

Preface

Lawyers have been present throughout the five-century history of Latin America. But how did lawyers in 1550 differ from lawyers today? Does it mean the same to be a lawyer in Mexico City or in Temuco, in the South of Chile?

Comparative law scholars include Latin America within the civil law tradition (Merryman, 1985; David, 1988; Zweigert and Kötz, 1998; Clark, 1999), implying a basic identity among Latin American lawyers themselves and between European and Latin American lawyers. The tradition of civil law generally reverts to ancient Rome and Roman law. This book will show the problematic aspects of this identity and highlight some of the enormous differences between lawyers in distant epochs and societies, as well as some basic traits that allow them to be wrapped together and compared. We have felt obliged to discuss the meaning of the Roman law tradition for Latin American lawyers.

In the early 1500s, Spanish kings forbade lawyers to travel to the “Indies” without special permission, but by the 1550s they created universities and law schools in the new territories. Only Old Christian white males were eligible to enroll. Portuguese royalty followed a different path: universities and law schools were prohibited in colonial Brazil, forcing wealthy colonists to send their children to Coimbra in order to study law. In spite of all the restrictions, lawyers in Latin America numbered about 1,500 by the early 1800s. Royal officials thought there were too many.

In today’s Latin America, lawyers number more than a million and universities are filled with law students. Yet requirements vary from one country to another; in fact, more similarities exist between Brazilian and Mexican lawyers today than between eighteenth-century and present-day Venezuelan lawyers. Education, stratification, and social role have evolved quite similarly in the various countries.

Lawyers are a crucial part of understanding state legal systems and societies. They have special knowledge and skills to operate the legal and political

system, and their role is to articulate for the individuals and businesses within the state. Although many lawyers are state functionaries, most are private lawyers paid with private money. Latin American lawyers have played this role in a notorious way: they frequently have been high officials and they primarily have served, and served well, wealthy people.

The first question is why, given their significant role, there have been no previous books on Latin American lawyers. The answer is that lawyers have been key to nation building, and their history and study are thus more related to individual countries. In fact, little has been written on Latin American law *per se*, and legal scholarship and literature on lawyers remain generally national.

As national studies addressing specific eras abound, the second question is why no previous effort at synthesis has been made. The answer mirrors the first one: there was little interest in thinking of Latin America as a whole in relation to law and lawyers. And that is surprising: whole libraries are devoted to Latin American literature, music, and culture. Law is staunchly national probably because its rules and principles vary so widely from place to place. A book on Latin American lawyers is possible in the measure that scholarship pays more attention to historical trends and the relation to culture and society.

The synthesis is not an easy task. What national studies do exist were written with many different perspectives and tend to center on lawyers' political roles or contribution to the legal field (see Halliday and Karpik, 1997). Other studies focus on legal education. This book proposes to connect occupation, knowledge, and political role while pointing out the contextual elements that allow a better understanding of this relation. But the reader should be aware that this book is possible only because it builds on previous scholarship and, at the same time, that we are limited by this bibliography.

The focus of this book is on the relation of lawyers and politics. Lawyers have been extremely important in Latin American politics from independence to present day, but their role requires a kind of baroque understanding. The political role is far from obvious because in Latin America rule of law has not been a dominant trait of politics. The relation is not a linear one. The present work will explore this complex dynamic, taking into account different times and political circumstances.

Acknowledgments

This book is a much-revised version of four lectures given at Universidad Diego Portales, in Santiago, in August 2000 by invitation of the Fueyo Laneri Foundation. I thank Don Gustavo Serrano, then-president of the foundation, Dean Carlos Peña, and my Chilean colleagues for the occasion to begin work on this book and for the warm reception given at the start of the whole enterprise. In 2002 the Universidad del Externado de Colombia, in

Bogotá, provided the occasion for me to return to the book. I thank Rector Hinestrosa and Director Silva García for that invitation and for the subsequent publication of the Spanish version of this book.

My work was possible because of the previous scholarship on lawyers of different periods and countries of Latin America. It is a varied scholarship, written with different approaches and not always easy to locate. I thank my Latin American friends and colleagues who provided me with information and insights on the history of their countries. I should mention especially María Inés Bergoglio, Eliane Junqueira, Carlos Peña, Edmundo Fuenzalida, Marcelo Montero, Iñigo De la Maza, Fernando de Trazegnies Granda, Gorki González, Renzo Honores, Alfredo Fuentes-Hernández, Germán Silva García, César Rodríguez, Alfredo Chirinos, María del Refugio González, José Antonio Caballero, Héctor Fix-Fierro, Asdrúbal Baptista, Carmen Luisa Roche, Yajaira Freitas, Manuel Gómez, and Irene Torres.

During the time I was writing this book, my country was living in turbulence. The Stanford University Law School provided the necessary tranquility and scholarly environment, making the inception of this book possible. The library is any scholar's dream, not only for its wealthy collection but also for the diligent and friendly staff. I am most grateful to all of them, with special mention of Alba Holgado and Sonia Moss. The fellows of the international program were a diverse set and provided a living course in comparative law and lawyers, and the students of my course in Law in Latin American obliged me to explain many aspects of lawyering that usually we take for granted. Two of these excellent students, Kate Unterman and Robert Watson, were the translators of this book. The Library of the Oñati International Institute for the Sociology of Law helped me, too, thanks to the facility of electronic communications. Elvira Muñoz and Sole Aguirre assisted me from across the Atlantic.

My time at Stanford was also one of solitude. My colleagues made this period less difficult with their friendship and spirited conversation. I wish to mention Tom Heller, Bill Gould, Miguel Méndez, Jonathan Greenberg, and Erick Jensen. Kate DeBoer, from the Stanford Program for International Legal Studies, assisted me on all practical and bureaucratic matters.

I am especially grateful to John Henry Merryman and Lawrence Friedman. They are true *sabios maestros*, as we like to say in Spanish, and this book is deeply indebted to their teaching. In addition, Lawrence Friedman revised and edited the English version, a huge job that is a sample of his enormous generosity. I associate this book with lunch on Monday with John Merryman, which became almost a ritual, and with many dinners and conversations with Lawrence and Leah Friedman, even if we talked of many other subjects than lawyers in Latin America.

Los Palos Grandes, Caracas,
and Palo Alto, California