

Spain and the Lost Legal Generation: Spain's Dysfunctional University System is Also to Blame

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A. Spanish Law Faculties and Their Students—An Unhealthy Symbiosis

For the last fifteen years I have taught final year law students at a Spanish state university on a regular basis. While it is extremely difficult to generalize about matters such as the following, I believe that the typical profile of the different groups of students I have taught over the years has been relatively homogenous in terms of quality and performance. Along with a minority of highly motivated and able students, at the beginning of every academic year the classes are mostly made up of silent students who are *a priori* reluctant to accept individual responsibilities in the learning process. Having presented this seemingly harsh appraisal with no preamble, one of the aims of this essay is to set out a series of arguments that enable us to go beyond the glib self-righteousness of blaming the students for all their woes. In my opinion, it is the Spanish higher education system that is the mainly to blame for many of the factors currently holding law students back. The following factors contribute to this outcome.

First, the low mark required for admission to legal higher education deflates the expectations of both students and faculty. In Spain, students who finish secondary education and wish to pursue university degrees have to sit for an exam called *selectividad*. Students' mark in this exam is combined with their mark for the last two years of secondary school (*bachillerato*) to determine which degree they are permitted to pursue at the university because every university offering degrees with limited numbers of available seats sets a minimum admission mark for each discipline. An essential factor here is that the minimum mark for admission to a law faculty at many Spanish universities in academic year 2013–2014 was five out of a possible ten.¹ The mark needed for admission to other

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¹ UNIVERSIDAD DE ZARAGOZA, NOTAS MÍNIMAS DE INGRESO. GRADOS (2013–2014), http://wzar.unizar.es/servicios/acceso/admisgrado/corte/grados13_14.pdf (explaining, for example, the

degree programs, such as nursing, medicine and physiotherapy, was around nine out of a possible ten.² The fact that such a poor mark is enough to study law in Spain entails a series of significant implications. In the first place, many students who fail to obtain a high enough mark to enroll in the degree program of their choice end up choosing the law degree as a fall-back option. This means that law lecture rooms contain a hotchpotch of students, many of whom are not there for reasons of vocation or convinced interest in the subject. In the second place, Spain currently has neither more nor less than eighty-one university institutions,³ the vast majority of which offer law degrees.⁴ Taken in tandem with the low admission mark, this means that most students stay in their hometowns and carry on living with their parents while they are at university. This state of affairs, which is very different from that in Germany,⁵ may impact negatively on Spanish students' degree of maturity.

Second, the Spanish legal academy is burdened with the legacy of dysfunctional faculties. Although this is a sweeping generalization that needs very careful qualification, the academic abilities of students embarking on law degrees with an admission mark of around five usually leaves something to be desired.⁶ If this is a matter for concern, then the fact that after four years studying law many of them will have failed to overcome their shortcomings and poor study habits is even more worrying. These barriers to learning remain because of a series of highly questionable and long-ingrained characteristics to be found in the university environment. When I reflect on my years as a student in a Spanish

minimum admission mark at the University of Zaragoza in the academic year 2013–2014 was 5/10 for the Law School, 9.54/10 for nursing, and 8.75/10 for medicine).

² See *Las notas de entrada para las facultades de todas las universidades públicas españolas*, EL PAIS, <http://www.elpais.com/especial/universidades/>.

³ Elisa Sillio, *Las autonomías desoyen al Gobierno y aprueban campus con su oposición*, EL PAIS (Apr. 25, 2014), http://sociedad.elpais.com/sociedad/2014/04/25/actualidad/1398457119_096004.html (explaining this high number is still increasing despite the economic crisis).

⁴ See *generally Universidades de España*, FOUNDATION UNIVERSIDAD (2014), <http://www.universidad.es/es/en-espana/estudiar-en-espana/universidades-de-espana>.

⁵ See Eurostat, *Average Age of Young People When Leaving the Parental Household, By Sex*, EUROPEAN COMMISSION (Dec. 9, 2010), http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Average_age_of_young_people_when_leaving_the_parental_household,_by_sex,_2007.png&filetimestamp=20101209133941; see also ALESSANDRA RUSCONI, LEAVING THE PARENTAL HOME IN WEST GERMANY AND ITALY: OPPORTUNITIES AND CONSTRAINTS, http://www.demogr.mpg.de/Papers/workshops/000906_paper02.pdf (comparing Germany with another southern European country such as Italy).

⁶ OECD, PROGRAM FOR INTERNATIONAL STUDENT ASSESSMENT 2012 RESULTS IN FOCUS (2014), <http://www.oecd.org/pisa/keyfindings/pisa-2012-results-overview.pdf> (The Spanish results are clearly lower than the results of the OECD countries: Germany—16th position and Spain—33rd position.); Cristina Cadenas Sánchez & Francisco Javier Huertas Delgado, *Informe PISA en España: un análisis al detalle*, 17 PROFESORADO: REVISTA DE CURRÍCULUM Y FORMACIÓN DEL PROFESORADO 243 (2013).

law faculty (this was in the nineties) I remember that my lecture notes were much appreciated by my fellow students because my handwriting—which was enormous, rounded and girlish—meant they could study in relative comfort the content of the lectures they had not attended despite of the fact that it did mean that they had to spend a small fortune on photocopies! In those days skipping lectures was very common, at times because the students' true vocations lay with sport, playing cards, falling in love or drinking coffee—universal and timeless distractions for university students. And, in any case, because being an amanuensis could become extremely boring. The truth is that in most classes, the only voice to be heard was the lecturer's, while we, the learners, spent the time compulsively and mutely taking notes. The lecturers, for their part, rarely improvised, but came to class with notes from unknown sources which they read or commented on with varying degrees of feeling and conviction. I remember perfectly that, without a hint of irony, we awarded glowing marks in the student satisfaction questionnaires to a lecturer who taught her entire course by improvising summaries of the contents of a handbook that she had borrowed from the library and brought to class with her. I suppose that at that time the fact that our lecture notes had an established doctrinal source gave us the impression that this was a very professional *modus docendi*. Additionally, in none of the twenty-five subjects making up my course of study did I ever have to do an oral exam or set foot in a court, law firm or government building as part of my legal education. With hindsight, I now realize how few legal textbooks I had to read as part of my academic program and, unfortunately, I realized some time ago how little I remember of the different courses in which I obtained high marks.

Third, against the bleakness of this scenario, the Bologna Process letter of introduction could not have looked more hopeful to Spanish universities. The fact that, at the turn of the century, the EHEA was going to foster the development of a host of student abilities and skills as well as the classic gathering of knowledge was little short of marvelous. Likewise, what a fantastic novelty a restructuring of the Spanish university system around continuous assessment and active learning would mean! Reflecting on this process in the year 2014, to say that Bologna has not introduced a single improvement into Spanish law faculties would be an act of disloyalty to the many lecturers who have honestly and conscientiously involved themselves in the reform of the study of law in Spain. It is more reasonable to conclude that the Bologna Process is still a work in progress in many Spanish law faculties.⁷ To put it another way, all that has been achieved is that a “Spanish-style Bologna”—a “low-profile” Bologna—has been established.⁸ Several aspects of the teaching

⁷ See Jürgen Enders & Harry De Boer, *The Mission Impossible of the European University: Institutional Confusion and Institutional Diversity*, in *EUROPEAN INTEGRATION AND THE GOVERNANCE OF HIGHER EDUCATION AND RESEARCH* 159 (A. Amaral et al. eds., 2009) (National differences make it difficult to harmonize universities in the European Union.); see also Jeroen Huisman & Frans van Vught, *Diversity in European Higher Education: Historical Trends and Current Policies*, in *MAPPING THE HIGHER EDUCATION LANDSCAPE* 17 (F. van Vught ed., 2009).

⁸ See SERGIO LLEBARÍA SAMPER, *EL PROCESO BOLONIA: LA ENSEÑANZA DEL DERECHO A JUICIO. ¿ABSOLUCIÓN O CONDENA?* (2009); Luis Cazorla González Serrano, *Breves reflexiones sobre los primeros años de aplicación del plan Bolonia y su*

of law have indeed improved in recent years—lectures and practical approaches have become more important, there are more opportunities for students to study abroad and to have their studies officially recognized by other European universities, there are work-experience opportunities that bring students into contact with professional practice. But, as previously mentioned, one of the aims of this article is precisely to emphasize the fact that Spanish law students deserve more than they get from many current aspects of their legal education. By way of reinforcing one of the ideas put forward in the introductory paragraphs (a snapshot of the profile of Spanish law students is misleading because it fails to sufficiently reflect the shortcomings of the Spanish university system),⁹ I now wish to raise a series of key issues regarding current law degrees in Spain, which in my opinion are in need of a thorough overhaul.

The more my career has taken me outside the academic sphere, the more strongly I feel that the current content of Spanish law degrees fails to respond to the demands that society legitimately makes on universities. These demands are not only made by the voracious capitalism embodied by large law firms and multinationals. The demands also come from the judiciary, the executive, and civil society, including NGOs.¹⁰ Spain needs a type of young legal expert that we academics are not presently fully capable of educating. Legal English is a prime example of this. It is an essential tool in many working environments. Yet, it is a skill that is currently very difficult to acquire to an adequate extent in many Spanish state university law faculties.¹¹ In the same vein, why are Spanish syllabuses unable to attach the same importance to new and diverse areas of law—investment arbitration, non-state law, bioethics—that they have acquired in legal practice?¹² Giving our students the opportunity to learn about these exciting subjects is almost always linked with titanic efforts on the part of specific lecturers, such that even if the subject finally becomes “institutionalized” in the curriculum, it is highly possible that

nuevo proceso de transmisión de conocimientos en la universidad española: luces y sombras derivadas de una experiencia personal docente, in *LA EVALUACIÓN E INNOVACIÓN DOCENTE EN EL GRADO DE DERECHO 99* (Ignacio Calatayud Prats et al. eds., 2013).

⁹ Manuel Trillo, *Los males crónicos de la universidad española: Politización, endogamia, exceso de centros y títulos y escasa investigación de calidad, entre los grandes lastres*, DOMINGO (May 4, 2014), <http://hemeroteca.abc.es/nav/Navigate.exe/hemeroteca/madrid/abc/2014/05/04/018.html>.

¹⁰ See UNIVERSITY OF MANCHESTER POST-CRASH ECONOMICS SOCIETY, <http://www.post-crasheconomics.com/> (In the economics field, a group of economics students at Manchester University have recently created the Post-Crash Economics Society, arguing that “the content of the economics syllabus and teaching methods could and should be seriously rethought.”).

¹¹ Katia Fach Gómez, *Why Does Legal English Sound Like Gibberish to Many Spanish Law Students?*, 43 A.B.A. INT’L LEGAL NEWS (2014).

¹² Nicholas Kristof, *Professors, We Need You!*, NEW YORK TIMES (Jan. 2, 2014), http://www.nytimes.com/2014/02/16/opinion/sunday/kristof-professors-we-need-you.html?_r=0 (dealing with the use of the expression “That’s academic” in a pejorative way).

the legal vanguard will already have moved in other directions. While good lawyers are constantly immersed in an agile continuous learning process, university structures sometimes look like beached whales.

The teaching methodologies presently used in law faculties in Spain leave something to be desired. The fact that academic subjects are still sometimes presented as watertight compartments hampers the student from training to resolve the kinds of mixed and intermingled cases he or she will have to deal with in professional practice.¹³ If the average student in the final year of a law degree has no natural inclination to participate actively in class, maybe it is because he or she has not been sufficiently trained in such activities from the beginning of the course. The shortcomings shown by many Spanish students in the area of verbal skills suggest that activities such as debate leagues, moots and clinics have not yet been given the importance that they deserve in Spanish state universities. Generally speaking, students normally flourish when their needs are sensed and addressed.¹⁴ It is essential that teaching staff make a special effort to plan their courses in a way that makes use of the many and varied teaching methodologies that encourage participative learning in law students.¹⁵

Finally, the news that there has been a fall of approximately 10% in the number of students enrolling for master's degrees at Spanish state universities in academic year 2013-2014 comes as no surprise whatsoever.¹⁶ The 69% average increase in specialized postgraduate degree fees has effectively dealt the deathblow to many of these master's courses, which will not manage to attract the minimum number of students required for them to operate. The current economic crisis doubtlessly furnishes a partial explanation for this startling fall in enrolment figures. But I feel that critical reflection as to how this type of postgraduate specialization has become established in some Spanish law faculties is also necessary. When the curricula for the new master's degrees in law were designed, priority was not always given only to scientific considerations, but faculty power groups made use of this new teaching opportunity to voice their grievances about quotas for participation. Moreover, there is the unpleasant impression that part of the teaching staff

¹³ Laura Carballo Piñeiro, *Legal Education in Spain: Challenges and Risks in Devising Access to the Legal Professions*, 19 INT'L J. LEGAL PROFESSIONS 339 (2012).

¹⁴ Alexandra Rengel & Katia Fach, *The Transformative Potential of Technology in Higher Education: The Shortcomings of MOOC's, the Benefits of Face-to-Face Learning and the Hybrid Model as a Possible Optimal Solution (A 2013 Spanish Case Study)* (Aug. 6, 2014), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2476854.

¹⁵ Katia Fach Gómez, *Ventajas del Problem Based Learning (PBL) como método de aprendizaje del Derecho Internacional*, BORDÓN 5 (2012) (providing an example of this kind of experience carried out in my International Law classes).

¹⁶ Ivanna Vallespín & J. A. Aunió, *El alumnado de master cae por primera vez tras la subida de tasas*, EL PAÍS (Mar. 9, 2013), http://sociedad.elpais.com/sociedad/2013/03/09/actualidad/1362857369_438513.html.

participating in these master's degrees would need more incentives (reductions in teaching obligations or financial inducements) to give these courses the scientific importance they deserved. I frequently hear students in master's degree programs complaining bitterly, not only about the administrative disorganization of these initial years, but also that it is the same degree course lecturers that come to the master's classes to dictate the same notes they dictated on the undergraduate degree. Given such a state of affairs—which doctoral students also claim—it is entirely logical for our students to spend their desperately limited resources on master's degrees in private institutions in Spain or in foreign universities. Of course, the reduction in the number of grants in both areas referred to above simply compounds Spanish state law faculties' loss of competitiveness. As I predicted, "*the economic crisis has become the mantra that will enable government bodies in Spain to justify their inaction and erect a shield to hide behind for many years.*"¹⁷ As the next section of this essay argues, this austerity, advocated by the European Union and magnificently applied by Spain in some essential sectors like education, has created a lost generation. The sad truth is that we are forcing our young people to pay an exceptionally high human toll, which is the sorry consequence of Spain's past excesses and, in a more general sense, is one outcome of the country's never having achieved a political and social consensus¹⁸ that would enable it to implement a first class stable and lasting education and science policy.¹⁹

B. The Economic Crisis: Amplifier of the Shortcomings of Spanish Law Faculties

One of the many attractions of being a lecturer in international law is that anyone seeking to forge a minimally solid scientific career has to leave their cushioned microcosm as early as possible and "expose" themselves to other legal systems and universities.²⁰ My own experience outside Spain—as a student and also as a lecturer—has mainly been in Germany and the United States. My personal impression of German law students, in a nutshell, is that they are proud to be studying law. The demanding *Staatsexamen* and an internationally renowned university system²¹ means that the German lawyers of the future

¹⁷ Katia Fach Gómez, *Why Does Legal English Sound Like Gibberish to Many Spanish Law Students?*, 43 A.B.A. INT'L LEGAL NEWS 16 (2014).

¹⁸ The 2014 Spanish Parliamentary Agreement on I+D+I R&D&I is promising in this sense, see CARTA POR LA CIENCIA (Dec. 19, 2013), <http://conimasmasihayfuturo.com/2013/12/19/firma-del-acuerdo-parlamentario-por-la-idi-un-compromiso-historico-por-el-futuro/>.

¹⁹ Juan Ignacio Cirac, *Para salir de la crisis hay que invertir en los mejores cerebros*, EL MUNDO (Aug. 28, 2014), <http://www.elmundo.es/ciencia/2014/08/28/53fe1548ca4741233a8b4580.html> (The statements made by a Spanish scientist now based at a prestigious European institution are symptomatic in this sense.).

²⁰ See E. García de Blas & A. J. Mora Caballero, *La endogamia enferma al campus*, EL PAIS (Mar. 23, 2014), http://sociedad.elpais.com/sociedad/2014/03/23/actualidad/1395604536_271638.html (revealing that professors who change university are more productive scientifically).

²¹ See *Academic Ranking of World Universities 2013*, <http://www.shanghairanking.com/ARWU2013.html>.

are aware of the privileged position they will enjoy in society. For their part, and to simplify matters once again, law students in the United States have a boldness and freshness that is the natural consequence of their highly competitive university system, in which the Socratic approach to learning combined with numerous extra-curricular activities educates future lawyers to conquer the world. In comparison with these two profiles, typical law students in Spain do not seem to possess such bright auras. First and foremost, this is because it is highly likely that Spanish students will never actually find work in the legal field after graduating. This is undoubtedly a tragedy at an individual level, as well as being a clear symptom that higher education policy in Spain is less than ideal. I ask my students about their career aspirations every year in an introductory lecture and it is truly disheartening to observe the unease created by a question of this type and the limited extent of their ambitions. Some students hope that their parents will not be hit by the economic crisis so that they can continue to support them through postgraduate studies—not necessarily in the law field—which will go on for long enough for the crisis to have abated, or so that they can prepare for the civil service exams—for which a university degree is frequently not required—without even knowing whether the current recruitment freeze will be lifted. In general, my students simply hope not to form part one of the categorizations with which young people's aspirations are being corralled in Spain (these days, being a *mileurista*—earning a thousand euros a month—has become a luxury, and so students are condemned to be Generation NEET—Not in Education, Employment, or Training).²² A not inconsiderable number of students have made up their minds to go abroad for a time and subsist by doing any work they can find so as to be able to learn English and thus increase their chances of finding a “decent” job – very possibly outside Spain. The most prestigious international press has echoed the personal experiences of young Spaniards who have emigrated (sociology graduates hoping to find supermarket work, trained nurses doing hard physical work in wholesale clothing warehouse), the sad manifestation of the suffering of a genuine lost generation.²³ With regard to this forced exodus, I can only say, without mincing words, that I am ashamed and it makes me wonder constantly about my share of the responsibility for this harsh reality, which can be described as nothing but a national failure. In spite of the cynicism shown by some Spanish politicians in their praise for our young people's current high “external mobility,” the vast majority of society is capable of appreciating the huge differences between voluntarily leaving one's own country and being forced to do so.²⁴ Fortunately, both the Spanish public and the media have thus adopted a highly belligerent position towards political

²² Steve Tallantyre, *Spain's "Lost Generation" Give up Work and Study*, THE LOCAL (June 26, 2013), <http://www.thelocal.es/20130626/study-shows-surge-in-spains-lost-generation>.

²³ *Young and Educated in Europe, but Desperate for Jobs*, NEW YORK TIMES (Nov. 16, 2013), http://www.nytimes.com/2013/11/16/world/europe/youth-unemployment-in-europe.html?pagewanted=all&_r=0.

²⁴ See *Fátima Báñez llama a la fuga de cerebros movilidad exterior*, PUBLICO (Apr. 17, 2014), <http://www.publico.es/espana/453846/fatima-banez-llama-a-la-fuga-de-cerebros-movilidad-exterior>.

decisions (such as the reduction of funding for Spanish Erasmus students) that will have negative repercussions on our young people's academic and personal futures.²⁵ This appalling reality also explains why under- and postgraduates are one of the main groups of voters for "Podemos,"²⁶ a Spanish political party created just a few months ago that won five seats in the last European elections,²⁷ becoming the fourth political force in Spain. Its election manifesto, in favour of "decent jobs" and against the traditional political classes,²⁸ is undoubtedly very appealing to the current generation of young Spaniards, who, in spite of being repeatedly referred to as "the highest-educated generation in the history of Spain,"²⁹ have to face the harsh realities of everyday life as part of a lost generation.

Given the arguments set out above as to why enforced separation is not an optimum solution for our young people, I believe that the dialectical solution of solidarity will provide more edifying outcomes. The lost generation of students deserves solidarity from its university professors. From the academic sphere, solidarity with students means striving for a genuine reinvention of Spanish universities.³⁰ That is, it means standing up for a high-quality university sector that is truly "useful," in both intellectual and professional terms, for our students and for society as a whole. Of course, re-founding our education and research system is a far from simple task, as will be pointed out in the following paragraphs, due to the fact that if the future for Spanish university students looks less than promising, then it seems to be no exaggeration to classify the scenario facing Spanish researchers as apocalyptic.³¹ Although there is the inevitable dancing around the numbers that goes on in relation to all hot topics, the adverse set of economic circumstances has

²⁵ See *Noticias en los medios sobre la presentación de Erasmus+ y los cambios introducidos*, CONFERENCIA DE RECTORES DE LAS UNIVERSIDADES ESPAÑOLAS (Jan. 23, 2013), <http://www.crue.org/PrensaYComunicacion/SalaPrensa/Documents/Apariciones%20medios/2014/Noticias%20Erasmus.pdf>.

²⁶ See Pablo Iglesias, *El perfil del votante de Podemos: joven urbano con estudios*, RTVE (Aug. 11, 2014), <http://www.rtve.es/noticias/20140811/perfil-del-votante-podemos-joven-urbano-estudios-pero-tambien-tan-jovenes/991043.shtml>.

²⁷ J. J. Gálvez & M. Kadner, *Podemos se convierte en la sorpresa y logra cinco escaños en Estrasburgo*, EL PAÍS (May 26, 2014), http://politica.elpais.com/politica/2014/05/25/actualidad/1401009854_060215.html.

²⁸ See generally *PODEMOS*, <http://podemos.info/wordpress/wp-content/uploads/2014/05/Programa-Podemos.pdf>.

²⁹ See Antonio Jiménez Barca, *La generación de los mil euros. Retrato de unos jóvenes hipercualificados, que pasaron por la Universidad pero están condenados a vivir con unos sueldos precarios*, EL PAÍS (Oct. 23, 2005), http://elpais.com/diario/2005/10/23/domingo/1130038892_850215.html.

³⁰ Noa De La Torre, *Así se reinventa la Universidad*, EL MUNDO (June 7, 2014), <http://www.elmundo.es/comunidad-valenciana/2014/07/06/53b9669622601de71c8b456f.html>.

³¹ CLARA EUGENIA NÚÑEZ, *UNIVERSIDAD Y CIENCIA EN ESPAÑA* (2013) (interesting in this sense, this book is written by a university professor who has also held political positions in the education field in Spain).

unquestionably given rise to a very substantial reduction in the budget allocated to funding research in Spain.³² This is creating serious consequences on numerous fronts:³³ budding scientific careers cut short; lack of job security for researchers; the closing of research centers; a brain drain.³⁴ In spite of the fact that in other countries such as Germany the new generation of scientists is also demanding more career stability,³⁵ I believe that in many European countries the macropillars underpinning research fortunately still exist.³⁶ That is not the case in Spain where we are shocked and saddened to witness a genuine demolition of the economic and educational bases that make it possible to carry-out high-quality scientific work. The specific field of legal sciences also provides numerous causes for gloom: law library new acquisition budgets are smaller all the time, even resulting in the cancelling of subscriptions to regularly used journals; calls for research group funding vanish, are delayed, or appear in depleted form; and the same can be said of financial assistance for teaching staff to spend time in other research centers. The grants to support pre- and post-doctoral research have been cut with extremely harmful effects on the regeneration of the pool of researchers in law faculties. All of this is happening just as the unbending application of the replacement rate in the legal-academic field means a reduction in the number of lecturers, and consequently in the time that the rest of the teaching staff can devote to research activities. In recent months Spanish scientists have put forward appealing proposals for the future of research, such as no longer counting investment in R&D in Spain's budget deficit figures for the purposes of fulfilling the

³² See Elisabeth Pain, *Research Cuts will Cause Exodus from Spain*, SCIENCE (Apr. 13, 2012), <http://www.sciencemag.org/content/336/6078/139> (In this sense, this article published in Science acquired great notoriety in Spain.).

³³ See Alicia Rivera, *El éxito científico de España ha caído por la falta de financiación*, EL PAIS (Apr. 22, 2014), http://sociedad.elpais.com/sociedad/2014/04/22/actualidad/1398192507_757284.html (The words of Dr. Bourguignon, President of the European Research Council are paradigmatic in this sense.).

³⁴ See Amaya Moro-Martin, *Despedida de una científica que está haciendo las maletas*, EL PAIS (Aug. 19, 2013), http://sociedad.elpais.com/sociedad/2013/08/19/actualidad/1376935600_483731.html; see also, Alicia Rivera, *El sistema de ciencia español no responde a las necesidades del siglo XXI*, EL PAIS (Feb. 11, 2014), http://sociedad.elpais.com/sociedad/2014/02/11/actualidad/1392154716_227536.html (A letter addressed to the President of Spain written by a Spanish scientist who left the country and went to the United States acquired great relevance.).

³⁵ See Von Martin Spiewak, *Forschung aus fairer Produktion*, ZEIT ONLINE (2014), <http://www.zeit.de/2014/11/universitaeten-wissenschaftlicher-nachwuchs/komplettansicht>; see also Tomasz Mroczkowski, *From Breakthrough to Incremental Innovation Leadership: Lessons from Germany*, 5 J. KNOWLEDGE ECON. 409 (2014) (highlighting some of the problems of the German scientific environment).

³⁶ See generally EXZELLENZINITIATIVE (Jan. 19, 2009), www.exzellenz-initiative.de/start (A good example of this is the German Excellence Initiative, where "politics and science joined together to promote outstanding research projects and institutions at Germany's universities.").

commitment to stability established by the European Union.³⁷ It is important to be aware, however, that even were proposals of this type agreed to, they could sadly not yield positive results in such a pressingly short time period. Everything outlined above shows that for a group as seriously wounded as the Spanish scientific community, there will be nothing but hurdles when the time comes to show effective and urgent solidarity with another injured group, that of the lost generation of their esteemed students.

C. Carrying Out Legal Research in a Spain in the Midst of the Crisis. A Pipe Dream?

A re-reading of everything that has been argued throughout this essay will show that the shortcomings and failings of teaching staff are a cross-cutting element evoked in many of the factors that help to justify law faculties' current ills.³⁸ A common complaint among lecturers in Spanish universities is that the system takes the teaching facet of academic staff for granted, conceding incentives for professional development only to staff who develop their research facet and fulfill the government-set objectives. It is claimed that those who make an effort with the teaching aspect of the profession do so only for reasons of vocation and in the knowledge that they are wasting valuable research time. This approach and its implementation clearly have dire consequences for education in Spanish universities. Although it may seem utopian to raise such desiderata in times of crisis, I feel that the Spanish university system has to introduce whatever changes are necessary so that the teaching facet is also given due weight in the professional advancement of law faculty staff.³⁹ The point made, it is now time to focus on the effects of the economic crisis on the research facet of law faculty staff, and a number of ideas will be put forward as to how the effects of the economic crisis on this field of the social sciences can be mitigated.

In the face of a situation as complicated as that outlined in the preceding paragraphs, it would seem logical for Spanish researchers in law to seek the support they need to carry out their scientific activities from bodies other than Spanish regional or central government, opting instead for the international sphere as the best focus for their research grant applications and efforts. Various institutions outside Spain (Fulbright, for example) offer prestigious fellowship programs for university lecturers. The European

³⁷ See Alicia Rivera, *Los científicos piden que la inversión en I+D no compute como déficit*, EL PAIS (May 21, 2014), http://sociedad.elpais.com/sociedad/2014/05/21/actualidad/1400682593_233247.html.

³⁸ Hector G. Barnes, *Los ocho males del profesor universitario: es uno de los trabajos más tóxicos que existen*, EL CONFIDENCIAL (July 7, 2014), http://www.elconfidencial.com/alma-corazon-vida/2014-07-07/los-8-males-del-profesor-universitario-es-uno-de-los-trabajos-mas-toxicos-que-existen_156018/.

³⁹ The solution could be the creation of "teaching awards"—similar to the "sexenios de investigación"—granted by the Spanish Ministry of Education, or the option to allow teachers to choose between carrying out predominantly teaching or research activities. This question is controversial, however, since the report referred to in footnote 44 suggests just the opposite; that is, that the importance of the teaching facet should be reduced when assessing the curricula of university staff in order to grant a possible promotion.

Union has recently launched its multiannual Horizon 2020 program, which also provides numerous funding opportunities for research groups and individual scientists from the legal sciences field,⁴⁰ and in more general terms, the European Research Area is becoming an increasingly tangible reality.⁴¹

Put like this, the problems of researchers in law in Spain would seem to have simple solutions, but the reality is that in most cases this is not true.⁴² There are a variety of reasons for this. I do not feel that it would be constructive at this point to rail against the many and highly reprehensible *modus operandi* that are unfortunately still to be found in the field of legal research in Spain. It might suffice to mention just a few of these intractable issues. For example, some lecturers shield themselves behind their irrevocable government employee status to allow themselves the luxury of not undertaking any type of research activity.⁴³ A recent report supported by the Spanish Ministry of Education concluded that more than half of the civil servants working at the University do not perform any or almost no research activity!⁴⁴ Another example is the tradition of awarding research positions to local candidates.⁴⁵ This still takes place despite ANECA's efforts to promote transparency.⁴⁶ Yet another exemplifications are the endogamy and petty

⁴⁰ Social Sciences and Humanities Scientific Committees, *Humanities and Social Sciences in Horizon 2020 Societal Challenges: Implementation and Monitoring*, SCIENCE EUROPE (Nov. 2013), http://www.scienceurope.org/uploads/PublicDocumentsAndSpeeches/SSH_Horizon2020_WEB_fin.pdf (advocating a more prominent role for the Social Sciences and Humanities in Horizon 2020, an opinion paper).

⁴¹ *Report from the Commission to the Council and the European Parliament: European Research Area Progress Report 2013*, COM (2013) 637 final (Sept. 20, 2013). In this sense, article 17 of the Regulation 1291/2013 states that: "Researchers' careers: Horizon 2020 shall be implemented in accordance with Regulation (EU) No 1290/2013, which shall contribute to the reinforcement of a single market for researchers and attractiveness of researchers' careers across the Union in the context of the ERA, by taking into account the transnational character of the majority of the actions supported under it." Commission Regulation 1291/2013, of The European Parliament And of the Council of 11 December 2013 establishing Horizon 2020 - the Framework Programme for Research and Innovation (2014–2020) and Repealing Decision No. 1982/2006/EC, 2013 O.J. (L 347/104).

⁴² Ignacio Fariza & Elisa Silió, *Ningún campus español entre el centenary con más impacto investigador*, EL PAIS (May 13, 2014), http://sociedad.elpais.com/sociedad/2014/05/13/actualidad/1399976549_650954.html (pointing out the poor results of Spanish Universities in international research rankings).

⁴³ SIXTO SÁNCHEZ LORENZO, *DE BESTIIS UNIVERSITATIS (ESOS TIPOS UNIVERSITARIOS)* (2004) (dealing with the—sometimes pathological—profiles of law professors).

⁴⁴ *Propuestas para la reforma y mejora de la calidad y eficiencia del sistema universitario español* (Feb. 12, 2013), <http://www.usc.es/export/sites/default/gl/web/descargas/propuestas-reforma.pdf> (This report was prepared in 2013 by a committee of scholars selected by the Minister of Education Jose Ignacio Wert.).

⁴⁵ Antonio Jesús Mora Caballero, *El TSJA anula una plaza de catedrático que favorecía a uno de los candidatos*, EL PAIS (Mar. 3, 2014), http://ccaa.elpais.com/ccaa/2014/03/03/andalucia/1393849120_949640.html.

⁴⁶ See generally NATIONAL AGENCY FOR QUALITY ASSESSMENT AND ACCREDITATION OF SPAIN (ANECA), <http://www.aneca.es/eng/ANECA> (explaining ANECA is a Foundation whose aim is to provide external quality assurance for the Spanish Higher Education System and to contribute to its constant improvement through the evaluation of the CVs of applicants willing to access Spanish civil servant academic staff bodies).

squabbles that go on when accepting or rejecting articles in scientific journals, as well as the fact that gender equality has yet to be achieved in the scientific field in Spain.⁴⁷ I could go on.⁴⁸ It is clear that these deviations from science are diametrically opposed to what a university should be. My final points, should they be of some use, are therefore addressed to young Spanish legal experts who aspire to build a sufficiently solid scientific career step by step to enable them to develop their research vocation regardless of the political and economic vicissitudes that may continue to affect Spain in the future.

A key idea in this regard is that excellence is very difficult to achieve. But it has the great virtue of being unquestionable. Therefore, from the very moment that law students take the decision to work towards a doctoral thesis, scientific quality has to take priority over convenience and collective habits.⁴⁹ On a day-to-day basis this may entail preferring to try to have a paper accepted at a high-profile conference in a foreign country over the certainty that a friend will accept your paper at a local conference. Likewise, publication in journals with a scrupulous scientific peer review system is essential, even though the total time invested in the process of writing and improving the article would have been enough to write a number of articles that doubtlessly would have been accepted by journals that do not feature in international rankings of quality.⁵⁰ Naturally, conducting high quality scientific activities should not prevent scientists from also conducting dissemination activities that allow the broader public to be involved in the beneficial results of their scientific work.⁵¹ Moreover, while Spanish is certainly the optimal language for doing science in certain subject areas and academic environments, English is unquestionably the *lingua franca* of the scientific-legal field today. Spanish researchers have to make the effort

⁴⁷ Eva Mosquera Rodriguez, *Las mujeres científicas siguen sin romper el techo de cristal*, EL MUNDO (Oct. 10, 2014), <http://www.elmundo.es/ciencia/2014/07/10/53beb7d3ca4741f8298b4586.html>.

⁴⁸ See generally Carlos Hidalgo, *Imputada la cúpula de la Escuela de Medicina Legal de la Complutense*, ABC (June 5, 2014), <http://www.abc.es/madrid/20140506/abci-imputada-cupula-escuela-medicina-201405052139.html> (providing more bloodcurdling cases where law professors seem to be involved); see also *Imputados por injurias el exrector Abril y el exsecretario general de la Uva Calonge*, ULTIMERO CERO (Feb. 20, 2014), <http://www.ultimocero.com/articulo/imputados-por-injurias-el-exrector-abril-y-el-exsecretario-general-la-uva-calonge>.

⁴⁹ See generally *Next Generation of Young Scientist: Towards a Contemporary Spirit of R&I - Sci-GENERATION*, EUROPEAN COOPERATION IN SCIENCE AND TECHNOLOGY (May 15, 2014), http://www.cost.eu/about_cost/strategy/targeted_networks/sci-generation (An interesting initiative in this sense is the creation of Sci-Generation, an initiative “that aims at elaborating contemporary scientific thought and thereby disseminating a new Spirit of Research and Innovation in Europe.”).

⁵⁰ María Matesanz del Barrio, *Los retos de la publicaciones científicas españolas en el desarrollo de la Europa del conocimiento*, @TIC. REVISTA D'INNOVACIÓ EDUCATIVA 20 (2010) (pointing out the shortcomings of many Spanish journals).

⁵¹ Mme Maud Olivier & M. Jean-Pierre Leleux, *Faire connaître et partager les cultures scientifiques, techniques et industrielles: un impérative*, ASSEMBLÉE NATIONALE (Jan. 9, 2014), <http://www.senat.fr/rap/r13-274/r13-2741.pdf> (In this sense, this recent French political initiative is highly interesting.).

to master this essential tool in both its written and spoken forms. Stays at prestigious foreign universities and research centers are essential, and frequently go hand-in-hand with the need to provide a competitive *curriculum vitae* when applying for grants at international level. By way of a further suggestion, it is often useful to find out about the standards imposed on other scientific disciplines so as to be able to anticipate what may be required in the future in the legal field. A good example in this respect is the statement made by the Spanish Ministry of Education regarding the way scientific contributions made by Spanish academics are assessed. With reference to the legal field it states in a generalized fashion that “in assessing the work, attention will be paid to the medium used, and publication by prestigious journals and publishing companies will be accepted as an indication of quality.” For most other scientific disciplines it is much more specific, saying that “among the contributions preference will be given to work published in journals of recognized worth, accepting as such those in leading positions in the scientific fields lists in the Subject Category Listing in the Journal Citation Reports of the Web of Knowledge (WoK).”⁵² I do not mean this as an argument in favor of the unfettered establishment of a utilitarian audit culture.⁵³ I know very well what that entails in the field of legal research.⁵⁴ I only mean to acknowledge the following reality: the legal-scientific world is getting flatter all the time. Spanish legal scientists can thus protect themselves from the impact of the economic crisis by making an effort to ensure that their scientific careers revolve around global excellence (excellence; there’s really nothing to it!).

⁵² RESOLUCIÓN DE 15 DE NOVIEMBRE DE 2013, DE LA COMISIÓN NACIONAL EVALUADORA DE LA ACTIVIDAD INVESTIGADORA, POR LA QUE SE PUBLICAN LOS CRITERIOS ESPECÍFICOS APROBADOS PARA CADA UNO DE LOS CAMBIOS DE EVALUACIÓN, BOLETÍN OFICIAL DEL ESTADO (Nov. 21, 2013), <http://www.boe.es/boe/dias/2013/11/21/pdfs/BOE-A-2013-12234.pdf>.

⁵³ Elizabeth Dzeng, *How Academia and Publishing Are Destroying Scientific Innovation: A Conversation with Sydney Brenner*, KING’S REVIEW (Feb. 24, 2014), <http://kingsreview.co.uk/magazine/blog/2014/02/24/how-academia-and-publishing-are-destroying-scientific-innovation-a-conversation-with-sydney-brenner/> (pointing out some of the risks of this trend).⁵⁴ Rafael Argullol, *La cultura enclaustrada. La Universidad se ha replegado sobre sí misma como consecuencia de un nuevo antiintelectualismo favorecido por una sacralización del paper cuya confección obliga a renunciar a toda creatividad y riesgo*, EL PAÍS (Apr. 5, 2014), http://elpais.com/elpais/2014/03/25/opinion/1395742979_031566.html.

⁵⁴ Rafael Argullol, *La cultura enclaustrada. La Universidad se ha replegado sobre sí misma como consecuencia de un nuevo antiintelectualismo favorecido por una sacralización del paper cuya confección obliga a renunciar a toda creatividad y riesgo*, EL PAÍS (Apr. 5, 2014), http://elpais.com/elpais/2014/03/25/opinion/1395742979_031566.html.