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ARTICLES

Brazilian educational regulation: a mechanism of domination and reproduction in the training of law graduates? [1]

A regulação educacional brasileira: um mecanismo de dominação e de reprodução na formação dos bacharéis em Direito?

La regulación educativa brasileña: ¿un mecanismo de dominación y reproducción en la formación de la licenciatura en derecho?

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Abstract

The general objective of the research was to analyze the reproductive phenomenon in Brazilian legal education based on the historical invariants in the essential contents established by educational regulation. Through documentary analysis of the main regulatory standards of the Brazilian legal curriculum since the beginning of the Republican Period (1889-2023) and from the theoretical perspective of Pierre Bourdieu (1930-2002), it was concluded that: 1) the classic dogmatic contents of Law , with a codicist character, just like Criminal Law, Civil Law and Procedural Law in all its branches, have a prominent space in the chronography of Brazilian legal education; 2) the propaedeutic and zetetic contents have low relevance in the history of the training curriculum of Law graduates; 3) regulation, supported by the symbolic power of the norm, ratifies the epistemological foundation of a positivist nature in legal education, contributing to the maintenance of the reproductive phenomenon in the training of these bachelors, with a dogmatic and technicalist character.

Keywords: Higher education; Right; Educational regulation; Legal positivism; Curriculum reform.

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Resumo

O objetivo geral da pesquisa foi analisar o fenômeno reprodutivista no ensino jurídico brasileiro a partir das invariáveis históricas nos conteúdos essenciais estabelecidos pela regulação educacional. Por meio da análise documental das principais normas regulatórias do currículo jurídico brasileiro desde o início do Período Republicano (1889-2023) e na perspectiva teórica de Pierre Bourdieu (1930-2002), concluiu-se que: 1) os conteúdos dogmáticos clássicos do Direito, com caráter codicista, tal como o Direito Penal, o Direito Civil e o Direito Processual em todos os seus ramos, possuem espaço destacado na cronografia do ensino jurídico brasileiro; 2) os conteúdos propedêuticos e zetéticos, apresentam baixa relevância na história do currículo formativo dos bacharéis em Direito; 3) a regulação, sustentada no poder simbólico da norma, ratifica o fundamento epistemológico de cunho positivista no ensino jurídico, contribuindo para a manutenção do fenômeno reprodutivista na formação destes bacharéis, com caráter dogmático e tecnicista.

Palavras-chave: Educação superior; Direito; Regulação educacional; Positivismo jurídico; Reforma do currículo.

Resumen

El objetivo general de la investigación fue analizar el fenómeno reproductivo en la educación jurídica brasileña a partir de las invariables históricas en los contenidos esenciales establecidos por la regulación educativa. A través del análisis documental de las principales normas reguladoras del currículo jurídico brasileño desde el inicio del Período Republicano (1889-2023) y en la perspectiva teórica de Pierre Bourdieu (1930-2002), se concluyó que: 1) los contenidos dogmáticos clásicos del Derecho, de carácter codicista, como el Derecho Penal, el Derecho Civil y el Derecho Procesal en todas sus ramas, ocupan un lugar destacado en la cronografía de la educación jurídica brasileña; 2) los contenidos propedéuticos y zetéticos tienen escasa relevancia en la historia del currículo de formación de los licenciados en derecho; 3) la regulación, apoyada en el poder simbólico de la norma, ratifica el fundamento epistemológico de carácter positivista en la educación jurídica, contribuyendo al mantenimiento del fenómeno reproductivo en la formación de estos egresados, con carácter dogmático y técnico.

Palabras clave: Educación universitaria; Derecho; Regulación educativa; Positivismo jurídico; Reforma curricular.

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Introduction

Power relations within the university revolve around a somewhat hierarchical structure, which reflects the marks of a history of previous practices and struggles, embodied in different value judgments and symbolic systems. This phenomenon is influenced "by the socioeconomic and cultural context, by the scientific field and by the power of each professional field, whether in the university or in society" (VOLPATO, 2019, p. 365), affecting different areas of knowledge, among which, the training of law graduates.

Thus, legal education is influenced by several mechanisms that contribute to the stability of the reproduction of classic normative subjects, remaining an important element of support for the power structures of the legal field, with their *habitus*[2] and positions that perpetuate and legitimize forms of domination, whether within them or in their interrelationship with other social fields.

According to sociologist Pierre Bourdieu (1930-2002), the structures of social fields[3] are influenced by numerous factors, such as schooling paths, inherited knowledge and privileges, State control mechanisms, power dynamics within the professional field, and the influences of other fields (BOURDIEU, 2017, 2020). The curriculum, in turn, translates invariable patterns that are the result of historical practices and power games within a training field.

Starting from the premise that the documents aim at the meaning of relevance given to the contents of the legal curriculum and that there is a hierarchy in the structure that controls the position and privileges of the curricular components in the pedagogical projects of the courses, the need for identification of invariable content standards is justified in the history of the curricular structure of Brazilian legal education, so that it is possible to investigate whether educational regulation contributes to the reproductive phenomenon in the training of law graduates.

Therefore, the general objective of the research was to analyze the reproductive phenomenon in Brazilian legal education based on the historical invariants in the essential contents established by educational regulation. To this end, the following specific objectives were established: 1) Examine the main curricular reforms of legal education in Brazil; 2) Identify the essential content for the training of law graduates, in accordance with the main regulatory standards for legal education since the beginning of the Republican Period (1889); and 3) reflect on the influence of educational regulation as a mechanism for maintaining and reproducing legal education in traditional ways.

To achieve the objectives, a documentary analysis of the main regulatory standards of the Brazilian legal curriculum in the period researched (1889-2023) was carried out, based on selected bibliographic sources. This association was appropriate, because "just as documentary research presupposes the analysis of selected documents, bibliographic research presupposes the reading and analysis of chosen texts" (MATTAR; RAMOS, 2021, p. 127), serving the appreciation of the chosen documents as a source of data.

The findings were analyzed from the sociological perspective of Pierre Bourdieu (2015b) because this author's scientific methodology invites the researcher to observe reality in a relational process that considers the relative autonomy of the social field, providing the researcher with a semiological analysis of the object of study.

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[2] Bourdieu's concept of *habitus* is explained, synthetically, as the disposition incorporated in the agent that puts him into action regardless of his ability to reason (BOURDIEU, 2020).

[3] Bourdieu (2004, p. 20-27) explains that the field is "[...] a social world like the others, but which obeys more or less specific social laws. The notion of field is there to designate this relatively autonomous space, this microcosm endowed with its own laws. [...] Fields are the places of relations of forces that imply immanent tendencies and objective probabilities. A field is not oriented entirely at random. Not everything in it is equally possible and impossible at each moment."

This article was structured in two main parts: the first is dedicated to the presentation of the main curricular reforms in the history of Brazilian legal education; and the second is the presentation of the analysis of the selected documents, with the identification of the contents considered essential by the aforementioned regulatory frameworks, reflecting on the relationship established between the curricular structure designated by educational regulation and the reproductive praxis in the teaching of Law.

1 The main curricular reforms of Brazilian legal education

The main political-pedagogical discussions of Brazilian legal education in the Republican Period are discussed below, identifying the main regulatory milestones in the history of the training of law graduates in Brazil.

1.1 Old Republic (1889 to 1930)

Letter of Law No. 1827, of August 11, 1827, which created the first two courses in legal and social sciences in Brazil, presented a rigid, unique curriculum, with a European model, predetermined by the State and with a strong influence from natural law and public ecclesiastical law (BRAZIL, 1827). Therefore, divine (or natural) law was the primary source of law, which motivated the mandatory courses of Natural Law and Ecclesiastical Public Law in the legal curriculum. Brazilian legal education privileged the interests of the ruling class and served the epistemological current that justified it, jusnaturalism. This transcendence towards the supernatural legitimized the power of the monarchy, whose king presented himself as a representative of God. From the aforementioned Letter of Law, the following should be highlighted:

> Dom Pedro The First, **by the Grace of God** and unanimous acclamation of the people, Constitutional Emperor and Perpetual Defender of Brazil: We make it known to all our subjects that the General Assembly has decreed, and we want the following Law:
> Art. 1 - Two legal and social science courses will be created, one in the city of S. Paulo, and the other in Olinda, and over the space of five years, and in nine courses, the following subjects will be taught:
> 1st YEAR
> 1st Chair. **Natural, public law**, Analysis of the Constitution of the Empire, Law of nations, and diplomacy.
> 2nd YEAR
> 1st Chair. Continuation of items from the previous year.
> **2nd Chair. Ecclesiastical public law.**
> 3rd YEAR
> 1st Chair. Civil law.
> 2nd Chair. Criminal law with the theory of criminal proceedings.
> 4TH YEAR
> 1st Chair. Continuation of civil law.
> 2nd Chair. Commercial and maritime law.
> 5th YEAR
> 1st Chair. Political economy.
> 2nd Chair. Theory and practice of the process adopted by the laws of the Empire.
> Art. 2 - To govern these chairs, the Government will appoint nine proprietary Lentes, and five substitutes (BRASIL, 1827, highlighted).

State control over Law Courses in the Imperial Period (1822-1889) covered, in addition to the curriculum, the resources, the teaching method, the appointment of regents to the subjects that were part of the curriculum, and even the compendia that should be adopted for the studies. Legal education in the first decades of Imperial Brazil contributed significantly to the unification of culture, either because it was only accessible to the elite in the face of an illiterate people, or because it served the interests of the Crown, or even because it concentrated within Law students a nucleus of homogeneous ideology in knowledge and skills. This was how the bureaucratic microcosm of the new Rule of Law was constituted and despite the period being one of profound transformations in the political scenario, legal education was distant from the country's social needs and of low quality. According to Rodrigues (1987), the Law Academies were mere communication instruments for the economic elites, in which the teachers were not very competent and dedicated and the students did not study but were allowed to pass the subjects. After the first decades of legal education in the country, the debate about the crisis in legal education was already emerging, deeply marked by the European liberal discourse.

In 1889 the period called the Old Republic began, which was marked by profound changes in the constitution of the Brazilian State with the abandonment of the imperial model, which had been in force until then. Thus, by Decree No. 1,232-H, of January 2, 1891, known as the Benjamin Constant Reform, the regulation of legal education institutions dependent on the Ministry of Public Instruction was approved, which allowed the installation of state and private law faculties, effectuating freedom of legal education by the private sector. Through the same reform, the inclusion of the subjects of Philosophy and History of Law, Legal Medicine and History of National Law was approved. There was, however, the exclusion of Legal Hermeneutics as a subject, which was part of the curriculum that was in force until then (BRASIL, 1891).

The republican structure brought changes to legal education, with a decisive positivist influence on the conception of Law and legal education and, also, a greater reverberation of legal pragmatism in the curriculum. Furthermore, the separation of Church and State gave rise to Decree No. 1036-A, of November 14, 1890, which suppressed the Ecclesiastical Law course from legal courses in Recife and São Paulo (BRASIL, 1890).

Shortly afterward, in 1895, Law No. 314, of October 30, 1895, came into effect, which reorganized the teaching of the country's Law faculties and established a new curriculum with a greater scope than the previous one (BRASIL, 1895). Between 1854 and 1895, important paradigmatic changes occurred, such as the exclusion of the subjects of Natural Law and Ecclesiastical Law, both the result of the positivist movement that was consolidating in the country and the separation between the State and the Church, with the constitution of the Republic. Other subjects gained space, such as Public International Law, Science of Finance and State Accounting, and Legislation, compared to Private Law. The latter, until then, was provided for in the Social Sciences Course, which had now been extinguished due to the determination contained in art. 3rd of the same Law (BRAZIL, 1895).

Whether in the Imperial or Republican Periods, the State maintained control of legal education, shaping it according to the interests of the ruling class. In 1911, Decree No. 8,659 approved the Organic Law on Higher and Elementary Education in the Republic and granted didactic and administrative autonomy to higher education institutions, in accordance with the provisions of its art. 2nd: “The institutes, until now subordinate to the Ministry of the Interior, will, from now on, be considered autonomous corporations, both from a didactic and administrative point of view” (sic) (BRASIL, 1911). On the same date, Decree No. 8,662 was issued, which approved new regulations for Law Faculties, defining, in its art. 5th, the subjects that would be included in the Law Course. This new curricular structure increased the training

time from 5 (five) to 6 (six) years and replaced the subject of Philosophy of Law with a General Introduction to the Study of Law, as well as dividing Civil Law into thematic areas, namely, Family Law, Patrimonial Law, Real Rights, and Succession Law. The disciplines of "History of Law, especially National Law" and "Comparative Legislation on Private Law" (BRASIL, 1895) were extinguished.

On March 18, 1915, Decree No. 11,530 was issued, known as the Carlos Maximiliano Reform, through which the 5 (five) year period for the Law course was re-established, the Philosophy of Law chair was resumed, replacing the Introduction to the Study of Law chair, and the subject of Private International Law was included. Civil Law, in turn, was organized into three series that comprised the General Part: Family Law; the Law of Things and Successions; and the Law of Obligations (BRASIL, 1915).

Legal pragmatism was so relevant in legal training that the course was condensed almost exclusively into positive law content and expressly aimed at professional practical application, so much so that art. 175 of the aforementioned Decree determined that: "The teaching of theory and practice of civil procedure will include, in addition to the theoretical part, an essentially practical course, in which students learn to draft legal acts and organize the defense of rights " (sic) (BRAZIL, 1915).

In 1927, legal education celebrated its first centenary in Brazil and the changes that had occurred until then, according to Bastos (2000), Rodrigues (1987, 1988, 2005, 2020) and Linhares (2010), would not have been significant in its curricular structure. As for the method, classes remained in a conference format and the teaching of law did not keep up with the political and social reality of the country.

Due to the imminent need to break with the oligarchic republican structures, still so focused on imperial bases, the 1930 Movement occurred. For education, the period was focused on training professionals for Brazilian industrial development, in a growing process of urbanization of the country, which is why this new period in the curricular structure of Law Courses in the country will now be discussed.

1.2 Post-1930 Movement, Estado Novo and Military Republic (1930-1985)

The Provisional Government of Getúlio Vargas created the Ministry of Education and Public Health, whose first head was jurist Francisco Campos, who proposed the Reform of Secondary and Higher Education in the country. The Francisco Campos Reform, as it became known, governed by Decree nº 19,851 and Decree nº 19,852, both of April 11, 1931, made the Law School curriculum even more pragmatic, by excluding the Philosophy of Law and Roman Law courses from the curriculum. He also created the doctorate course in Law, lasting two years, which had chairs in Philosophy of Law, Forensic Psychology, Legal Criminology, and Roman Law, among others (BRASIL, 1931a, 1931b). According to Rodrigues (1987), this reform did not bring the expected results, nor did the doctorate course in Law achieve the desired objectives. However, the Francisco Campos Reform contributed profoundly to strengthening the positivist foundations and the primacy of technique in the training of law graduates. Studies related to the critical understanding of Law were labeled as "high culture" and declared essential for professionals in the legal field. Although a major change in the curriculum was not evident, the study of the aforementioned Decrees (BRASIL, 1931a, 1931b) and the Exposition of Motives (BRASIL, 1931c), which founded the reform, demonstrates the clear political-ideological positioning of the period and the consolidation of industrial capitalism in Brazil, with the expansion of the Civil Law course load and the presence of the subjects of Political Economy and Science of Finance and Commercial Law. The following should be highlighted:

> Art. 26. Law teaching will take place at the respective Faculty in two courses: one, lasting five years, and the other, lasting two.
> The student who passes the exams for all the subjects taught in the first course will be awarded a bachelor's degree in law and the corresponding diploma; to the person approved in all the subjects taught in any of the sections of the second course and in the defense of the thesis referred to in art. 50, the degree of doctor in law and the corresponding diploma will be awarded.
> Art. 27. The bachelor's degree in law will include teaching the following subjects:
> Introduction to the science of law;
> Political Economy and Finance Science;
> Civil Law;
> Criminal Law;
> Constitutional Public Law;
> International Public Law;
> Commercial law;
> Civil Judicial Law;
> Criminal Judiciary Law;
> Administrative law;
> Legal Medicine (BRAZIL, 1931b).

With the advent of the Francisco Campos Reform, therefore, changes occurred in Secondary Education and Higher Education in the country, which contributed profoundly to the strengthening of the positivist foundations in the training of Law graduates. Furthermore, the same reform made it possible to equate state or free universities with federal universities for the purposes of granting titles, dignities, and other university privileges, through prior inspection by the National Department of Education, after consulting the National Education Council (BRASIL, 1931a). This equivalence made it possible to strengthen the links between secondary technical training and academic training.

The two main experiments of this equivalence in that period were that of the University of São Paulo (USP), created in 1934, and the University of the Federal District (UDF), created in 1935. According to Vicenzi (1986, p. 24), the University of São Paulo gave preference to the French model, "which fit reasonably well with the norms of the Francisco Campos Reform". The University of the Federal District (UDF) resulted from the project of Anísio Teixeira (1900-1971), in which "several ends of the same process were articulated: elementary and university education, the training of researchers and teachers, the development of empirical research and disinterested studies or pure science" (XAVIER, 2012, p. 670). Anísio Teixeira suffered numerous ideological persecutions and the UDF was attacked on the grounds that it disobeyed the standards of the Francisco Campos Reform, interrupting the ideals set out in its project following the 1937 Military Coup, culminating, therefore, in its extinction due to through Decree-Law No. 1,063, of January 20, 1939 (BRASIL, 1939).

Still in this context and in line with the competence established by the Federal Constitution of 1934, the Ministry of Education and Health, through the National Education Council, prepared the draft National Education Plan which was sent to the Presidency of the Republic on May 18, 1937. However, with the closure of the National Congress in November of that year, the aforementioned project was never discussed. Nevertheless, with regard to the teaching of Law, the proposal differed from that in force due to the inclusion of the subjects of Roman Law, Industrial Law and Labor Legislation, as well as Philosophy of Law (BRASIL, 1949, p. 266). It is important to mention that, according to Cury (2015), for this project to be

effectively considered a Plan, it should include the goals to be achieved, a defined schedule, and the necessary resources for this. However, for the author, the project represented a kind of guidelines and bases for education, with evident bureaucratic control, which made up the authoritarian spirit of that time.

The Federal Constitution of 1946 established, in its 5th article, item XV, "d", the Union's competence to legislate on guidelines and the basis of national education (BRASIL, 1946), and, although sparse legislation existed until then, it was based on the Federal Constitution of 1946 that the first Guidelines and Bases Law ("LDB") came to be, in 1961. Law No. 4,024, of December 20, established the guidelines and bases of national education at the time (BRASIL, 1961) and, despite the exponential increase in the number of Law Courses in Brazil, the LDB reinforced state control by reserving the State's power of appointment before validating titles granted by higher education institutions. In its articles 66, 68, and 70, the LDB defined the objective of higher education, the importance of the diploma for the exercise of professions and admission to public positions and also, the competence of the Federal Education Council to establish the minimum curriculum and duration of courses that would qualify for obtaining a diploma capable of ensuring privileges for exercising the liberal profession (BRASIL, 1961). Later, in 1995, Law No. 9,131, of November 24, amended the LDB of 1961 to include among the duties of the Higher Education Chamber of the National Education Council, deliberating on the curricular guidelines proposed by the Ministry of Education and the Sport, for undergraduate courses (BRASIL, 1995), anticipating the expression that would be consolidated in the LDB, nº 9,394 of December 20, 1996.

From a curricular point of view, a new relevant change for the teaching of Law was only made in 1962, when the idea of a single and rigid curriculum for the country's undergraduate courses was supplanted and minimum curricula were established. Ministerial Ordinance No. 4, of December 1962, then established a minimum curriculum for Law Courses, lasting five years, starting from the 1963 academic year, granting freedom to higher education institutions to establish a full curriculum of their courses (BRASIL, 1962). The minimum curriculum, however, remained quite rigid and technical in nature, with the privilege of dogmatic Law subjects. The novelty was only the inclusion of the Labor Law subject since the resumption of the Private International Law subject did not bring any substantial change to the curriculum.

Furthermore, the 1962 reform maintained the exclusion of subjects such as Philosophy of Law and History of Law from the minimum curriculum of Law Courses, which also expresses persistent legal pragmatism. In this sense, Rodrigues (1988) states that the period consolidated the positivist paradigm, by almost eliminating humanist and cultural courses and favoring the lawyer's forensic activity. Despite the proposal providing a stimulus to educational institutions, giving them some freedom, the time frame for developing the course was the same and the subjects that made up the minimum curriculum coincided with those of the previous mandatory curriculum.

To avoid professional disqualification and the devaluation of the lawyer's position in the legal field, given the high number of new law graduates, the Brazilian Bar ("OAB") also mobilized the capital it held and obtained the approval of Law No. 4,215, in 1963, which provided for the Statute of the Brazilian Bar Association and established the obligation of the Bar Exam for admission to the list of lawyers for candidates who had not completed the professional internship or who had not satisfactorily demonstrated their performance and results (BRASIL, 1963).

The subsequent period, marked by the 1964 Military Coup, made technical professionalization even more pronounced in the country, with an emphasis on teaching positive law, far from the critical and reflective bases that would threaten the authoritarian regime. It was in this context that Law No. 5,540/68 came about, which promoted a University Reform and established the competence of the Federal Education Council ("CFE") to provide

the minimum curriculum and duration of undergraduate courses nationwide (BRASIL, 1968). However, it was only in 1972 that a new minimum curriculum was introduced for Law Courses, which was in force until 1994, resulting from CFE Opinion No. 162/72, established by CFE Resolution No. 3/72 (BRASIL, 1972). The basic subjects of legal training were reduced to just three, and the remaining ten mandatory subjects maintained their dogmatic and technical character. The new minimum curriculum for the Law course, under the justification of ensuring greater flexibility for higher education institutions in preparing the full curricula of their courses, remained captive to the dogmatic contents of Law, without any significant change in its structure. It is worth mentioning that the professional nature became even more accentuated through the proposal to grant specific qualifications on the back of the graduation diploma.

Subsequently, Resolution No. 15, of March 2, 1973, complemented Resolution No. 03/72 with regard to supervised internships within the Law faculties themselves, which had become mandatory by the previous Resolution. This established the space allocated to the OAB in its supervision (RODRIGUES, 1987).

The historical survey of the period shows that, from 1931 to 1994, the year in which Ordinance No. 1886/1994 was issued (BRASIL, 1994), legal education underwent very few transformations, all of which strengthened the pragmatic character of the training of bachelor's in law, supported by the positivist foundations of the science of law.

1.3 New Republic (1985-2023)

The expression "curricular guidelines" was used for the first time for Law Courses with the advent of Ministerial Ordinance No. 1886/1994, which established the curricular guidelines and the minimum content of the legal course, therefore replacing the expression "minimum curriculum". It introduced, within the scope of the curricular components of the Law Courses, in addition to the requirement of the Course Pedagogical Project ("PPC"), the skills that should be mandatory worked on by them, as well as making complementary activities mandatory and introducing the Course Conclusion Essay (BRAZIL, 1994).

The proposal established in the new guidelines represented an important improvement in the history of Brazilian legal education, as it valued the conception of the internship as a legal practice and not just forensic; it maintained the flexibility of a full curriculum that met the regional peculiarities of the location where the course was offered; and it required the monograph and, therefore, encouraged research in the student's formative path; it also allocated hours for complementary activities, which broaden training horizons and enable academics to participate in research and extension activities, for example. However, despite Ministerial Ordinance No. 1886/1994 stating the expression "curricular guidelines" (BRASIL, 1994), in reality it still required the minimum course curriculum, which contradicted the parameters established by the new LDB, No. 9,394 of 20 of December 1996, which focused on the development of different proposals for graduate profiles, translating a greater diversity of professionals in the working world, with intellectual skills compatible with the heterogeneity of social demands.

However, it was only about eight years after the 1996 edition of the LDB that CNE/CES Resolution No. 9/2004, of September 29, established new national curricular guidelines for the undergraduate Law course (BRAZIL, 2004). Scholars point out that the 2004 guidelines also did not achieve the intended results, as stated in Rodrigues (2020), Linhares (2010), Machado (2009) and Bastos (2000). The professional training axis maintained the focus on the classic branches of law and their systematic study. The monograph, which was previously required, was replaced by the Course Essay, allowing institutions flexibility in choosing the most appropriate model. The supervised internship and complementary activities were maintained.

Carrying out a comparative analysis of the curricular structure of the fundamental axis of Ministerial Ordinance nº 1886/1994 and the CNE/CES Resolution nº 9/2004, denotes a narrowing of Philosophy and Sociology, as references to their division between General and Legal disappear. Introduction to Law and State Theory were also absent, while Anthropology and Psychology appear for the first time in the history of Brazilian legal education. Finally, for the first time, Ethics gained a prominent space in training (BRASIL, 1994, 2004).

Ministerial Ordinance No. 1886/1994, however, contains the expression "fundamental subjects" (BRASIL, 1994), while CNE/CES Resolution No. 9/2004 lists "essential contents" (BRASIL, 2004). Rodrigues (2005) states that, despite the attempt at change, it is incorrect to state that from 2004 onwards the minimum curricula no longer existed, as the legislator's intention to impose the structural configuration of Law Courses would have been clear since the minimum curriculum will only be replaced by the training axes made up of essential content and activities indicated in the regulatory standard.

On December 17, 2018, CNE/CES Resolution nº 5 established the new National Curricular Guidelines ("DCN") for the Undergraduate Law Course, whose implementation deadline by higher education institutions was extended by CNE/CES Resolution nº 1, of December 29, 2020, and had its limit on December 19, 2021 (BRASIL, 2020).

The comparative analysis between Resolution CNE/CES nº 9/2004 and Resolution CNE/CES nº 5/2018, carried out by Rodrigues (2020), allows us to identify that the new DCN made clearer the possibilities of adapting the pedagogical projects of Law Courses to their context of action, which was already possible under the rules of the previous Resolution and which, for this very reason, could not be considered an innovation. For this reason, what the new DCN added was the obligation to include in the Course Pedagogical Project ("PPC") the "conception of its strategic planning, specifying the mission, vision and values intended by the course", according to art. 2nd, item I, of CNE/CES Resolution No. 5/2018 (BRASIL, 2018), maintaining the requirement to include the "conception and general objectives of the course, contextualized in relation to its institutional, political, geographic and social insertions" (BRASIL , 2004), already expressed in previous DCN (art. 2, item I, of Resolution CNE/CES nº 9/2004).

There were also no major changes regarding the graduate profile, especially because the revoked Resolution already provided for a critical and reflective stance for undergraduates, now basically including the mastery of consensual forms of conflict composition. When analyzing the new regulation, Faria and Lima (2019) also verify the permanence of the previous DCN's proposal essentiality, identifying the character of the new curricular guidelines for Law Courses as "incremental".

The list of technical and behavioral skills required for a Law graduate was expanded in comparison to the revoked norm, with emphasis being placed on the interpretative capacity to apply the law to the specific case, to solve problems, to apply consensual methods of resolving conflicts, among others. In this sense, the need to develop acceptance of diversity and cultural pluralism emerged as effectively innovative in the list of skills.

In relation to curricular contents, in turn, it is possible to observe the replacement of training axes by training perspectives, which demonstrates the intention of moving away from the usual conception of consecutive training stages and implementing the integration of perspectives (general, technical-legal and practical-professional) in the training path, so much so that the new text prioritizes interdisciplinarity and the articulation of knowledge.

This time, Resolution CNE/CES nº 5/2018 established general, technical-legal, and practical-professional perspectives. It turns out that, for general training, suggestions for studies

that involve knowledge from other training areas are presented, without specific mandatory content. Regarding the technical-legal perspective, the contents that were historically essential are maintained (Legal Theory, Constitutional Law, Administrative Law, Tax Law, Criminal Law, Civil Law, Business Law, Labor Law, International Law and Procedural Law), now added by Social Security Law and Consensual Forms of Conflict Resolution. Practical-professional training maintained the perspective brought by Resolution CNE/CES nº 3/2017 (BRASIL, 2017), expanding the places where curricular internships are carried out beyond the legal practice centers at universities.

Therefore, general training, which previously determined the inclusion of essential content on Anthropology, Political Science, Economics, Ethics, Philosophy, History, Psychology, and Sociology, brings these contents only with a suggestive nature, putting into discussion a training that proposes a critical and humanistic profile to the graduate, but which dispenses with the condition of essentiality of these contents; a stance that is not adopted in relation to the classical technical contents of law.

The technical-legal perspective continues to focus on classic legal content, which relegates content such as consumer rights, human rights, and cyber law, for example, to a subsidiarity character that is not adequate to contemporary challenges. The transversality foreseen for content covered by specific legislation and for extension activities, without a possible increase in teaching staff or adequate training, gives rise to the possibility that such content will be a mere citation in the PPC to comply with regulatory precepts.

Furthermore, among the innovations brought by the new DCN is the encouragement of transdisciplinarity, which stimulates the overcoming of the offer in traditional disciplines precisely to structure legal training in order to encompass emerging problems and the challenges that are established for the training of new professionals. Therefore, in a transdisciplinary proposal, it is suggested that content relevant to legal training be covered, without the intention of exhausting subjects.

Finally, it is worth mentioning that the DCN still brings what Rodrigues (2020, p. 70) calls “didactic, integrative and administrative” elements, namely: those related to planning the teaching-learning process (which with the new Resolution must start from a diagnosis of reality), the indication of active teaching-learning methodologies, the ways in which interdisciplinarity will be concretely carried out, the encouragement of innovation, the description of the forms of articulation between theory and practice with the indication of the active methodologies used to this end, the mandatory provision for the integration of research and extension activities with teaching, the perspective of articulating continued education between undergraduate and postgraduate courses, forms of national and international mobility - recognized or supported by higher education institutions, and the regulation of the possibility of reducing the length of stay on the course for students who have extraordinary performance.

2. Educational regulation and the reproductive phenomenon in legal training

A historical understanding of the curricular structure of legal education is essential for verifying the invariable patterns in the structural configuration of Brazilian legal education. To this end, the curricular components were compared with similar content in each of the main Brazilian curricular reforms, aiming to outline the profile of legal training at each moment in Brazil's political history. This time, the curricular components were classified into five groups, according to their content.

The first group is related to the **Dogmatic Contents of Law**. Legal dogmatics is established by the phenomenon of positivization, it is a way of thinking that calls on the jurist to reduce problems to individual conflicts that can be resolved based on the imposed rule. It conditions investigations to take a position in relation to the norm (Ferraz Júnior, 2015).

Thus, the mandatory curricular components classified as **Dogmatic Contents of Law** are those whose object is clearly identified in its own name and goes back to the positive normative content, such as Civil, Criminal, Commercial, Constitutional Law, etc. It should be noted that this research does not serve to deny the existence of critical and reflective initiatives in Brazilian legal education, especially due to the possibilities granted to Law Courses from Resolution CNE/CES nº 9/2004 and Resolution CNE/CES nº 5 /2018, which made the possibilities for adapting pedagogical projects clearer. However, the choice for the categorization exposed here observed the predominant parameters in the teaching of Law, based on the theoretical references exposed throughout this work.

The second group represents the curricular components of **Propaedeutic and Zetetic Contents**. It deals, therefore, with the disciplines that enable general, humanistic, reflective and critical training. The term "propaedeutic" refers to what is introductory, preliminary, and preparatory in nature, while "zetetic" refers to investigation, the tireless search for truth through questioning (MICHAELIS, 2015).

Both the curricular components classified as **Dogmatic Contents of Law** and those identified as **Propedeutic and Zetetic Contents** can be worked on differently from such specifications by the teaching staff. However, bibliographical surveys on the infamous crisis in legal education, especially Bastos (2000), Rodrigues (1987, 1988, 1995, 2005, 2020), and Linhares (2010) demonstrate the positivist historical paradigm of Law teaching, which strengthens legal dogmatics in traditional ways. Therefore, the grouping of contents in this model is based on the assumption that, by their very nature, they have the specified character.

The third classification is identified as **Professional Practice** and refers to practical experiences such as those carried out in internships, as well as the development of conflict resolution skills through consensual means. It should be noted that, within the scope of professional practice, training can also be carried out in a reflective and critical or strictly technical approach. However, such verification is not possible exclusively through documentary analysis of the curricular structure of Law Courses in Brazil. On the other hand, the profile of the curricular orientation investigated, its historical-political framework and the other reasons described in the regulatory standard, tend to demonstrate the profile of the training and, consequently, the practical experiences provided within it.

The fourth group is called **Other Contents and/or Curricular Components**. It refers to content other than those specified in the previous groups, and which provides other learning experiences, such as the practice of physical education, monographs, and complementary activities.

Finally, the fifth group was destined to **Optional or Exemplary List Contents**, identified in only two regulatory frameworks in the history of legal education. The first was due to CFE Resolution No. 3/72, which determined the choice of at least two optional subjects from the list determined by it. Regarding the exemplary list, which emerged on the occasion of CNE/CES Resolution No. 5/2018, it is proposed that general training and curricular diversification be mandatory even without identifying the respective essential contents.

The analysis of the main curricular reforms in legal education highlighted the privilege of dogmatic subjects and the predominance of the identity of a large number of them throughout the history of Brazilian legal education. The survey of contents historically considered relevant to legal training was carried out based on the frequency with which they appeared as essential or mandatory in the curricular matrices of Law Courses, as shown in the following table:

Table 1 - Frequency of mandatory content in the Curriculum Reforms of the Republican Period

		Curricular Reforms										**Frequency in the Curricular Structure (%)**
		1891	1895	1911	1915	1931	1962	1972	1994	2004	2018	
Dogmatic Contents of Law	Constitutional Law	x	x	x	x	x	x	x	x	x	x	100
	Civil Law	x	x	x	x	x	x	x	x	x	x	100
	Criminal Law	x	x	x	x	x	x	x	x	x	x	100
	Commercial and Business Law	x	x	x	x	x	x	x	x	x	x	100
	Procedural Law	x	x	x	x	x	x	x	x	x	x	100
	Administrative law	x	x	x	x	x	x	x	x	x	x	100
	International Law		x	x	x	x	x		x	x	x	80
	Labor Law						x	x	x	x	x	50
	Tax law								x	x	x	30
	Financial Law and Finance						x					10
	Comparative legislation on Private Law		x									10
	Social Security Law										x	10
Propedeutic and Zetetic Contents	Economics and Political Science, Finance and State Accounting		x	x	x	x	x	x	x	x		80
	Introduction to the study of law			x		x	x	x	x		x	60
	Philosophy	x	x		x				x	x		50
	History of Law	x	x							x		30
	Roman law	x	x	x	x							40
	Sociology							x	x	x		30
	Anthropology									x		10
	Ethics									x		10
	Study of Brazilian Problems							x				10

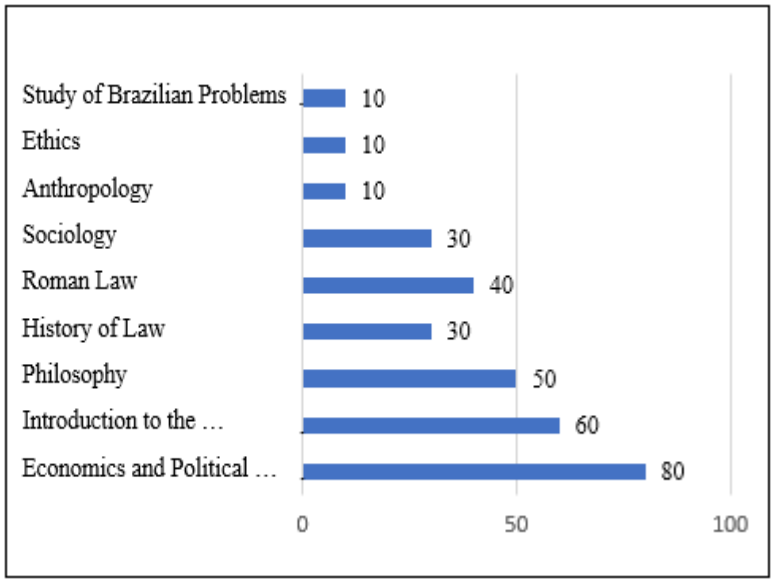
Professional Practice	Professional Practice	x	x	x	x	x	x	x	x	x	x	100
Other Contents and/or Curricular Components	Course Essay								x	x	x	30
	Psychology									x		10
	Consensual forms of conflict resolution										x	10
	Legal Medicine	x	x	x	x	x						50
	Physical education							x	x			20
	Additional activities								x	x		20
Optional or exemplary content	Optional subjects, general training, or curricular diversification in an exemplary list							x			x	20

Source: created by the author (2023).

Analyzing the previous table, it is possible to verify that dogmatic contents prevailed in the legal curriculum throughout the analyzed period. Constitutional, Civil, Criminal, Commercial and Business, Procedural and Administrative Law remained in 100% (one hundred percent) of the curriculum proposals. Labor Law ensured this space from 1962 onwards, while Tax Law did so from 1972 onwards; and Social Security Law, unfortunately, only entered essential content in 2018.

The propaedeutic and zetetic contents appear less frequently, highlighting the State's interest in maintaining the subjects related to Economics and Political Science, State Finance, and Accounting, which appear in 80% (eighty percent) of the curricular structures studied. Introduction to the Study of Law appears in 60% (sixty percent) of the structures, while the other disciplines, such as Philosophy and Sociology, fluctuate throughout history. See below:

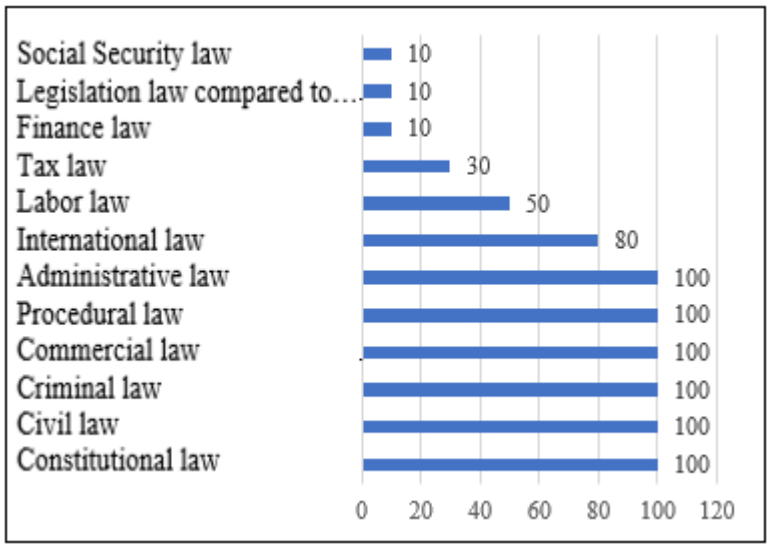
Graph 1- Frequency of Propedeutic and Zetetic Contents in the main Curricular Reforms of the Republican Period - from 1889 to 2023 (%)



Source: created by the author (2023).

Graph 1 shows, among other aspects, how Sociology has shown itself, throughout history, to be less important from a regulatory point of view than other curricular contents, even though Law is a social science. In the same way, the History of Law succumbed to the preponderance of dogmatic knowledge of Law, despite its relevance being indisputable for understanding the historical evolution of legal institutes and State control mechanisms. On the other hand, the dogmatic contents of Law have established their positions throughout history, guaranteeing prestige and power to those who occupy these spaces. Graph 2 below demonstrates the relevance given by the State through its agents to some contents of positive law and, consequently, by the university field that is constituted in accordance with regulatory standards. Graph 2 presents this reality:

Graph 2- Frequency of Dogmatic Contents of Law in the main Curricular Reforms of the Republican Period - from 1889 to 2023 (%)



Source: created by the author (2023).

The graph above can be analyzed from the perspective of Bourdieu (2020), to whom there are specific symbolic capitals that have value within each field. When studying the legal field, the author highlighted that the set of codes, the domain of jurisprudence, and legal doctrine are examples of objectified cultural capital, the appropriation of which matters for the rise of professionals to positions in the provisions of the professional field. Positive law, therefore, becomes symbolic capital that has the power to produce effects both in the legal field and in the field of legal training, which are interrelated.

Educational regulation, also based on the normative paradigm and with the support of agents who seek to maintain their positions in the field of legal training, in turn, also contributes to the maintenance of this symbolic power of legal positivism in Law training.

Two aspects pointed out by Bourdieu (2017) are relevant to the analysis of the results identified in the research into the curricular structure of Brazilian legal education. One of them is associated with the intellectual and scientific prestige that professors in such positions recognize, "especially within the limits of their temporal strength, as a true intellectual or scientific authority" (BOURDIEU, 2017, p. 142). Professors who teach such content, having historically ensured the relevance of their discipline and, moreover, given the intellectual authority gained through the investments made in their career, are able to obtain an effect corresponding to the hierarchization of the teaching staff resulting from the training content, even that it is not expressed.

The teaching recognition obtained by their peers and students in the field of legal training, as well as the traditional access they have to administrative positions of power in the university environment, grants these agents a symbolic power that gives them legitimacy in the field of legal training and access to provisions in which they can express themselves about the structure of legal education and contribute to "innovating" with the same epistemological paradigm, maintaining the same power and prestige relations of the academic world. In that regard:

> What may seem like a kind of collective and organized defense of the teaching staff is nothing more than the accumulated result of thousands of independent and yet orchestrated reproduction strategies, of thousands of actions that effectively contribute to the conservation of the body because they are the product of this a kind of social conservation instinct that is a dominant *habitus* (BOURDIEU, 2017, p. 196).

The positivist philosophy approach, rooted in the culture of the professional field and in the practices of Law Course teachers, and issues relating to the State's power of appointment and the division of legal labor as a mechanism for interpreting and updating the norm, contribute to the understanding of the valorization of the norm in legal education and in the professional field and, consequently, for the maintenance of legal education in traditional ways. Machado (2009) points out that mere curricular reform is not enough to guarantee the desired critical, politicized, and humanistic training of the bachelor, which enables the graduate to recognize the new legal, social, and political problems of contemporary societies. For him, the revolution in legal education would be an epistemological one, with the replacement of the axiological paradigms of positivist normativism and the overcoming of the methodology centered on the logical-formal investigation of positive law.

It is necessary to analyze the naive claim to resolve the crisis of legal training under the argument of innovation, as if innovation, according to Bourdieu (2015a), occupied a place in the social space. Innovation is a type of renewal that occurs within the field of struggles carried out by the same group that aims to maintain the conservation of its positions within it. It is an

attempt to innovate to guarantee the continuity of its space in the field. The classical contents of Law, standardized, end up "naturally" occupying historical and large spaces in the curricular guidelines and, consequently, in the pedagogical projects of Law Courses. This is why the data cannot be analyzed in isolation, but based on its genesis and the relationship between legal training and the professional field and with the capital accumulated by agents in the university field, as well as power relations and games established in these fields. It is clear that professors want legal education to expand its training dimension and, of course, they seek to do so. However, a sociological and paradigmatic discussion precedes the elaboration of a new legal education, adapted to current demands and meeting new social demands.

Final considerations

The examination of the historical configuration of the curricular matrices of Law Courses in Brazil showed that the classic dogmatic contents of Law, with a coding character, such as Criminal Law, Civil Law, and Procedural Law in all its branches, have a prominent space in chronography of Brazilian legal education. On the other hand, the propaedeutic and zetetic contents, which allow a broad evaluation of legal phenomena and the effects of the norm, have low relevance in the history of the training curriculum of law graduates, as is the case of Sociology, Ethics, History of Law and even Philosophy.

It should be noted that the proposals for overcoming reproductive legal education of the classic normative content by changing the curricular matrices of Law courses, although they present themselves as innovative, they tend towards a type of renewal within their field of struggles, led by the same group that aims to maintain the conservation of its positions within it. It was verified, therefore, that the regulation, supported by the symbolic power of the norm, ratifies the epistemological foundation of a positivist nature that contributes to the maintenance of the reproductive phenomenon of a dogmatic and technical nature in the training of law graduates in Brazil.

However, by way of conclusion, it is important to say that "the *habitus* is not eternal, it changes, it is worked on" (BOURDIEU, 2019, p. 335), especially in periods of instability or collapse. The excessive growth in the number of Law Courses in Brazil and its discrepancy in relation to emerging social demands demonstrates that it is time to recognize and understand the symbolic power of the norm with its mechanisms of domination and reproduction of the training of Law graduates so that the cognitive structures of agents are renewed, and effectively innovative initiatives are put to experimentation.

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