is present nowadays in the legal profession.¹⁴ A segmentation that it is social and economic.

The segmentation can be seen in the current manner in which the legal profession develops. In the second half of the XX century there was an expansion of the higher level education which contributed to amplified the quantity of lawyers of all social strata. There is a more varied composition of lawyers in relation with gender, ethnic affiliations or social classes. Unfortunately, this also caused the increase of the number of professionals and the expand of the competition between them. This has stimulated the search for new forms of labor insertion in the public and private sector.¹⁵

In the big firms of lawyers there is a deepening of the division of labor and the lawyers are more specialized very specific areas of the law. Nowadays, this is a vital need to practice profession. It not just enough with enabling title to have a good development of the profession. The lawyers have to be constantly studying new doctrines and laws to keep up to date in the practice.

Furthermore, there is an increase of the hierarchy in the relations between partner lawyers, associates and employees. There is a big gap between the salaries of these categories. Also, the more dangerous problem is that some of this lawyers will stay in this position eternally and without possibilities of elevate its status or get a promotion.¹⁶

The authors established how is the situation of segmentation in Argentina. In the beginning of the XXI century there was an increase of students in the enrollment in law school. Also, there was a massive proliferation of big Law Firms in Argentina. Even though the number of big law firms is minor than the one of Mexico or Brazil, there are many of these firms and some of them works with the government. In the decade of the nineties there was an opening of the economy, there were great privatizations and the handle of the public and private debt have increase the range of operations of this big enterprises and the political

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

significance of its role. These firms dedicate mostly to fusions and acquisitions, capital market, project financing, patents and brandings, tax and resource law natural.¹⁷

Between the clients of this big firms there are big banks, foreign financial companies and multinational corporations that operates in Argentina. This demands that the employees of these firms works in different languages.¹⁸

The authors highlight the situation of crisis in Argentina that, according to them, sharpened the social and regionals inequalities. This means that the segmentation between lawyers caused that legal professionals shares the economic luck of their clients. There is a difference between the professionals that have clients of lower and middle classes and the ones that works in big firms with clients of higher social classes and multinational enterprises. The is an asymmetrical character of the globalization that accentuates the tendency of social heterogeneity that is a mirror of what have been happening in the society.¹⁹

Bergoglio and Carballo established that the occupational fragmentation also has another side. With the reinstatement of the democracy there was a new importance in the judicial power in the functioning of the institutions of the state. The tendency of this affirmation occurs in Argentina and other countries of Latin-America after the end of the dictatorships and the recovery of democracy. This situation had revealed multiples ways including an important relevance in the relative matters of the administration of justice in the political agenda.²⁰

Furthermore, there were an expansion of the judicial power that was manifested in the increase of the number of judges and the budget destined to the judicial power. There were new occupational opportunities for lawyers characterized by a higher level of incomes and employment stability.²¹ Nevertheless, in 2022 there were several protests in Argentina for the slow functioning of the judicial power and the necessity of more judges and employees in the courts of the country.

To sum up Bergoglio and Carballo establish that the occupational insertion of the lawyers has been diversified. The expansion of the judicial power that occurred during the nineties has increased the opportunities of work in the public field. The number of people in legal professions in dependency relation has escalated a lot. Nowadays, lawyers prefer to work in big firms or inside the judicial system to an independent work with its own office and litigating for clients. This heterogeneity in the legal profession may provoke that lawyers develop different points of view about how they have to handle its relations with clients and other colleagues. It is possible that these tendencies to inequality inside the profession stimulate process of redefinition of the traditional role of the lawyer that has been changing since the beginning of the XXI century.²²

All the mentioned above demonstrates the tendency of the legal profession to the segmentation. This phenomenon is taken place in other countries of Latin-America and for that this exposure of Argentina could be just an example of what it is happening in the region with the diversification and segmentation of the legal profession. There is also a bigger gap

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

of incomes between the independent and private lawyers and the ones that work in dependency relation and in the public area.

María Jose Azócar Benavente establishes an insight about legal profession in Chile and different changes in this country. The author says that in the decade of 2000 there were two significant reforms that were implemented in Chile. The first one was the change in the criminal process that modified the inquisitive system and replace this by an oral one, creating institutions as the Public Ministry and the Public Criminal Defense.²³ This also happened in Argentina that implemented the same changes and is still applying these modifications in the judicial power.

The other relevant reform was that new oral tribunals of family law were created and reunited in a single judiciary matter that before were spread between minors and civil tribunals.²⁴

Furthermore, Azócar Benavente highlights that there were an increased in the number of women who study law and for that there is more women who exercise the legal profession.²⁵ This is related with the changes of gender at a worldwide level that had as a result that in decade of fifties and the sixties women left the house chores to enter into the labor market.

Elizabeth del Rosario Rojas establish in her text “*Nuevos Ropajes de la abogacía: la metamorfosis menos pensada*”, the changes that the legal profession has been through from a critique and feminist perspective. Also, the author highlights the modifications in relation with the technology and the communication in the legal profession.²⁶

Rojas sustains that the legal profession in the past has been characterized by being an independent work. Nevertheless, nowadays this logic has been modified and the lawyers works mostly in a dependency relation. The author highlights an interesting idea about how the work was divided in the past in relation with the gender. The work was divided in manual work and intellectual work. The women used to dedicate themselves to the first one while the men were in charge of the second one. This was a division of labor by gender and had dreadful effects for the women whose vestiges of this fallout can still be seen today. Although during the industrialization process more women started to work outside of the house, they still had to do two jobs: the housework and the job outside of the house.²⁷ This explain how difficult if for the women lawyers to have the same opportunities and equal pay than her men peers.

The author establishes that in the beginning of the legal profession this discipline has participated in the conformation of national Latin-American states and helped in the political projects accompanied the path of the countries with the exercise of the law. In the beginning the profession was strictly masculine but since the XX century women started to access to the career of law and insert in the labor of the sector of the law.²⁸

Nowadays, the profession is mostly feminine, highly qualified and possess post-graduate courses and specializations the current times are requiring. As all professions and works the

²³ Azócar Benavente, María José. “Expertos en derecho: profesión legal, género y reformas judiciales en Chile. Experts in law: legal profession, gender, and judicial reforms in Chile”. In: *Revista de derecho (Valdivia)*. Vol. 28. N°2. Chile. December 2015.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Del Rosario Rojas, Elizabeth. (2019) “*Nuevos ropajes de la abogacía: la metamorfosis menos pensada.*” XIII Jornadas de Sociología. Facultad de Ciencias Sociales, Universidad de Buenos Aires, Buenos Aires. 2019.

²⁷ Ibid.

²⁸ Ibid.

globalization, the advance of technology and communication has changed the way that the legal profession it is exercise. Rojas states that the current legal profession in Latin-America is heterogeneous in relation to social class, ethnicity, gender and ages. Also, the profession is not sedentary and is mostly nomad because the lawyers goes from a place to another and sometime they rent the office for hours or meet with their clients in bars and restaurants.²⁹

Furthermore, another major change has been the quantity of institutional spaces that nucleate the lawyers such as federations, tribunals, schools of lawyers in the national and the provincial level.

Rojas establishes that there is a stratification of the legal profession in Latin-America and this causes inequality in respect with the access of clients and services.³⁰ In Argentina to exercise as a lawyer the person has to be enrolled in the bar association that correspond with its jurisdiction and must have a registration of this school to practice law.

In the current times the online connection is now vital for the lawyers to exercise its job. The systems of the courts in the Latin-American countries has changed and now are mostly digital. There are still files on paper but the idea is to get everything in a digital form. For this the lawyers and people who work at the courts has digital signature and other online services. The idea is also change the writing proceedings by oral in the places that this has not yet happened.

Although there are more women in the legal profession is not the same representation in the places of power for men and women as it happened historically in almost every profession. There is a big gap between the salaries earns by women and men in legal professions what proof the inequality of gender. A woman gets paid far less for the same work than a man. The author is optimistic with the possibility that the gap will close and the goal of achieving equality will happen during the next years.³¹

A phenomenon that is growing since 2015 is a new wave of feminism defending the rights of women, the equality in all contexts, the decisions over her bodies and the fight against the killing of women by men. The murder of a woman by a man is called “Femicidio” since the case of the IACHR Caso González y otras (“Campo Algodonero”) V. México. This is a Judgment of 16 of November of 2009. This case was about the assassination of several women because of the mere fact of being a woman, what it means that they were murder by their gender.

For this is important what María Eugenia Monte establishes in her text about the disputes in relation with the juridical regulation of abortion in Argentina and about feminist lawyers. The author states that in the last decades the politics about the juridical regulation of gender, the sexuality and the reproduction changed radically and occupy an important place in the international forums and politics of the countries of Latin-America. These changes were enabled because of the fight and perseverance of women’s movements that are changing the way to define gender, sexuality and reproduction. This was translated in the politics and law of the countries. An example of this is the fight for the juridical regulation of abortion in the last decade in Colombia, Mexico, Argentina and Uruguay. In Argentina is possible to

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

determine different instances of fight of the movements of women and feminists about the juridical regulation of the abortion established in the juridical and state institutions.³²

Since the last reform of the Constitution of Argentina in 1994 and the conformation of the National Campaign for the Right to the Legal, Secure and Free Abortion in 2005 the right to abortion had a new rebirth. Also, there were presentations of the project of the legalization of the law about abortion in the National Congress, in the approval of protocols in the access of abortion in the health system and the judicial process about the abortion in the courts.³³

Without dwelling further on this topic is relevant how Monte establish the fight of the feminist lawyers against the discursive configuration of the abortion. It is important to establish that the abortion was established as legal on the 29 December 2020 in Argentina. The Latin-American countries where the abortion is legal are Colombia, Argentina, México, Uruguay, Cuba, Guyana, French Guyana and Puerto Rico.

There is a situation about how legal profession is developing today in Argentina. This is an example of the province Tucumán in the north of the country. As it was mentioned before, the independent lawyer that litigate with clients is losing the prominence place as actor in the judicial world. It is for that that many people desire to enter in a dependency relation. The courts of Argentina open a contest for people to enter to work in these ones. It is a very good job with six hours of work, social benefits and a good salary. The change in the legal profession shows that before only lawyers could apply for this but now any person of 18 years old and with high school finished is able to register for the contest. In Tucumán there is a significant number of people that try to enter to this job because of all the advantages that were mentioned before.

This can be great for people to find a steady and secure job in a country with constants economic crisis. The problem is that as this contest is open for everybody, lawyers has less possibilities of finding work in courts and develop a career inside these ones to achieve ambitious dreams such as being secretary of a court or even judge.

To conclude, the legal profession in Latin-America has evolved a lot since the beginning of the XX century where only men could be lawyers. It was mostly an independent profession and lawyers litigate with direct relation with its clients. As it is established above, the current status of the legal profession presents a dominance of women as lawyers, fighting for their rights and making justice for the assassination of other women perpetrated by men.

Moreover, the technology, new forms of communication and globalization has achieved that the work in courts become mostly digital leaving paper documents behind. In addition to this, the legal profession has changed from being a more independent profession to being a work in a dependency relationship in big law firms. Another change is that lawyers are increasingly grouped together in organizations and bar associations.

In this work two countries of Latin-America were used as main example that are Chile and Argentina. These ones are a mirror of what is happening, in more or less measure, in all Latin-America in relation with the legal profession. The situation is different in Europe, Asia, North and Central America, Africa or Oceania because each of these places has had its own evolution. Since the evolution is being fast maybe in five or ten years the exercise of legal

³² Monte, María Eugenia. “Disputas sobre la regulación jurídica del aborto en Argentina. La abogacía feminista frente a resistencias conservadoras en el proceso judicial *T.S.* (2000): ecografía, visualización fetal y producción del discurso jurídico.” *Oñati Socio-Legla Series* (Online), 8 (5) 722-738. Available from: <http://ssrn.com/abstract=3272137>

³³ *Ibid.*

profession in Latin-America have change radically, much more than in the last fifty years and hopefully in a positive way.

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