

Mapping academic exchanges: beyond the North-South divide

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To speak of power and dominance in regards to the production of legal knowledge is counterintuitive at least in two ways. First, law tends to understand itself as national or local or somehow particular to the ways of a sovereign. In this sense, legal knowledge tends to be considered as bound to the specificities of each jurisdiction. Second, knowledge tends to understand itself as objective in the sense of being outside of power and will.

These two suppositions, however, have been considered problematic at least for the past century. The idea that law is always national or local or particular was challenged by two disciplines within law itself: comparative law and international law. Both of them have aspired to render national law commensurable, comparable and, in the case of international law, accountable. Both of them have remained marginal in many contexts but have definitely changed the way in which we imagine law and we justify refusals to engage with the excess that lies outside the national borders. The idea that legal knowledge is scientific in the sense that it exists outside of power and will, on the other hand, has been contested to expose that dominant ideas are not necessarily closer to any understanding of truth but rather achieve status because their backed by economic prowess, military strength or a contingent will to become global.

In this paper, I intervene in this debate in three ways. First, I locate the claim of a north-south divide in regards to legal knowledge in the wider context of arguments about the production and dissemination of ideas about the law, particularly in the realms of comparative law, international law and legal theory. This wider context reveals the type of geographic dispersion that the idea of the north-south divide is working against, but also highlights the regimes of distribution of power that it condones. Second, I explore the actual practices of

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academic exchange in legal academia in the Americas to show the limits of the idea of the north south divide to account for the exercise of power. Finally, I propose two ideas about how to change the terms of the debate in order to overcome the binaries that seem to feed and stabilize the feelings of glass ceilings and sticky floors that are associated to the idea of the north south divide.

I. Three debates about legal knowledge and its situated, yet objective, nature

I propose thinking about the argument of the north south divide in relation to three debates about legal knowledge: the debate about the comparability of national laws, the debate about the accountability of national laws to international law and the debate about the production and circulation of legal knowledge within a widely defined discipline of Jurisprudence. I am particularly interested in the dichotomies that structure each debate and their relation to the problem of the nation and the political.

A. Comparative law: between culture and nature

Simply put, comparative law is about finding similarities and differences among legal systems. Comparativists disagree about the unit to be compared, the aim of the comparison and the conclusions of the exercise. These disagreements are structured along the culture/nature divide in so far as arguments about sameness and difference tend to be construed with reference to the issue of the intervention of human action in the production of the characteristic under scrutiny. By foregrounding, alternatively, culture and nature, comparativists intervene to decenter the nation state as the agent and object of legal knowledge. On the other hand, by demanding that knowledge be scientific, they confront legal knowledge as merely the construction of concepts or the deduction of consequences from the correct interpretation of rules.

Thus, with respect to the unit to be compared, there have been four major positions. The first, proposes geographical regions as determinants of legal necessities and, therefore, as the basic units for thinking about the law. One

version of this was Montesquieu's division of the world in three different regions according to weather: tropical, moderate and temperate.² The author attributed to each region the capacity to influence human action to the point that government and legislation needed to be thought of differently.³ For the tropical region, where individuals were passionate and disorderly, the appropriate was discretion and caprice. For temperate regions, with obedient and autonomous individuals, democracy and self-rule were the best fit. Finally, for moderate regions, monarchy as a hybrid or mid-point between the two, was mandated.⁴ Because, and when, geographic regions are defined by characteristics that are deemed “natural” or preexisting human action, this position is aligned with nature.

The second position understands that the basic unit to be compared is the legal family or legal tradition. Legal families are considered the result of intense cultural interactions that can help to trace influences between legal systems due to processes of colonization, emulation or integration. René David, the famous articulator of this idea, proposed the existence of three major legal families: common family, the Romano-germanic family, and the soviet or socialist family.⁵ The concept of legal tradition, on the other hand, relates to the construction of similarities through shared conventions and practices. Therefore, while the idea of the legal family tends to be static because it is built genealogically, the legal tradition concept wishes to accommodate the dynamic nature of the contours of the region defined by it.⁶

These two versions of the idea of grouping legal systems following their affiliation to a set of ideas and practices, contrary to the previous position, adheres to the side of culture to identify what is worth talking about when it comes to law.

For a third group of authors/theories, the unit for comparative analysis must be the norm, understood as a response to a social problem that, even if situated, may be characterized in such a way that it gets repeated in other jurisdictions; also the

² Montesquieu, *The Spirit of the Laws* (The Hafner Library of Classics, 1949), pp. 6-7.

³ Ibid, pp. 8-70.

⁴ Ibid, pp. 6-7.

⁵ René David, *Major legal systems in the world today* (Free Press, 1978)

⁶ Patrick Glenn, *Legal traditions of the world* (Oxford University Press, 3rd. ed. 2010)

norm as a cultural product that may travel and be disseminated around the globe. Weber, for example, proposed a functionalist approach to comparative law on the basis of ideal types of legal systems or legal reasoning that included irrational formalism, as the Roman legal system, and rational formalism, that he believed was proper of capitalist economies.⁷

Finally, the fourth position, inspired by anthropological thinking, holds culture as the unit for comparisons and foregrounds the incommensurability of culture as a principle for comparative studies. In this sense, it radically transforms the comparative exercise to force it into staying in one locale to understand fully the subtleties and richness of one instead of finding it across the board.

In relation to the goals and conclusions that may be arrived at through the comparative exercise, three positions deserve being highlighted: universalizing, functionalist and cultural. The first position, universalizing position, would understand comparative analysis as geared towards finding the underlying principles or logics to different sets of rules with the intention of producing Codes or Statutes that most countries in a given region, or in the world, can adopt as their own.⁸ The second position, somehow more modest but still very ambitious, holds that comparative studies should provide solutions for common or recurrent problems.⁹ The third position, cultural, is oriented towards emphasizing the differences and incommensurability of legal thinking with the intention of showing the way in which transplants engender or widen the gaps between law in the books and law in action; or aiming at resisting a certain way of thinking about the law by claiming the equal value or superiority of the legal system being studied.

The following table may be useful in understanding how the two sets of categories can intersect in the work of different authors:

⁷ *Max Weber on Law in Economy and Society* (Max Rheinstein, ed.) (Harvard University Press, 1954)

⁸ The Universal Declaration of Human Rights, for example, was based on the work of commissions that studied many constitutions from different traditions. See Mary Ann Glendon, *A World Made Anew* (Random House, 2001). Eleanor Fox provides a good example of the universalizing sensibility in her article "Harmonisation of law and procedures in a globalized world: why, how and what?" in 60 *Antitrust Law Journal* 593 (1991-1992)

⁹ K. Zwigert and H. Kötz, *Introduction to Comparative law* (Clarendon Press, 1998, orig. 1977). Also, for example, Max Gluckman, *Politics, Law, and Culture in Tribal Society* (Oxford, 1965)

Table 1. Comparative law

Unit of analysis	Natural Region	Family tradition	or Rule or set of rules	Culture
Ends of the comparison				
Universalizing	*	*	Common Core of European Private Law ¹⁰	*
Functional	*	David	Zweigert	Gluckman
Cultural	Montesquieu	Glenn	*	

Comparative law as a discipline, thus, has contested the idea of the nation, and particularly of the nation state, as a political scheme that is not necessarily meaningful for the true scientists. Of the four positions described above, only some versions of the legal traditions position and the cultural position will accept that the nation can signify either as a claim of local elites that is worth studying (the national tradition) or as an accurate description of a culture (the nation as a culture).¹¹

But not all contestation of nationalism within comparative law has had the same political value. In some cases, comparative law has been understood as a valuable tool for colonialism and imperialism.¹² While in others, comparative studies have been pursued as a way to resist colonialism. This was, for example, the case of Lambert’s intervention in Egypt: teaching French law as an epistemological and

¹⁰ The Common Core of European Private Law is a several year long project. See: <http://www.common-core.org/> (last visited April 8, 2012)

¹¹ Patrick Glenn, “Nationalist Heritage” (*Comparative legal traditions*, Legrand and Munday, eds.) (Cambridge University Press, 2003), pp. 76-99. Lama Abu-Odeh proposes a way in which the nation becomes culture in the case of the veil. See her “Postcolonial feminism and the veil: Thinking the difference” in *Feminist Review*, no. 43, p. 26.

¹² This is for example Ahmed A. White’s interpretation of Max Weber in “Max Weber and the Uncertainties of Categorical Comparative Law” (*Rethinking the Masters of Comparative Law*, Annelise Riles, ed.) (Hart Publishing, 2001), pp. 40-66. John Henry Merryman explains how colonial administrators used comparative law in his “Comparative Law and Social Change: On the Origins, Style, Decline & Revival of the Law and Development Movement” in *The American Journal of Comparative Law*, vol. 25, 1977.

political alternative for imagining Egyptian modernity.¹³

The nation, on the other hand, remains a phantasmagoric possibility in so far as comparativists insist on the culture/nature dichotomy and the issue of the unit of analysis. First, the idea of nation retains its meaning of group of people bound by a language and a tradition, consequently a culture, even if so many people have demonstrated that every claim to nation inscribes a project of homogenization that kills a civilization.¹⁴ Second, the act of establishing the unit of analysis in the context of the nation as a meaningful signifier determines an engagement with the nation, be it positive or negative.

In the same vein, comparative law as a discipline has contested the idea of law as logic or deduction, even if comparativists do not agree on a general critique of scientific knowledge. Questioning what passes for logic or deduction as a reason for a rule or a certain interpretation of a rule, was somehow the impulse of Montesquieu's first attempts at articulating a vision of the need to draft laws in such a way that they "reflected" or were "responsive to" the facts that they were to govern. It was also the leit motiv of the *Congrès International de Droit Comparé* held in Paris in 1900 and organized by Saleilles and Lambert, for whom the social had a quite more definite shape than for Montesquieu and had particular implications for taking distance from the nation states construed as liberal states.¹⁵

The interrogation of logic and deduction applied to legal rules did not lead to a full embrace of law or knowledge as politics. Rather, comparative law was inspired in a strong belief in the usefulness of approaching law as a phenomenon with a scientific attitude and tools. The methodological debate occupies comparativists to this day.¹⁶

¹³ Amr Shalakany, "Sanhuri and the Historical Origins of Comparative Law in the Arab World (or How Sometimes Losing your Asalah can be Good for You)" in (*Rethinking the Masters of Comparative Law*, Annelise Riles, ed.) (Hart Publishing, 2001), pp. 152-188.

¹⁴ J.G. Herder, *Treatise on the Origin of Languages* (1772). See Royal J. Schmidt, "Cultural Nationalism in Herder" in *Journal of the History of Ideas*, vol. 17, No. 3 (Jun., 1956), pp. 407-417; Richrd White, "On the Ethics of Nationalism" in *Humanitas*, vol. 18 (2005), pp. 166-181.

¹⁵ Amr Shalakany, *Sanhuri*, op.cit.

¹⁶ David Kennedy, "New Approaches to Comparative Law: Comparativism and International Governance," *Utah Law Review*, vol. 2, p. 545 (1997)

Logic and deduction continue to haunt the enterprise of comparative law, just as the notion of the nation, in so far as speaking the law, in order to compare it, demands taking a stance on the issue of the role of logic and deduction in understanding the actual or potential effects of a given rule or set of rules.

B. International law: national responsibility, social groups and power

International law has also hosted a deep skepticism about the bounded nature of law and legal knowledge. This skepticism has inspired two types of projects: the critique of sovereigns and the critique of nation states. Each project has a view on the sources and legitimacy of international law, as well as a position with regards to the role of politics in establishing legal knowledge.

The impulse to criticize sovereigns, even before the birth of nation states, was an important foundation for the demand that, beyond the power of a certain monarch or the Pope, there were rules of good conduct that should be obeyed by all. Francisco de Vittoria, for example, was adamant in locating the question of the behavior of the Spanish Kings towards the natives found in the Americas in the realm of the rules of behavior of a sovereign vis-à-vis another sovereign and not simply of the relationship of a sovereign vis-à-vis disaggregated individuals.¹⁷ In this context, he maintained, the rules of neither sovereign could be invoked as the final measure of the fairness of a given action. Somewhat, a separate and superior set of rules should be found to absolve the conflicts that could arise among the sovereigns. The power of the Pope would not be enough in a case, such as this, in which one of the parties did not recognize his superiority.¹⁸

The problem of war, defined strictly as the situation of confrontation between equal sovereigns, is limited, nevertheless, to sovereigns. In this view, this means that the rules enacted by the sovereign to deal with its subjects are not liable to generalized scrutiny. But to be accounted as sovereigns, governments do need to

¹⁷ *Vitoria, Political Writings* (Anthony Pagden and Jeremy Lawrence, eds.) (Cambridge University Press, 1991)

¹⁸ *Vitoria, op.cit.*, p. 239 and ff.

be able to present themselves as able to impart order among the population and not incur in acts of extreme cruelty to get this result.¹⁹

The critique of nation states led to two quite different visions of international law. The first one proposes displacing nation states to give rise to the possibility of seeing individuals as exercising power inside and across territorial borders and being liable for these actions. This critique is largely inspired by the social theory of law that was articulated mainly by French scholars during the first half of the twentieth century.²⁰ According to this theory, legal thinking has focused too much on the individual and too little on relationships and therefore has missed interdependency, or solidarity, as a basic fact of social life.²¹ By missing interdependency, it has overstated the role of fictions in handling conflict and exaggerated the power of those who end up as Kings or Presidents.²² Foregrounding interdependency, on the other hand, meant reconsidering the multiple associations of individuals and the legal rules they engendered, including rules for the international sphere.²³

The second view inspired by the critique of the nation state simply emphasizes the responsibility of the nation state vis-à-vis its citizens by way of holding it accountable for securing their rights and not simply for guaranteeing any semblance of order achieved beyond cruelty.

International law, in this sense, has worked against the grain of the national, both rejecting the need of the nation state to imagine the international sphere, such as in the view inspired by the critique of sovereigns and in the social theory of law, and demanding national law to be increasingly accountable to international law. The idea of national law, however, haunts international law as it moves toward a

¹⁹ *Ibid*

²⁰ A strong critique of the liberal idea of the state from a social point of view may be found in Leon Duguit, "Objective Law" in *Columbia Law Review*, vols. 20 and 21, 1920-21.

²¹ For example, Leon Duguit, "Concept of Public Service" in *Yale Law Journal*, vol. 32, pp. 425-235, 1922-1923. Also, Louis Josserand, "Le protection des faibles pour le droit" in *Legal Essays in Tribute To Orrin Kip McMurray* (Max Radin and Alexander Marsden, eds.) (University of California Press, 1935), pp. 221-244.

²² Duguit, *Objective law*, *op.cit.*

²³ See, for example, Georges Gurvitch, *Sociology of Law* (Philosophical Library, 1942)

demand for rights based accountability that requires nation states to secure actions oriented to the satisfaction of rights.

Then again, international law has also been a site for contestation and resistance to the idea that law is merely a technical or neutral instrument for the achievement of peace. It has been accused of false universalism, of hypocrisy and of fostering colonialism and imperialism while pretending to condemn them.

The accusation of false universalism is intimately connected to the claim that international law is founded on universal or general principles of law that can be deduced from the nature of things.²⁴ Critics have pointed out that what appeared to be the nature of things was only one perspective, inspired by certain values and beliefs, and not a comprehensive view of ethics. This charge has been particularly important in relation to human rights and the habit of speaking of them using the word “Universal” in front of them.²⁵

The indictment of hypocrisy, in a similar manner, refers to the use of international law to justify or legitimate actions against the national elites of subordinated countries when these actions seem to benefit the oppressors more than helping the local citizens whose interests are waved as inspiration for intervention.²⁶ In particular, countries belonging to the West and or the North are blamed of being too fast to point to the misgivings of the countries in the East or the South, and not critical enough of their own situations.²⁷

Finally, for many it has been crucial to point to the structural bias of international law to colonialism. That is, to highlight the fact that international law was thought up and developed in the context of colonialism and, while departing from the

²⁴ See, for example, Carl Schmidt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum* (Telos Press, 2003, orig. published 1950); Immanuel Wallerstein, “European Universalism: the Rhetorics of Power” (New York University Press, 2006), Emmanuelle Jouannet, “Universalisms and Imperialism: The True-False Paradox of International Law?” In *European Journal of International Law*, 2007, pp. 379-407.

²⁵ Among many others, Boaventura de Sousa Santos, *Towards a New Common Sense* (Routledge, 1995)

²⁶ See, for example, Joel Ngugi, “The World Bank and the Ideology of Reform in International Development Discourse,” *Cardozo Journal of International and Comparative Law*, vol. 14, 2006, p. 313;

²⁷ One example in Karen Engle, “Female Subjects of Public International Law: Human Rights and the Exotic Other Female” in *New England Law Review*, Vol. 26, 1992, pp. 1509-1526.

position of self determination as a universal principle, always ended up justifying the territorial occupation and/or domination of one nation by another.²⁸

The following table sums up the positions in international law with regards to national law and politics (table 2):

Table 2. International law

Equality	IL as the law of peace	IL as social law	IL as a limit for national elites
(Examples)	Francisco de Vitoria, Hugo Grotius	Gurvitch, Saleilles	Universal Declaration of Human Rights
Subordination	IL as hypocrisy	IL as colonialism	IL as false universal
(Examples)	Joel Ngugi	Tony Angie	Boaventura de Sousa

C. The objective nature of legal knowledge

The idea that knowledge is neutral or unbiased, and legal knowledge, consequently, has these very same characteristics, has also been intensely criticized at least for the last one hundred years. Knowledge, in general, has come to be represented as the result of political battles and contingent constellations of interest and subjectivities, rather than as a “reflection” or “picture” of a reality outside of our minds. Thus, in the sixties Kuhn proposed a model of politics in knowledge that has transformed the perception that even the firmest believers of scientific neutrality have come to adhere to.²⁹ Kuhn proposed that worldview changes, or scientific revolutions, demanded much more than good, or true, ideas: they implicated the mobilization of the elites, pooling of resources, sound framing and good timing. Kuhn described the backstories of the production of truth in such a convincing way that he inspired a whole line of research concerning the contexts

²⁸ For example, Anthony Anghie, “Francisco de Vitoria and the Colonial Origins of International Law” in *Social and Legal Studies*, vol. 5, 1996, p. 321; Anthony Angie, “Finding the Peripheries: Sovereignty and Colonialism in Nineteenth Century” in *Harvard International Law Journal*, vol. 40, 1999, p. 1; B. S. Chimini, “Third World Approaches to International Law: A Manifesto” in *International Community Law Review* 8: 3–27, 2006.

²⁹ Thomas Khun, *The Structure of Scientific Revolutions* (University of Chicago Press, 1962)

that made possible the triumph of certain scientific paradigms.³⁰

The reverse idea of the power of knowledge was forcefully defended by Michel Foucault some decades later in his book *Will to Knowledge* (the first volume of his *History of Sexuality*).³¹ In this book, Foucault provides an account of sexuality as an instrument of power that resulted from the careful balance of an invitation to speak about sex in all its forms and colors, and chastisement for having too much or wanting more of it. The instrument or dispositive that resulted from this selective engagement with sex by those who could ask and take note, situated women as wondering wombs, children as asexual angels, and homosexuals as perverts. The production of these abject subjects would not have been possible but for the rich accounts accumulated by priests and physicians through their peculiar modes of confession.

In regards to legal knowledge, the geographical impact of the critique of objectivity can be traced to at least three competing views. According to the first view, I will call it dependency theory for its heavy reliance on the insights developed by Raúl Prebisch and Hans Singer in the 1950's; production of knowledge is concentrated in the "north" while the consumption of knowledge is concentrated in the "south".³² The basic reason provided for this role distribution in relation to knowledge is the resource differential and the impact it has on the size of libraries and Universities. The most relevant consequence that those who share this vision point to is the continued imposition or transplant of legal institutions and the legal knowledge that comes with them, and the institutional instability that derives from continuous changes in rules and regulations.³³

Dependency theorists of knowledge have supported the creation of public universities in the south, and their protection beyond their productivity and recognition. They also favor the consumption of locally produced ideas and the

³⁰ For example his discussion on the "discovery of oxygen" in chapter VI. Kuhn, *Structure*, op.cit.

³¹ Michel Foucault, *History of Sexuality*, vol. I, *The Will to Knowledge* (Penguin Books, 1984)

³² For example, Diego Lopez Medina, *Teoría Impura del Derecho* (Temis, 2004)

³³ For example, Jorge Esquirol, "The Failed Law of Latin America" in *American Journal of Comparative Law*, vol. 56, 2008, p. 75

isolation of impoverished locales to strengthen their capacity to compete.³⁴

The second view is deeply influenced by cultural relativists and shares with dependency theory the idea of role distribution. However, it does not hold that this role distribution is influenced by economic factors or structures, but by ideas of cultural supremacy and inferiority.³⁵ Ideas of cultural supremacy of the north and the inferiority of the south are considered distortions of the real worth of legal knowledge. For some, overcoming the divide means, then, subjecting these ideas to critique to create the possibility of authentic appreciation of the truth. For others, it means giving up on the notion of the monopoly of creativity and recognizing mimicry as misreadings that have foundational potential.³⁶

The third view, we could refer to it as legal consciousness theory, holds that in the last two centuries, at least three modes of legal consciousness locally produced and enriched, have become global.³⁷ The origins of such modes of thought and organization, contrary to the previous model, are not determined solely by economic might or military power, though both factors influence the types of dissemination they go through. Rather, they appear as contingent scenarios for the unfolding of history.³⁸ The loss of credibility of one mode and the ascent of a new one, on the other hand, are presented as progressive and coexisting in so far as each new mode has relied heavily on a critique of the previous one to succeed.³⁹

In this third view, the privilege of global dominance is not understood as inviting local subversions, since each local attempt is little more than a performance of the few arguments available in legal knowledge at a given point in time in any and every place. Somewhat, it summons globally coordinated efforts of critique that

³⁴ For education, in general, see Martin Carnoy, *Education as Cultural Imperialism* (New York: David McKay, 1974) Pierre Bourdieu & Jean-Claude Passeron, *Reproduction in Education, Society and Culture* (London: Sage Publications, 1977); and Philip G. Altbach & Gail P. Kelly (eds.), *Education and Colonialism* (New York: Longman Inc., 1978).

³⁵ Boaventura, *Epistemologia del Sur*

³⁶ Lopez Medina, *Teoria Impura*, *op.cit*

³⁷ Duncan Kennedy, Three Globalizations of Law and Legal Thought: 1850-2000, in *The New Law and Economic Development. A Critical Appraisal* (David Trubek and Alvaro Santos, eds.), (Cambridge, 2006)

³⁸ *Ibid*

³⁹ *Ibid*

may help to adumbrate the new order.

A variation of this third view holds that legal knowledge is one layer of ideology that both subordinates local knowledge and reproduces the economic dominance of the center. Opposed to the notion of a North-South divide, this version of globalization understands that the imperial law is the law of the United States.⁴⁰

D. The argument of a North-South divide in legal knowledge in context

The idea of a North-South divide that is used as a frame for this conversation is difficult to grasp outside of the context provided by comparative and international law and legal theory. Most of the debates in these fields, however, do not engage directly the hypothesis of the north-south divide of legal knowledge. In this section I will propose a series of arguments that bring together these dispersed fields and help to organize the intuitions that guided the collection of data about practices in law schools in the United States and Latin America, which I present in the following section.

i. Legal knowledge represents the law; law is a response to/reflection of a social need determined by the intersection of economic and technological factors. Consequently, what one believes about the economy will be translated into law and the production of legal knowledge.

This package of ideas grounds geographical essentialism à-la Montesquieu, functionalist comparative thinking, and representations of international law as peace, as social law and as a limit to national elites, and Marxist, Dependency Theory and Imperialist ideas about legal knowledge (including the notion of a north-south divide and of US Hegemony).

ii. Legal knowledge represents the law; law is the autonomous result of the unfolding of history, tradition, or culture. Consequently, what one believes about

⁴⁰Ugo Mattei, “A Theory of Imperial Law: A Study on US Hegemony and Latin Resistance” in *Indiana Journal of Global Legal Studies*, vol. 10, p. 383- 448 (2003)

culture, history, tradition will be translated into law and the production of legal knowledge.

This package of ideas grounds the projects of legal families, legal traditions and legal cultures in comparative law, the critiques of false universalism, hypocrisy and colonialism in international law, and the cultural critique of the superiority of legal knowledge produced in the North.

iii. Legal knowledge is the result of highly structured battles that do not necessarily follow pre-existing distributions of power, wealth or natural endowment; which theory becomes dominant globally intervenes in the accumulation of resources and influence in a way that makes it impossible to define the direction of causality between legal knowledge and the structures that it determines and are determined by it.

This package of ideas underlies the first version of globalization theory referred to as legal consciousness theory here.

II. Practices of academic exchange

Following the intuition that legal knowledge is the result of highly structured battles that are relatively autonomous from general economic or cultural factors, I engaged the exercise of collecting data about academic exchanges between the North and the South through the lenses of the practices of invitation of professors as visiting professors and as lecturers in short conferences in eight law schools in the United States and eight law Schools in Latin America.⁴¹

⁴¹ I choose law schools that could be considered as highly prestigious and interested in having a global presence. For the United States: Yale, Harvard, New York University, Stanford, Cornell, University of Chicago, Columbia and Georgetown. For Latin America: Instituto Tecnológico Autónomo de México (ITAM), Universidad Autónoma de México (UNAM), Fundación Getulio Vargas (Brasil), Universidad de Buenos Aires (Argentina), Universidad de Palermo (Argentina), Universidad Torcuato Ditella (Argentina), Universidad Católica de Chile (Chile), Universidad de Chile (Chile), Universidad Católica de Perú (Perú), Universidad Nacional de Colombia (Colombia), Universidad de los Andes (Colombia). Only four of the Latin American law schools had information about visitors in their web pages: Instituto Tecnológico Autónomo de México (ITAM), Fundación Getulio Vargas (Brasil), Universidad Torcuato Ditella (Argentina), Universidad de los Andes (Colombia). The law school at Universidad de Chile was the only other law school to send a complete file with information about international visitors.

The amount of information I was able to gather in the last 3 months was much smaller than expected, even with the help of a research assistant, and even if this issue of information was in my mind when selecting the law schools of the sample. For the American law schools we only found comprehensive information about visiting professors and some information about lecturers, in some cases only for 2011, in others for every year since 2006. For the Latin American law schools, we only found comprehensive information of lecturers in short conferences and, in one case, also information about visiting professors. Most of information was gathered through the institutional web pages and google. Very few law schools replied to our letters requesting information.

Notwithstanding the problems of commensurability that the diversity in the sources and type of data pose, the amount of individuals we could “see” travelling was significant enough to adventure some preliminary conclusions that might guide further research on the topic. We had information for a total of 590 visitors to the American law schools in the sample and 353 visitors for the Latin American law schools in the sample. I think there is enough evidence to put forward the following ideas:

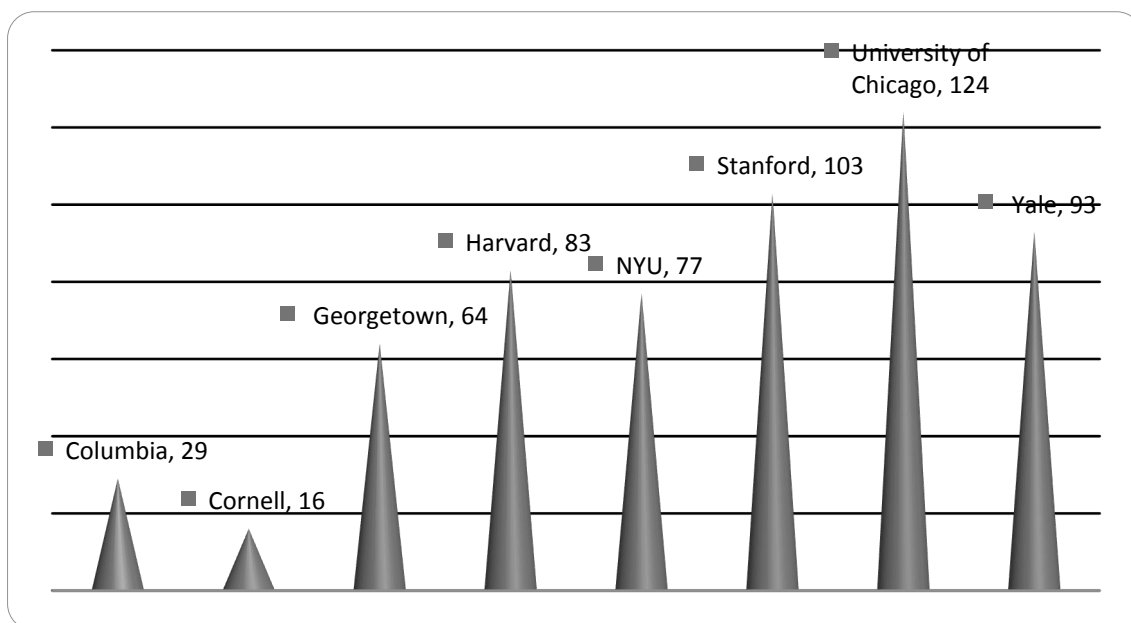
- 1) Prestige in American law schools is particularly attached to graduates from Yale and Harvard, but American law schools also support their own graduates by inviting them more often than they do graduates from other law schools.
- 2) Latin American law schools have much more diversified exchanges
- 3) Argentina is a local powerhouse of legal knowledge: it is, by far, the Latin American country of origin of most invited lecturers. This local prestige hardly gets translated into the academic exchanges fostered by American law schools.

A. Visitors to American Law Schools

As pointed out above, we collected data about visiting profesors and lecturers from

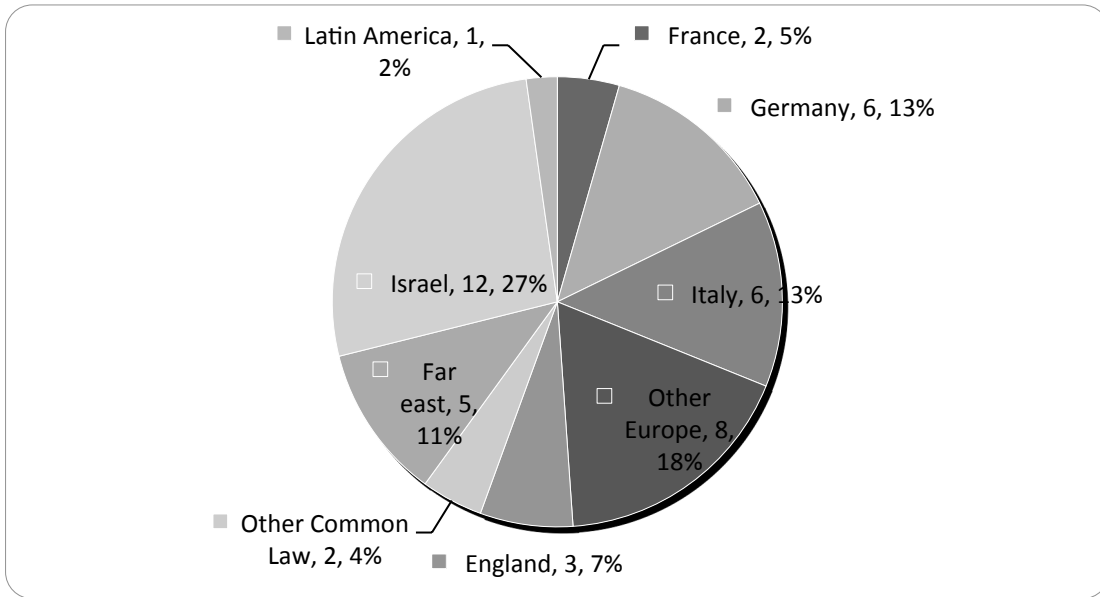
eight American law schools for a total of 590 individuals. The law school for which we have the most visitors is the law school of the University of Chicago, while we could only find data about 16 visitors to Cornell law school (see graph 1). Only for the law school at NYU we have data for all years from 2006 to 2011. For all other law schools data corresponds to 2011.

Graph 1. Visitors to US law schools

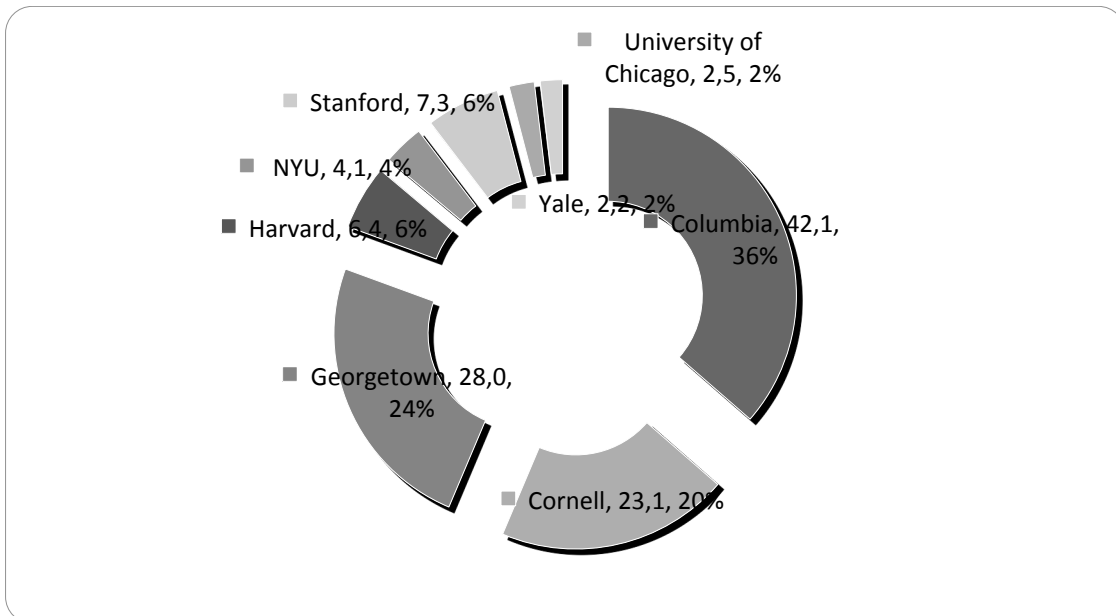


An ample majority of visitors to the law schools, according to our data, are either Americans or have been teaching for a while in an American University.⁴² Only 8 percent of the total came directly from abroad. Most foreign visitors came from Europe and most Europeans came from Italy and Germany. Israel was the country of origin of most visitors (see graph 2), while only 1 Latin American appears as visitor in the data (originally from Mexico).

⁴² We located the curriculum vitae of most visitors, using google and institutional web pages, in order to verify where they were teaching before visiting each of the American law schools.

Graph 2. Origin of foreign visitors

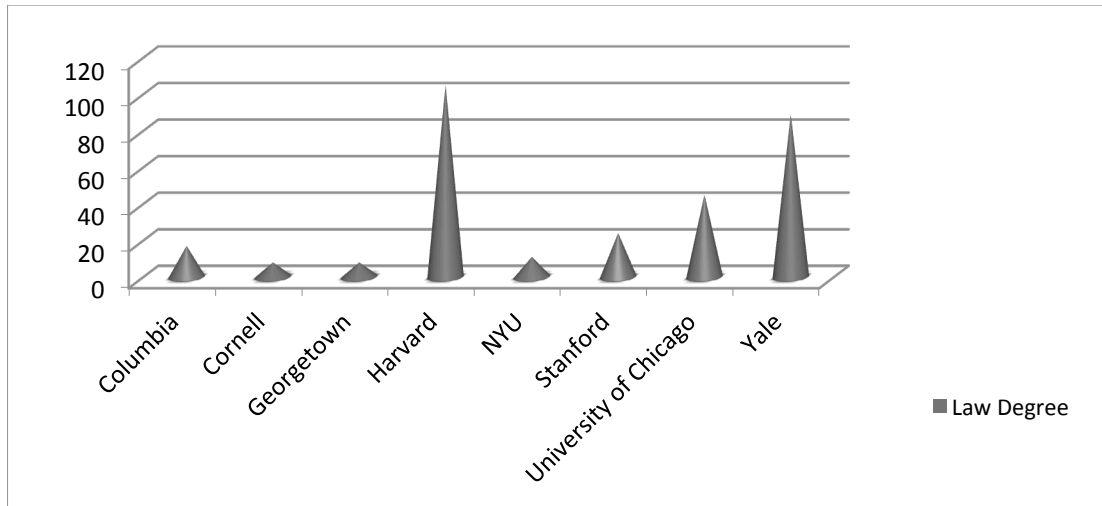
The relative weight of foreign visitors, on the other hand, increases as the total number of visitors and the prestige of the law school decreases: Columbia law school has the most foreign visitors per American visitors, while Yale has the least (see graph 3).

Graph 3. Relative weight of foreign visitors

More interesting is the data concerning the law school of origin of American visitors to these eight law schools. Out of the 541 visitors originally from an

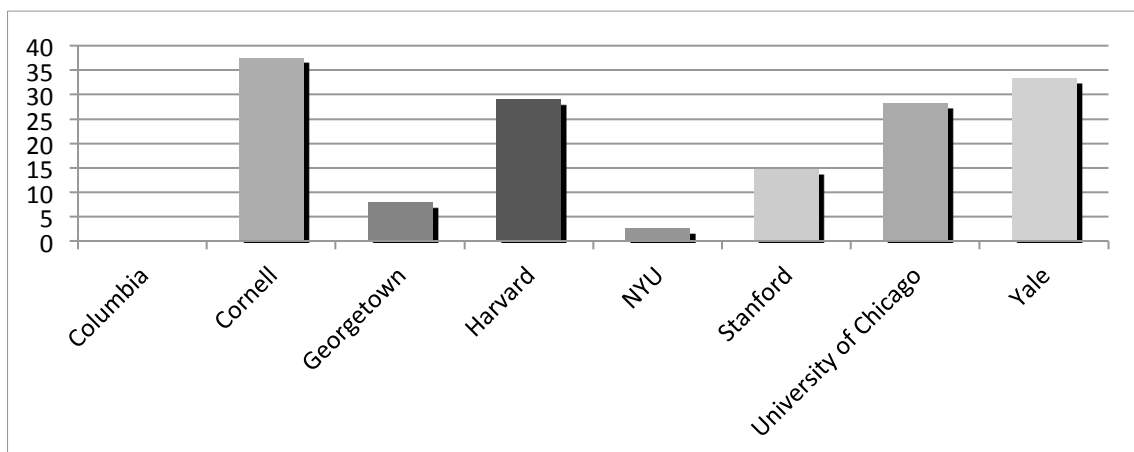
American law school, 100 graduated from Harvard Law School and 89 graduated from Yale Law School (see graph 4). A total of 54% of the visitors had law degrees from one of the law schools in the sample.

Graph 4. Law Schools from which American visitors obtained their degrees

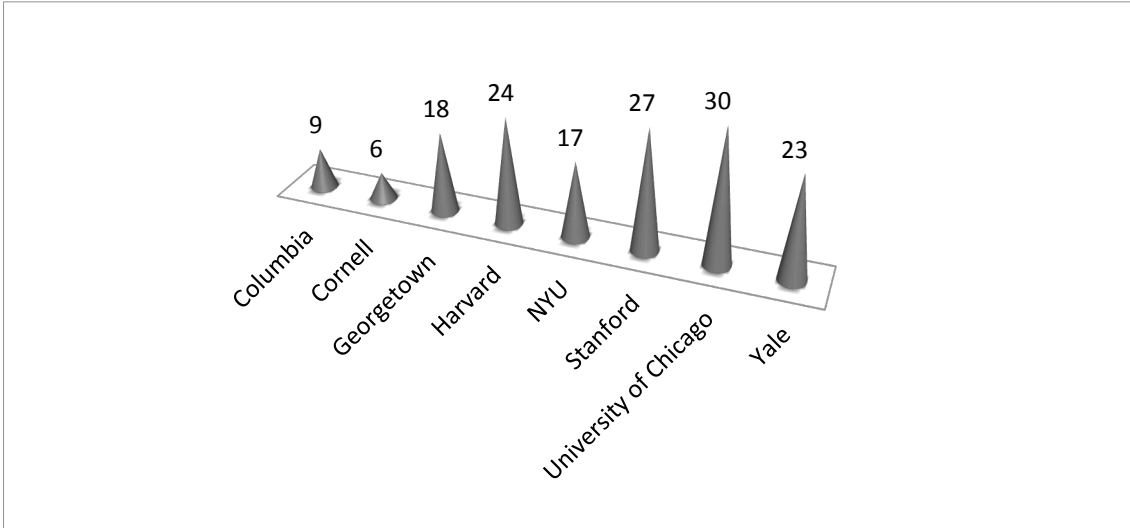


But also, most law schools tend to prefer their graduates to graduates from other schools. Cornell's law school and Yale are the most endogamic (see graph 5 where endogamy is measured as the relative weight of graduates from the inviting law school), while Chicago Kent Law School and Stanford tend to recruit among very diverse law schools (see graph 6 where diversity is measured as the number of different law schools visitors obtained degrees from, after excluding the 8 law schools from the sample).

Graph 5. Endogamy in law schools invitations

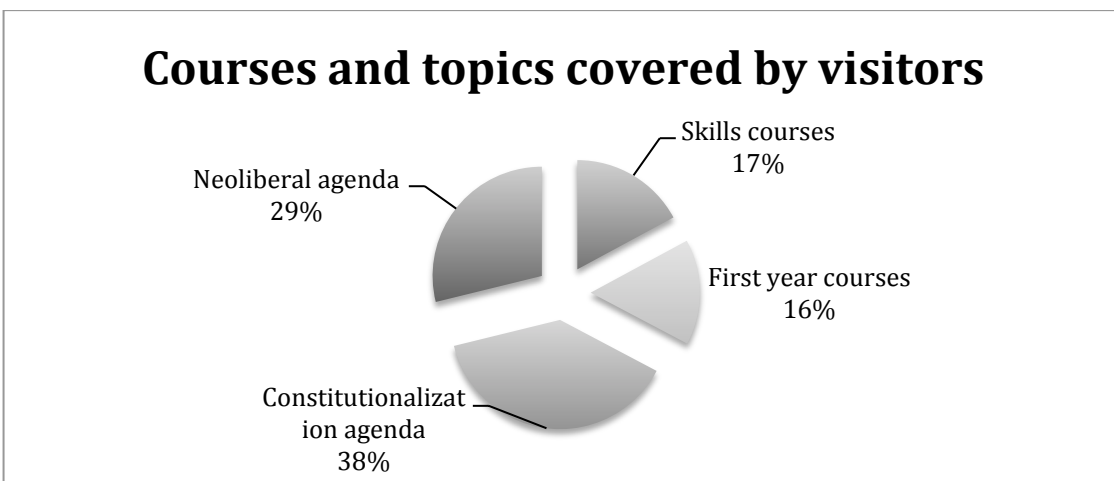


Graph 6. Diversity in law school's invitations



Finally, it is worth noting that an important number of visitors cater to the skills courses offered in law schools that are of little interest to the regular Faculty (legal writing, advocacy skills, legal profession –including ethics, and negotiation) as well as to first year courses such as property, torts, and civil procedure. Not surprisingly, if we go by any of the globalization theories –legal consciousness or imperialism versions-, most visitors (333 of 590) work on issues related to the constitutionalization agenda or the neoliberal agenda. (See graphs 7, 8, 9, 10, 11)

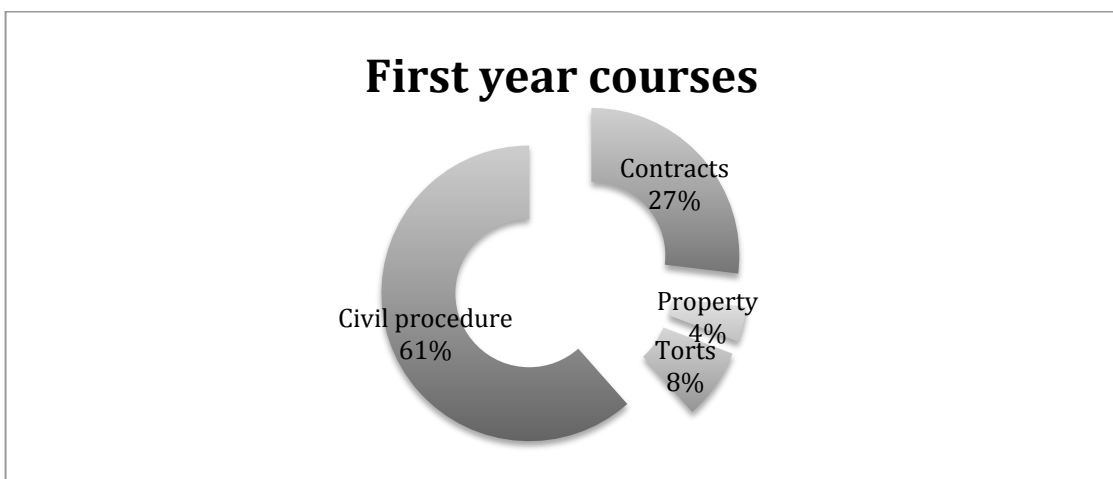
Graph 7. Topics covered by visitors

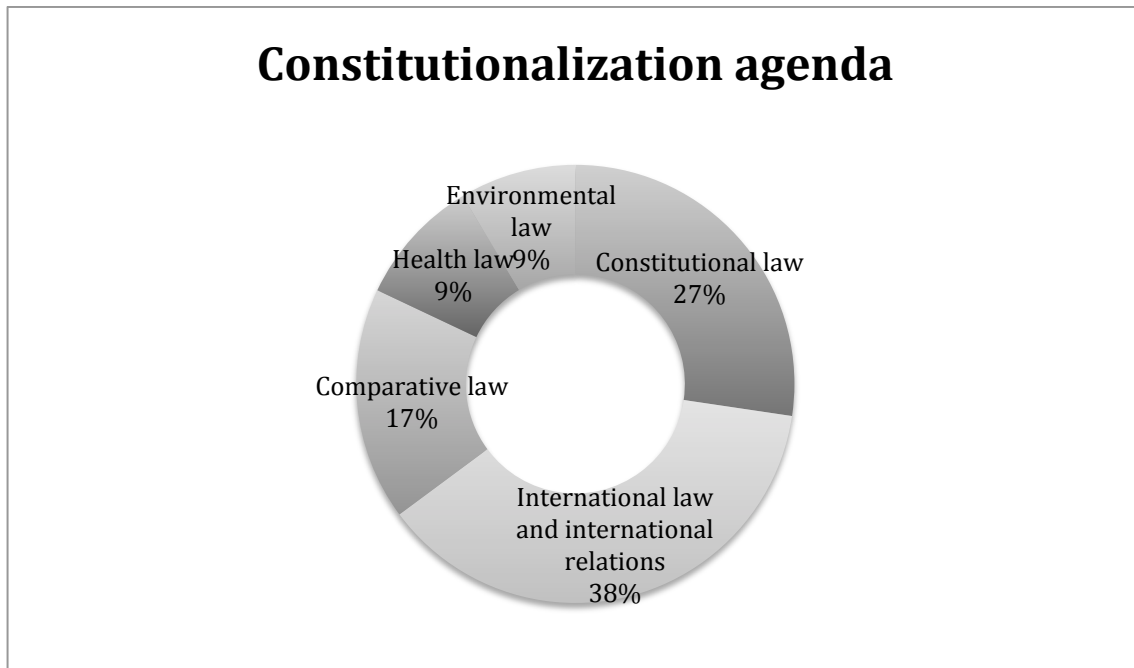


Graph 8. Skills courses



Graph 9. First year courses



Graph 10. Constitutionalization agenda**Graph 11. Neoliberal agenda****B. Visitors to Latin American law schools**

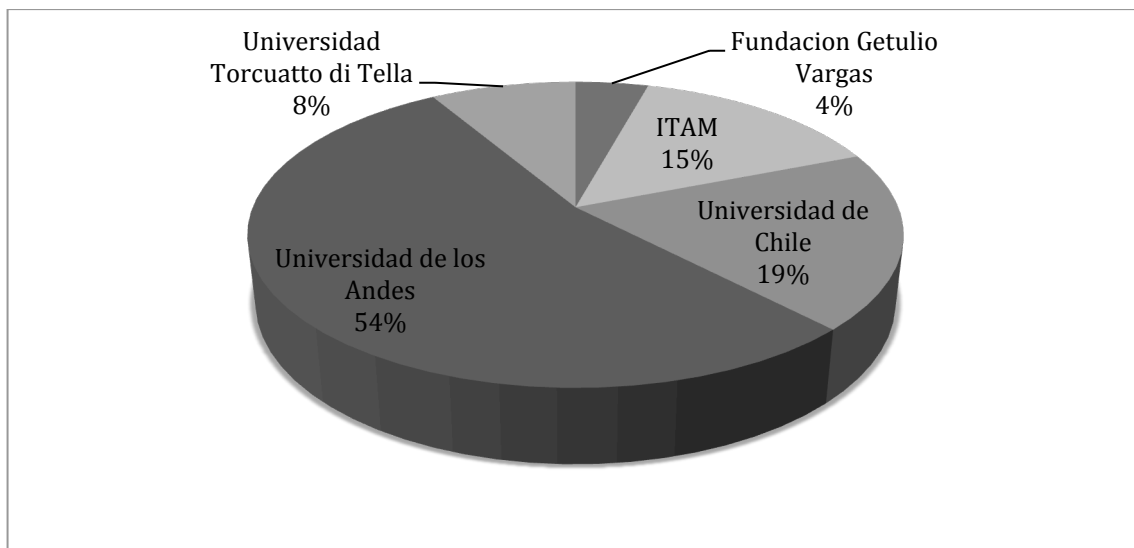
Data for Latin American law schools was restricted to 5 small private law schools from different countries in the region: ITAM (Mexico), Torcuato Ditella (Argentina), Universidad de Chile (Chile), FGV (Brasil) and Universidad de los

Andes (Bogotá) (see graph 12). In total, 353 visitors were recorded. Most information was gathered from Universidad de los Andes, with 189 visitors, and Universidad de Chile, with 66 visitors.

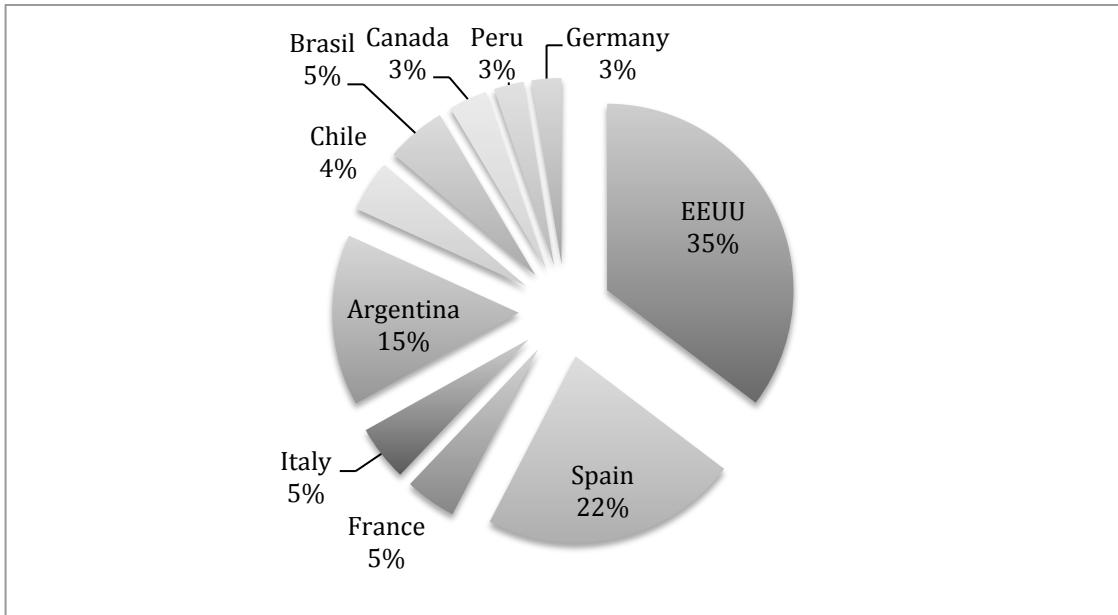
Most visitors, as the globalization theories predicted, come from American law schools. But next to this, Spanish and Argentinean scholars enjoy the most prestige in law schools around the region (graph 13). It is also worth noting that two law schools in the region invited, almost to the exclusion of all others, visitors from the United States: FGV and Torcuatto Ditella (graphs 14 to 18).

Unfortunately, information about the visitors to Latin American law schools was much more scarce in the web than information about American law schools visitors. My analysis is mostly restricted to origin in this section.

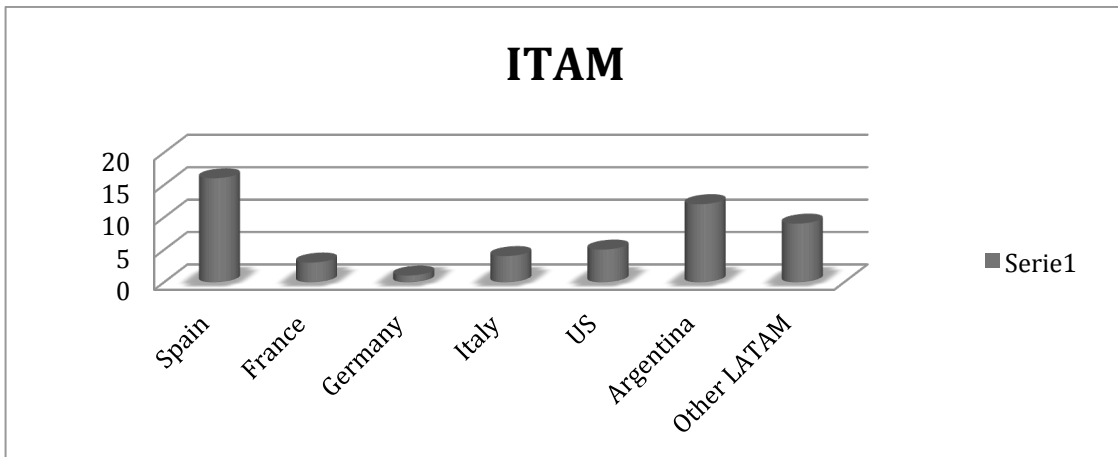
Graph 12. Visitors to 5 Latin American Law Schools



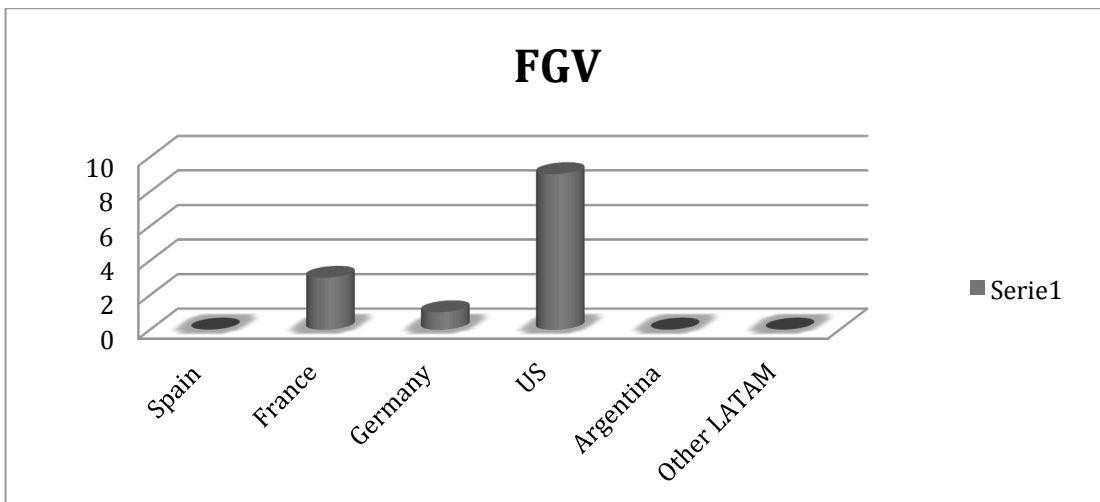
Graph 13. Countries of origin of visitors



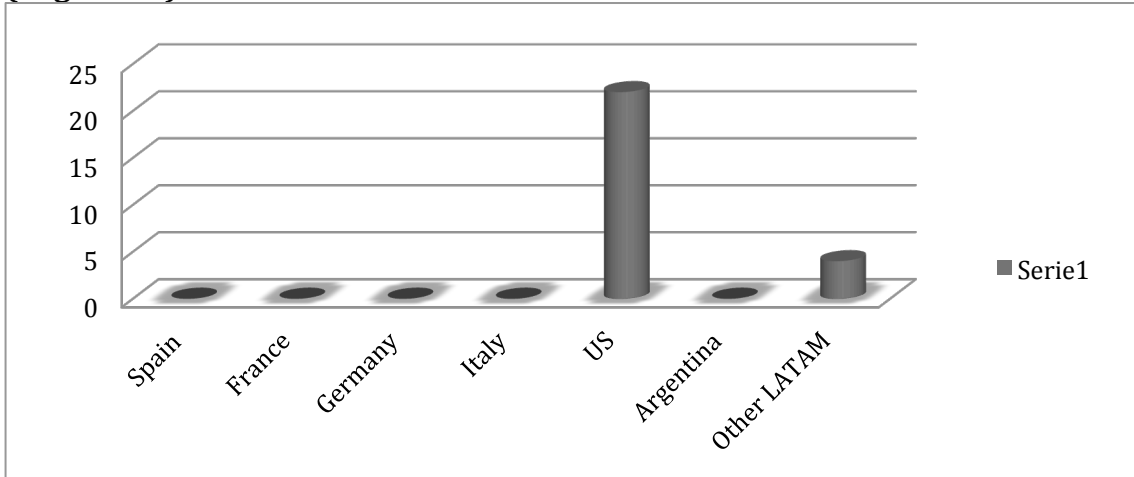
Graph 14. Countries of origin of visitors to ITAM (México)



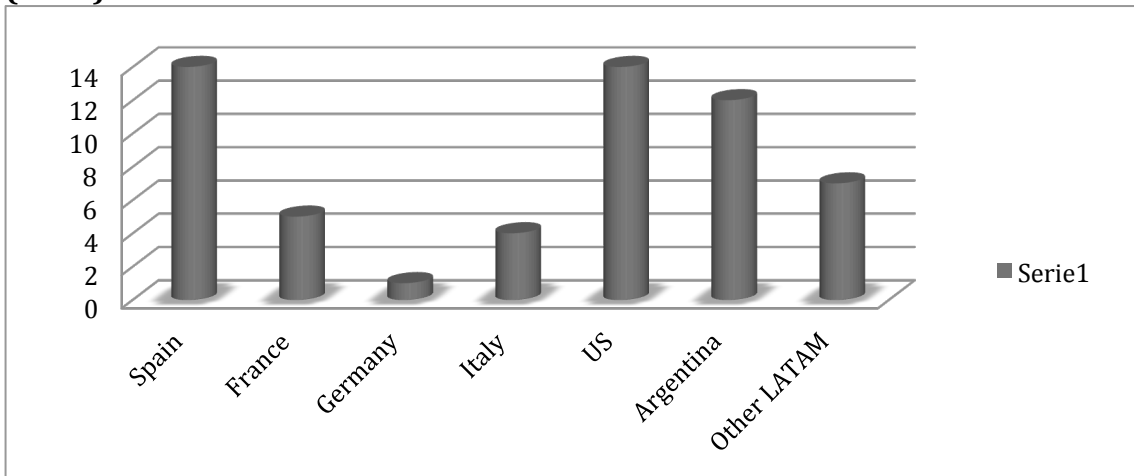
Graph 15. Countries of origin of visitors to FGV (Brasil)



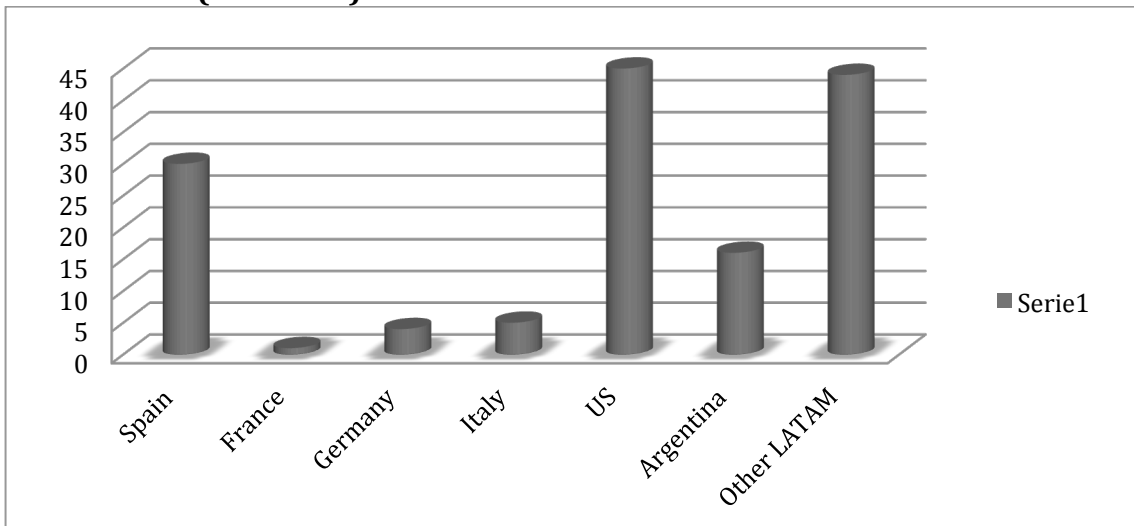
Graph 16. Countries of origin of visitors to Torcuato Ditella (Argentina)



Graph 17. Countries of origin of visitors to Universidad de Chile (Chile)



Graph 18. Countries of origin of visitors to Universidad de los Andes (Colombia)



III. Some preliminary conclusions and thoughts about future research

Understanding the production and consumption of legal knowledge beyond the enclosure of the nation state is an enterprise that for some time now has been proven worth our while. The north-south divide explanation is useful to highlight the role of external factors in the amount and prestige of knowledge produced in the wealthy countries of the north as compared to the poor countries of the south. It also gives us clues as to the function of legal knowledge in regards to the continued accumulation of resources and prestige by countries of the north. However, the north-south explanation pays too little attention to the political character of legal knowledge, thus its constitutive part in the creation of wealth and prestige. For this reason, the north-south divide explanation does not give us indication of the particular concepts and fields of law that are dominant at a given point in time, does not account for the channels of dissemination of a particular configuration of concepts, and cannot explain patterns of dominance within the north or within the south.

The primitive exercise of data collection that is presented here is persuasive as to the importance of studying patterns of academic exchange to comprehend the elements of the situation of production of legal knowledge and the elements of the situation of consumption of legal knowledge. In these situations, much more is at stake than “ruling the world” or “emulating the leaders”. American law schools, for example, use tools seemingly geared at internationalization and exchange, mostly to satisfy their basic teaching needs and tend to hire their own graduates instead of exposing their students to radically different points of view. Latin American law schools, as they get stronger, tend to diversify their visitors to get worldwide visibility and spark debate, more than single mindedly trying to win the approval of their American peers.

Using the legal consciousness theory, then again, helps to foreground the prevalence of certain topics among visitors in front of a somewhat infinite list of

conference and course names.

I believe that more quantitative and qualitative data concerning the practices of academic exchange in American law schools and law schools located in other jurisdictions could help us to identify better the politics of the construction of legal knowledge and the possibilities of establishing alliances to transform it. Extending this exercise to other regions in the world and other law schools in North and South America could be a way to get familiarized with the landscape. Having better representations of the types, sizes, ideologies and contexts of law schools around the world could be helpful in further interpreting this information.