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The teaching of Law and Development: towards inclusiveness and reflexivity across time zones

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Abstract

An exploratory qualitative analysis of Law and Development (L&D) course descriptions reveals plurality and heterodoxy across time zones through the way in which they approach ‘law’ and ‘development’. We see this contestedness as a manifestation of the inherent power asymmetries of the field and offer the notion of time zones to better describe plural and contested forms of L&D knowledge. We seek to explore teaching as an important arena where knowledge is created and argue that the characteristics of substantive complexity and methodological heterodoxy of L&D provide promising conditions for making teaching more *inclusive* and *reflexive*. In this way, teaching can help in further provincialising the field. Additionally, inclusiveness and reflexivity can also have an impact on the epistemological trajectory of L&D more broadly by giving voice to a diversity of narratives, concepts and values.

Keywords: Law and Development; teaching; knowledge; power; plurality; provincialisation

‘[A]ll forms of knowledge are partial and local.’ (Santos, 2002, p. 471)

1 Introduction

Law and Development (L&D) as a scholarly movement was established in the 1960s with trust in the capacity of exporting American models of laws and legal institutions in order to build institutional and regulatory frameworks around the world (Lizarazo-Rodriguez, 2017).¹ The understanding of L&D academics and practitioners alike was that Western models of laws and institutions could be easily transplanted from one legal system into another (Tamanaha, 2011). These co-operation programmes, which aimed to professionalise legal systems in the Global South, disregarded cultural specificities, context and local conditions with their top-down approaches to legal reform (Lizarazo-Rodriguez, 2017; Tamanaha, 2011). After more than a decade of scholarly contributions and practical experiences, however, the core assumptions of the ‘liberal legalist paradigm’ were challenged in terms of their universal application (Trubek and Galanter, 1974). Witnessing the disparity between their intentions and the grim practical results, practitioners and scholars felt ‘self-estranged’ from their initial projects in recognition that these were ethnocentric and naive to the complexities of the countries in which they were implemented (Trubek and Galanter, 1974; Buchanan, 2014).

¹Despite using the terminology, the authors do not engage with existing discussions on whether L&D has become an academic field and thus more than a corpus of ideas and theories (Tan, 2019) or an area of investment (Tamanaha, 2011). The authors are of the opinion, however, that plurality as a characteristic does not necessarily preclude the existence of an academic ‘field’.

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Over the next decades, L&D started to embrace pluralist notions on several dimensions: the notion of law as a homogenous product created, implemented and enforced exclusively by the state as well as the emancipatory potential of law for economic and social purposes were questioned (Faundez, 2012; Jayasuriya, 2012; Tan, 2019). At the same time, the concept of ‘development’ was no longer equated exclusively with theories of modernisation and economic growth, but also acknowledged social and cultural factors shaping different understandings of what ‘development’ can mean for different kinds of actors and institutions (Esteva, 2009; Babb, 2013; Escobar, 2011). In addition to aspects of economic growth, institutions and human-centred well-being became central to thinking about development (Sen, 1999). In terms of themes, L&D started to encompass not only private-law regimes like property, contracts or firms, but increasingly opened up to broader inquiries into the rule of law, governance, human rights or sustainable development (Tamanaha, 2011; Dann, 2013). Finally, methodological and epistemological aspects – probably the most challenging to tackle for L&D scholars – were pluralised through scholars and knowledge coming from the Global South that offered their own L&D logic and experiences (Tan, 2019; Smith, 2012a). These different dimensions of pluralisation, heterogeneity and contestation within L&D have introduced distinctions and diversity in perspectives and demonstrated less of a consensus than earlier presumed (Eslava, 2015; Pahuja, 2011). This builds upon the insight that there exists an ‘extreme interrelatedness of everything with everything else in a society’ (Kennedy, 2006, p. 153). The time of context-independent transplantation of law and abstract advice for scalable legal reform has thus long passed, and there is a need for a more user-centred approach to understanding how the law works in different contexts (De Souza, 2019b). It is important to keep in mind that while these continuing contestations have redrawn categories and pluralised the movement, the hierarchy of ideas, methods and actors has not vanished and continues to shape the contested identity of L&D (Riegner *et al.*, 2019; Tan, 2019). Significantly, it puts questions of epistemological power centre stage in L&D studies.

One site of epistemological power that has not been part of the self-reflective DNA of L&D, however, is the area of teaching. This observation is counter-intuitive for an area of scholarly inquiry in which epistemological limitations as well as regional and cultural biases of knowledge production have been critically addressed with increasing intensity ever since the first L&D scholars became ‘estranged from the project [they] had helped create’ (Trubek, 2016, p. 327; Trubek and Galanter, 1974). The ‘legal transplant’ (Watson, 1974), one of the most powerful concepts of L&D, offers a striking example that reflects the biases in knowledge production. It is built upon the epistemological idea that functional, effective and successful legal institutions from the North can be easily transferred to the dysfunctional and ineffective South, making ‘development’ a goal formulated by the West, to be achieved by the non-West (Dann, 2021). In thinking proactively about the epistemology of L&D and the way in which teaching relates to it, a key aspect of this paper is to explore the diversity of experiences and histories. Regional expertise and localised challenges play a role in terms of how concepts, methods and ideas are used and challenged. Unpacking the ways in which knowledge is produced and framed in the teaching of L&D is explored in the following sections, thereby recognising the contested ways in which ‘law’ and ‘development’ interact across the globe. Further, we offer the metaphor of ‘time zones’ as a device that on a descriptive level helps us to understand the substantive complexity and methodological heterodoxy of L&D, while at the same time providing a normative matrix and more plural source of imagination when designing courses. We contrast the use of ‘time zones’ with the more widespread use of ‘moments’ in L&D and argue that moments as a term does not capture a plural understanding of the field – both inside and outside of the classroom.

By focusing on the teaching of L&D inside the classroom, we seek to contribute to a higher sensitivity towards the epistemological importance and power of teaching for legal academia and knowledge production more generally (Bowden and Marton, 2003). We thereby seek to shift the perception about education as a passive process of knowledge transfer to one of *active* engagement, also reflecting on what it entails for the subjects involved in terms of their socio-economic or geographic backgrounds (Eslava, 2020). This sensitivity has been particularly visible in the area of public international law (Schwöbel-Patel, 2013; Roberts, 2017; Eslava, 2020). Adopting a reflexive and critical approach,

this paper maps the question of whether the contestation and plurality of L&D scholarship also manifest themselves inside the classroom. We further provide suggestions for how competing discourses, contested findings and the engagement with different worlds (Cadena and Blaser, 2018; Santos *et al.*, 2008) can potentially be achieved through *inclusive* and *reflexive* teaching, thereby helping courses on L&D to flourish and benefit from plurality.

In the following sections, we first outline the methodology adopted. What follows is the descriptive and interpretative unbundling of aspects of plurality on the two dimensions of ‘law’ and ‘development’, based on an exploratory analysis of course descriptions. By introducing the notions of ‘time zones’ and provincialisation, we explain why there are multiple narratives to the story of L&D through the examination of the courses we encountered. We then elaborate on why increasing sensitivity towards teaching is particularly significant for an area like L&D and how we can counteract the exclusionary and disciplinary power of teaching through *inclusiveness* and *reflexivity*. Finally, we offer suggestions on how to operationalise the plurality of L&D inside the classroom.

2 Methodology and hypothesis

Acknowledging the significance of epistemological power in L&D, we seek to draw attention to one specific site where epistemological power manifests and reproduces itself, but also has the potential to be challenged and contested. We look at what happens inside the classroom and thereby emphasise the potential of teaching for the epistemological trajectory of L&D. Over the last years, L&D has not just seen larger numbers of L&D publications and an increasing institutionalisation,² but also witnessed a surge of interest in L&D courses and degrees, situated at law schools, interdisciplinary research centres as well as professional schools all around the world (Trubek, 2016). Knowledge about L&D is thus increasingly distributed, created and challenged not only among academics and practitioners, but also by and with students.

Our inquiry into teaching starts with the premise that the classroom is a space where the contested notions of L&D play out. But what exactly happens inside the classroom? From the perspective of educational sciences, processes of education in an ideal situation are processes of transformation, in which students reassess their identity and the world around them by engaging with the content of education (Musumeci, 2013). Recent inquiries into the teaching of public international law have emphasised the co-dependent relationship between structural arrangements, which institutions of higher education are part of, and the ideas and knowledge created within such institutions (Eslava, 2020), showing that legal knowledge and truth are contingent upon the actors who produce and the environments that sustain them (Roberts, 2017). Further, students’ subjectivity and positionality proactively shape and are getting shaped by the knowledge being transmitted (Eslava, 2020). In short, ‘structure moulds social reality’ (Eslava, 2020, p. 372) as well as the knowledge and truth that is part of this reality contingent on a specific time and space (Santos, 2002; Smith, 2012a). An interactive and co-constitutive process between knowledge formation and individual subjectivity takes place (Ball, 2012).

In this process of teaching, learning and knowledge production, questions of power become relevant, and even more so in the field of L&D. Highlighting insights by the educational scientists Niewolny and Wilson, Eslava, for example, wants us to understand ‘how adult learning is embedded in and constituted by the cultural and social relations of power that comprise the learning experience’ (Niewolny and Wilson, 2009, p. 32; Eslava, 2020). Along similar lines, Foucault has outlined the *disciplinary* and *exclusionary* characteristics of power (Foucault, 1980) and reminds us that the ‘order of things’ constitutes what is being perceived as true (Foucault, 1966). We argue that both characteristics are strengthened and reinforced by different approaches towards teaching, while teaching itself belongs to the ‘order of things’ – however, with disruptive potential. Through the way a course is designed and executed, contents are shaped and reformed, some questions are articulated and others neglected,

²For examples of increasing institutionalisation, see ‘The Law and Development Research Network’ (LDRN: <https://lawdev.org/partner-institutions>) and the ‘Law and Development Institute’ (LDI: <https://www.lawanddevelopment.net/>).

certain voices are heard while others are silenced. Teaching is thus a mutually constitutive process between the knowledge created and the identity of the members of a specific epistemic community (Ball, 2012). This means that teaching approaches can be *disciplinary* upon the community members' intellectual potential through the analytical framework they provide, and *exclusionary* for what and whom they include or exclude (Smith, 2012a). Teaching decisions thus have the potential to contribute to problematising some aspects while normalising others within a scientific discourse that governs our thinking, subjectivity and ultimately our acts within that field. From a Foucauldian perspective, both the *disciplinary* as well as the *exclusionary* characteristics of power are therefore to be understood discursively (Hall, 2001).

In our analysis, we opted for an empirical approach that aims at mapping variations of how L&D is being taught, and how plural and particular L&D knowledge production is. As part of our exploratory study, we look at six L&D course descriptions from the University of Melbourne (Australia), Azim Premji University (India), the University of Warwick (UK), the University of São Paulo (Brazil), Columbia University (US) and the National University of Singapore (Singapore). By course descriptions, we refer to the texts (excluding the reading lists) that instructors provide to introduce their course, its approach and key concepts to students and the wider faculty. We obtained the course descriptions either online through the universities' freely accessible course catalogues or by asking the course convenors to send us the descriptions that they have used in the past. All of them are on file with the authors.

In choosing course descriptions, we make a choice of examining specific and particular observations of how L&D courses are described, framed and presented. Unlike reading lists, course descriptions are situated on a meta-level above the actual texts used in class. They provide a unique impression of how the texts read where the instructions given and the approaches taken all tie together to constitute examples of specific L&D learning environments. Through these descriptions, this paper attempts to distil narratives, draw parallels and make nuanced distinctions. We use this empirical material as a means to suggest trends and different approaches within them, which we contrast against each other. This is not in order to generalise, but to localise and illustrate the dynamics and differences (Lund, 2014) that the teaching of L&D sees itself confronted with. Building on the case-study method and the kind of questions it seeks to address (Yin, 2017), we want to shed light on the questions of *how* plurality and contestation manifest themselves inside the classroom and *why* therefore teaching is significant and has the potential to accommodate this plurality. According to our findings, we want to politicise teaching and emphasise the agency of members of a scholarly community to provincialise knowledge into their own 'time zones'. In this process, the reader can emancipate his/herself from more traditional forms of teaching that continue to shape our knowledge and behaviour but whose effects by default often remain unquestioned. Reflecting about teaching L&D thus holds the potential to 'teach back' in the spirit of 'writing back' (Smith, 2012a).

We believe this exercise of analysing teaching offers a unique opportunity to debate and reflect on why L&D remains an open field. It also gives us an opportunity to analyse how it is fragmented, contested and subject to multiple narratives and interpretations. We are interested in locating the different ways in which these courses are framed to showcase and highlight different epistemologies of knowledge that already populate the field as well as the need to engage with peripheral and mainstream narratives. This analysis also connects to work that examines curricula critically, particularly with regard to movements to decolonise the university (Mbembe, 2016; Santos, 2018a). By encouraging an investigation into the techniques, substance and methods used in studying L&D, teaching can address what de Sousa Santos calls a 'sociology of absence', where ecologies of knowledge in the South are silenced by other more dominant experiences (Santos, 2002; 2018c). In order to do so, epistemic diversity can help us to engage with different epistemic traditions (Mbembe, 2016). As Tan has argued, in an effort to counter the hegemonic legal knowledge that is emerging in the North, it is important to present the dynamics of power that emerge from the connections of L&D and situate the resistances that confront institutional reform in the name of development (Tan, 2019). This is where we see the potential of

teaching: it can problematise the formation of legal and development knowledge to ensure that it is not taken as given but is instead critiqued and challenged.

Our methodology, however, encounters certain limitations. First, we acknowledge that various independent variables consciously or subconsciously contribute to the decisions that instructors make concerning course design and teaching. These can be factors related to the institutional environment within which we operate, and which might constrain us. It can include the educational culture as the structure within which we were socialised, or simply matters of personal style and preference. The scope of this paper cannot address these complex correlations. Rather, this piece wants to draw attention to the power and agency that instructors have when teaching and designing L&D courses, while being aware of the structural limitations that we are all confronted with (Eslava, 2020). We also acknowledge that our paper focuses on how teachers and instructors *frame* their courses and how they seek to design the nature of their classroom. This framework sets the scene for the actual intellectual engagement that takes place inside the classroom: the frames provide specific opportunities and entail concrete limitations concerning the direction the course takes and the learning experience of the students in practice. Second, we do not claim to trace an exemplary L&D discourse and subjectivity that manifest themselves in each and every classroom. Rather the opposite – we seek to explore non-exhaustive examples of *pluralities* in L&D discourses and subjectivities since discourses within professional communities are always context-dependent (Ball, 2012). Third, the methodology adopted here seeks to contribute a small piece to the genealogy or ‘history of the present’ (Prado, 2019) of L&D by reaffirming plurality and contestation not merely by reference to scholarship, but by engaging with a limited number of course descriptions of L&D courses at six law schools from Australia, India, the UK, Brazil, the US and Singapore. The selection of law schools did not follow specific criteria beyond the goal of regional diversity and the practical limitation of freely accessible course descriptions. It must therefore be stated that our findings cannot simply be generalised since they cannot account for all the complex institutional, cultural and political landscapes within which these courses are offered. They are meant to be a mapping exercise and exploration of plurality and contestation inside the classroom, and the challenges and potential that this can entail for teaching.

3 Approaching L&D through course descriptions

In this section, we analyse how course descriptions approach L&D. This analysis entails the two core elements of ‘law’ and ‘development’. By deploying these categories, we regard them as more abstract reference points that allow us to systematise the content of course descriptions in an effort to show parallels, distinctions or uniqueness. Such an inquiry automatically entails our subjective interpretation of the words and phrases used in the course descriptions and how they relate to the categories we deploy. As part of this analysis, however, we did not look for specific keywords or the mentioning of established concepts taken from the literature. This would be a limitation rather than an exploration since similar ideas can be expressed through different terms. Instead, through a more open and discursive interpretation of the ideas presented, our study seeks to give enough space to the variety of written manifestations of ‘law’ and ‘development’ in the course descriptions while also creating a link between them for the purpose of comparison. Additionally, we connect our interpretative findings with insights from L&D scholarship more broadly in order to explore and highlight the co-constitutive relationship between the classroom and the academic discourse.

3.1 Approaching ‘law’

The qualitative analysis of selected course descriptions has revealed three facets that emerged in the way in which the courses approach law. The first concerns the *analytical level and location* of legal inquiry, which can navigate between the local, national, regional or international sphere. The second addresses the *predictability and transferability* of substantive law. It concerns the different functions

and characteristics assigned to law by L&D scholars. The third ventures into the *political dimensions* of law in L&D research and practice, thereby de-neutralising the means and end of the field.

First, our analysis of selected course descriptions made clear that concepts of law vary depending on the geographical focus as well as the level of legal inquiry within multilevel legal systems (Tamanaha *et al.*, 2012). Some courses focus on law more as a regional or international instrument ('M.A. in L&D (Melbourne Law School)', 2018; 'LLM (Warwick University)', 2018), adopting a lens that concentrates on legal relations, dependences and histories between nations, international organisations or transnational corporations. If the approach to law focuses on international legal institutions and instruments shaping processes of globalisation, L&D moves closer to the field of public international or economic law (Faundez and Tan, 2010). Such an approach goes hand in hand with a focus that concentrates on the institutions and countries particularly shaping and shaped by globalisation and global capitalism (Tan, 2011; Riegner, 2016) – categorised by the newer dichotomy of rule-makers vs. rule-takers and the different scope of their legal sovereignty (Dollmaier, 2019). In contrast, other courses approach law more through regional, local and mundane experiences (Eslava and Pahuja, 2012) within specific economic and social cultures and the (fragmented) subjectivities that this creates (Urueña, 2012). Our selection of courses has shown examples of a specific focus on the Chinese legal experience in contrast to Western models, highlighting the impact of the economic and political culture of state capitalism and value systems like Confucianism on the law ('Law, Institutions and Business in Greater China (National University of Singapore Faculty of Law)', 2017). Yet another course emphasises histories and perspectives from the Global South in contrast to more hegemonic notions of law established and maintained in the Global North ('LLM (Warwick University)', 2018). Approaches like these challenge more conventional notions of the effects of law on economic and social development, and introduce new types of actors like social movements (Rajagopal, 2003) or state-owned enterprises (Yu, 2014). Including domestic and local factors often goes hand in hand with a socio-legal approach that understands law as an economically, socially and culturally complex and context- as well as subtext-dependent fabric (Perry-Kessaris, 2012). At the same time, the distinct geographical and multilevel perspectives do not necessarily occur mutually exclusive, but are also established alongside each other for the purpose of contrasting juxtaposition ('LLM (Warwick University)', 2018; 'Desenvolvimento: Racionalidades, Ferramentas e Arranjos Jurídicos (Faculdade de Direito Da Universidade de São Paulo)', 2012).

Second, some courses approach law as an instrument capable of establishing order, predictability and to some extent even transferability under the premise that institutions matter for development (Trebilcock and Prado, 2011). The focus on the ability of law to create order tends to reflect elements of a liberal perspective of law, while creating order can be seen as one of the general functions typically assigned to the law of development (Dann, 2021). Others, on the contrary, regard law as just one among many factors in a contested framework of (unsuccessful) development solutions (Davis and Trebilcock, 2008; Escobar, 2011). The course descriptions that we have analysed brought to light both of these dimensions in a manner intrinsically linked to each other. On the one hand, legal institutions like contract law, property law, corporate law or financial markets are part of the analysis ('Law and Development (Columbia Law School)', 2014; 'Law, Institutions and Business in Greater China (National University of Singapore Faculty of Law)', 2017). This reflects the minimal agreement in the literature on the fact that legal institutions do play a significant role (Trebilcock and Prado, 2011). On the other hand, the limitations of law are equally acknowledged. Several course descriptions approach law as a deeply plural and socially embedded concept ('LLM (Warwick University)', 2018; 'LLM (Azim Premji University)', 2018). When comparing both approaches, we observed that even the courses that emphasise the importance of legal institutions do also point out their divergent roles and context specificities ('Law and Development (Columbia Law School)', 2014; 'Law, Institutions and Business in Greater China (National University of Singapore Faculty of Law)', 2017). While the courses we analysed seem to show a minimal consensus on the importance of legal institutions, these findings indicate that legal institutions tend not to be approached exclusively in a theoretically abstract, purely formalist fashion. Rather, our courses approach legal institutions as part of a

multicausal, multilevel and multicultural legal entanglement – an observation that reaffirms what Tamanaha has described as the ‘connectedness of law principle’ (Tamanaha, 2011). The courses thus do not completely abandon the idea of the transferability (or ‘transplantation’) of law, but rather acknowledge the challenges and complexity entailed in this process (Husa, 2018).

Third, some of the courses have taken a decidedly political and thus critical stand through their approach to law. The emancipatory potential of law as a possible sword for activist purposes as well as its hegemonic force as an instrument of domination and oppression are seen as two sides of the same coin (Santos, 2002). Course descriptions, for instance, approach law as a tool for advocacy purposes, social engineering and critical to informing social policy (‘LLM (Warwick University)’, 2018; ‘LLM (Azim Premji University)’, 2018). Some of the same courses frame law as a mechanism that reinforces globalisation processes (‘LLM (Warwick University)’, 2018) and as an instrument that can weaken and paralyse institutions, policies and processes of development (‘Desenvolvimento: Racionalidades, Ferramentas e Arranjos Jurídicos (Faculdade de Direito Da Universidade de São Paulo)’, 2012). Only in one course, which focuses more on the business and economic aspects of development, were political conceptions of law less dominant (‘Law, Institutions and Business in Greater China (National University of Singapore Faculty of Law)’, 2017). These more political approaches to law demonstrate an increasing sensitivity towards insights from critical and post-colonial theory and make clear that law in development in these courses is no longer seen as a purely economic or legal, and thus apolitical, endeavour, but often creates ‘a world of winners and losers’ (Perrone and Schneiderman, 2019, p. 446). This stands in contrast to efforts, for instance, in the practice of the institutional law of development finance that utilises law as an instrument to separate the political from the economic, sanitising the former by claiming to serve only the latter (Dann and Dollmaier, 2021). This observation can be linked to a broader recent debate that unmasks the neutrality of law by tracing the political and economic preferences coded into the law, which primarily serve capital and the global elite rather than the rest (Pistor, 2019).

These three observations which our analysis revealed are indicative of a lack of consensus on what exactly L&D scholars mean when they talk about ‘law’ in L&D, where law can be found, which actors it includes and what oppressive or emancipatory effects law has in the context of ‘development’. What does emerge is the insight that the ‘law’ of L&D oftentimes escapes traditional boundaries of domestic, formalist and politically neutral legal analysis, thereby on many levels reflecting the contestations and contexts that shape the field.

3.2 Approaching ‘development’

The course descriptions further provide an insight into how the plurality of L&D manifests itself through diverse notions of ‘development’. Two important markers emerge: the first is the *outlook of the course*, which indicates whether it is designed to look at macro trends and global interlinkages of development in terms of international institutions and regulations, or instead whether the course adopts a more regional focus in which development is embedded in a geographical social and cultural context. The second marker entails how the concept of development *relates to other phenomena*, such as whether the concept is embedded in literature around globalisation, capitalism or discussions on human rights.

In the first instance, development is examined differently through a combination of foci on the international and the national, the global and the local, thereby examining regulations, institutions and policies as they emerge in different locations. For some courses, development is situated in an international sphere looking at how development is legalised through the work of different actors and law-reform projects (‘M.A. in L&D (Melbourne Law School)’, 2018). It appeals to those who work in the ‘international development’ sector. In this regard, the orientation of the course is very much connected with questions of rule of law and international law. What is evident is a conscious decision to blend different perspectives from history to practice and from theory to critique, introducing a multipolar way of examining the field especially when taking a ‘global outlook’ (‘Law and Development (Columbia Law School)’, 2014; ‘M.A. in L&D (Melbourne Law School)’, 2018).

When development is given an international or global character, the lenses that are used are those of global institutions, making it relevant to also unpack the discourses around these institutions. Case-studies, often from emerging economies, are used as a tool to politicise how development manifests in different parts of the world ('Law and Development (Columbia Law School)', 2014).

Not all our courses see development through a global lens, and some place more emphasis on a contextual rather than comparative analysis – whether this is through studying how economic, political and social components of development relate to the laws and legal institutions in the context of India, by studying the role of a Chinese model of development in Singapore or by choosing a Brazilian approach that situates development in the lived experiences of that context ('LLM in Law and Development (Azim Premji University)', 2018; 'Law, Institutions and Business in Greater China (National University of Singapore Faculty of Law)', 2017; 'Desenvolvimento: Racionalidades, Ferramentas e Arranjos Jurídicos (Faculdade de Direito Da Universidade de São Paulo)', 2012). These courses tend to see less distinction between the academic field and the practitioner field. In doing so, they aim to produce voices that can participate in the debate in varied ways. This is important because it can also be reflected in the use of fieldwork and projects as a core constituent of the learning experience ('LLM in Law and Development (Azim Premji University)', 2018). Students are thus encouraged to be critical of theory but also engaged as practitioners. Herein lies the complexity of a transdisciplinary subject. A confluence of research methods, whether studying doctrine in legislation and judgment or in the field through anthropological methods such as ethnography, demonstrates that in order for development to be understood, it needs to explore how to build a methodology in action. This focus relates to an emphasis on exploring techniques that offer perspectives that may counter dominant narratives by understanding the material and life worlds in which development takes place (Xavier, 2016; Escobar, 2018).

The choice of the global or the regional also corresponds to discussions about whether development is considered as denationalised in these courses, making the state not the most influential actor in determining the economic and cultural way of life (Sachs, 2009; Kothari *et al.*, 2019). The dilution of the importance of the state and the rise of other transnational entities also suggests a delocalisation of development (Darian-Smith, 2013b). What remains interesting is why some of the analysed courses in the Global South tend to look more at realities concerning *their* specific environment rather than with a transnational outlook, whereas the courses in the Global North appear more interested in comparative experiences. Do the institutions in the North feel more self-confident to make claims about comparison, while those in the South remain occupied by their own realities? This question does not have easy answers but, as we look at the outlook of courses, it is important to recognise that the lived experiences of development, of globalisation and of colonialism are not silent spectators when courses are conceptualised.

The second aspect considers how development is framed as a concept and where the distinctions lie. Some see development as an inclusive concept with an emphasis on linking it with contemporary issues of climate change, gender justice and civil society movements ('LLM (Warwick University)', 2018). Many courses make a deliberate departure from the debate of development being run by economists to a broader context that addresses not just questions of growth, but also sustainability, equality, rights and innovation ('Desenvolvimento: Racionalidades, Ferramentas e Arranjos Jurídicos (Faculdade de Direito Da Universidade de São Paulo)', 2012). The turn to interdisciplinarity can possibly be understood as a break from Western rationalism and the particularities of economics and politics since there is a clear attempt to locate development within a contextual experience (Kothari *et al.*, 2019; Escobar, 2018). By introducing different disciplinary vocabularies, there is an opportunity to showcase not just development as it is organised transnationally by global institutions, but how it actually operates in context and how it enables, censures and constrains the lives of people (De Souza, 2019a; 2019b). In this sense, courses attempt to use interdisciplinarity as a window to de-hegemonise development. The use of different methods and voices pluralises and politicises transnational concepts (Merry, 2006). It is then possible to be self-aware and to highlight the absences and silences that are otherwise embedded in knowledge production (Santos *et al.*, 2008). Further, by

connecting with other contemporary issues, these courses aim to break from speaking of development as a technocratic discipline but rather aim to expose the fault lines that emerge when practices are unearthed beyond a technical jargon (Desai *et al.*, 2012). Some contrast models of capitalism with their effects on human rights, labour rights and the environment. The emphasis of the course in this regard is more on presenting an analysis rather than practical ways of ‘how to [actually] do development’ (‘Law and Development (Columbia Law School)’, 2014), while others look more deliberately at how their students can become socially engaged practitioners and how they can contribute towards developing a sustainable and ‘socially progressive legal profession’ (‘LL.M. (Azim Premji University)’, 2018).

In both the *outlook of the course* and through the *relation to other phenomena*, we observe that development is viewed as a dynamic and contested concept that has narratives emerging from different sources. We also notice the use of different techniques to meet the objectives of the discipline from doctrinal to ethnographic. In balancing theoretical and practical implications of development, we further see how development speaks to the audiences of academics and practitioners.

4 The significance and potential of teaching to provincialise L&D

We have argued that reflecting about teaching is imperative for L&D because questions of epistemological power are ubiquitous in L&D studies. We have explained how this kind of power is also exercised through teaching and the exclusionary and disciplinary effects that teaching can have. When analysing a selected number of course descriptions from a variety of countries, we observe plural and particular forms of L&D knowledge inside classrooms, reflecting the contestations that have also shaped L&D literature over the last decades. These facets of L&D make visible the need to pay attention to and engage with the provincialisation of L&D curricula.

The argument presented below proceeds in two steps: first, we offer the idea of time zones instead of moments as a metaphor to capture and better describe provincialised forms of L&D knowledge. Second, we outline characteristics of L&D that we think provide promising conditions to achieve provincialisation and to *overcome* the exclusionary and disciplinary effects of teaching. Specifically, the plurality that we encounter in course descriptions illustrates the *substantive complexity* and *methodological heterodoxy* of L&D that, when acknowledged and amplified, can help to make the teaching of L&D more *inclusive* and *reflexive*. We will explain below how this is possible. More broadly, we argue that provincialisation through teaching is likely to impact the broader epistemological trajectory of L&D and has the potential to decrease the existing power asymmetries that still exist inside the classroom and beyond.

4.1 Provincialising L&D knowledge by thinking in time zones instead of moments

The analysis of course descriptions shows that L&D scholarship has become more plural and contested than what is attributed in the discourse around ‘moments’ as narrated in the work by Trubek and Santos. The authors proceed by introducing the role of law as an instrument of state policy in the first ‘moment’, before law provided a framework for market activity in the second ‘moment’, and more recently by law being an object of development as part of the third ‘moment’ (Trubek and Santos, 2006). Our engagement with course descriptions reveals that the trajectory that tends to be taken is in fact more one of space, time and history, and that the ‘moments’ are less linear or uniform. As Bonila Maldonado has argued, the production of legal knowledge is often subject to the political economy around it. As a result, what assume importance are also the conditions, consumption and commerce within which such knowledge is produced (Maldonado, 2018). We therefore argue that rather than thinking of certain ‘critical moments’, the metaphor of ‘time zones’ captures better the multi-faceted status quo. We find this to be a useful (but not exhaustive) descriptor because even though time zones attempt to standardise time across geographies, they cannot standardise experiences within that time. For some there is more light, for others more darkness, for some rain, while others get to

experience the sun. Time zones can therefore provide spaces for counter narratives against standardisation and universalisation.

Santos argues for new time-spaces that will in turn offer varied narratives – subaltern and insurgent – which must not be made into nonentities, but rather acknowledged and allowed for (Santos, 2018a). In a similar vein, we believe that time zones can be part of a ‘pluriversality’ that encompasses different experiences, resistances and knowledge ecosystems. We believe that ‘time zones’ is a metaphor that can capture diversity more holistically than ‘moments’ do, not only through its ability to transcend a North–South divide, but also by showcasing divergent legal, historical and social contexts. While time zones also have a hegemonic and colonial history with a centre in Greenwich, England, they are also reappropriated by different experiences within that standardised framework. This can be seen as a parallel to the current status quo of L&D, where dependences and hierarchies are still present in various ways, but divergent narratives are very much present and significant. To further explore the idea of time zones, we want to reflect on how L&D knowledge must be provincialised to allow this reappropriation to take place across time and space.

While it is important to acknowledge the significant role played by US academia in the origin and development of the field, one of the consequences of acknowledging plurality is to recognise that an exclusive focus on knowledge generated in the Global North is inadequate, particularly if we are to be conscious of the political economy around how this knowledge has circulated over time (Maldonado, 2018). From the analysis of the course descriptions in section 3, we are able to see how different courses seek to provide ‘histories’ of L&D through the choices they make when they engage with certain topics, case-studies from different contexts and through the methods that they use to offer comparison. This self-reflexivity in course design indicates a recognition that L&D knowledge must be provincialised when extrapolating trends and theories that seek to define L&D as a whole (Chakrabarty, 2007). Doing so will help to prevent the emergence of a hegemonic narrative in much the same way as scholars have sought to avoid ever since their first ‘self-estrangement’.

The idea of provincialising the field means that there is a need to recognise the plurality of content used in classes, the different organising themes behind the courses, the contexts and agency of the students, and the locations and politics of the university (Mbembe, 2016; Santos, 2018a; Chakrabarty, 2007). It recognises that tools for comparisons do not just emerge from the North to be analysed in the South, but instead are co-produced through knowledge and lived experiences in both contexts (Smith, 2012b).

Helpful to achieve such provincialisation *through teaching* are two L&D characteristics that our course descriptions have been illustrative of, namely the *substantive complexity* and *methodological heterodoxy*. Acknowledging and amplifying these characteristics make it possible to harness the potential of teaching by making it more *inclusive* and *reflexive*.

4.2 The substantive complexity of L&D

The contestedness of ‘law’ and ‘development’, which the course descriptions have illustrated, showcases the difficulty in attributing neat research categories or labels to the field. This ambiguity comes from the fact that L&D addresses substantive questions that include multilevel and multi-actor dependences (Davis and Trebilcock, 2008). Law as a catalyst for change, for instance, depends not merely on the national context, but also on inter- and transnational schemes of economic, social and political co-operation and regulation, and the institutional actors involved in these arenas (Sinclair, 2017; Rajagopal, 2003). Such starting points of research lead to a closely interwoven framework of inquiry, where the global, international, domestic and local inevitably interrelate and depend upon each other (Eslava, 2015; Dedek *et al.*, 2018; Riegner and Dann, 2008). At the same time, scholars and students of L&D are encouraged to keep in mind the systemic inequalities when establishing structural analyses and interdependences. These dimensions of the political economy of L&D entail the ‘inequality between those seeking and those giving transfer’ (Dann, 2019, p. 542). The underlying legal relations of the transfer – and the various actors involved in the process – exist in the shadow of

this hierarchy (Dann, 2019). This imbalance of power and resources becomes obvious, for instance, when analysing the claim of an indigenous community against a transnational corporation for environmental degradation on indigenous land (Kimerling, 2013) or against multilateral development banks for infrastructure-related resettlement (Fourie, 2009).

The analysis of the courses shows us that only through the inclusion of such voices and movements from below into the histories and narratives of L&D is it possible to provide counter-hegemonic viewpoints and insights into struggles of resistance and contestation (Rajagopal, 2003). Because the substantive complexity of L&D entails many of such marginalised and disenfranchised voices as central actors, acknowledging this complexity by embracing their perspectives makes discourses on L&D more *inclusive*.

Such inclusiveness also means that power asymmetries between actors are highlighted. This constitutes a first step towards overcoming them because once discourses widen and take into account previously excluded or marginalised viewpoints, it remains harder for the dominant actors to maintain their hegemonic position. Inspired by Fanon and Santos, one might refer to more inclusive teaching as an effort to bridge the ‘abyssal line’ between the South and North and the epistemological exclusion it creates (Santos, 2018c). As a matter of educational science, including such voices can provide a framework within which the learner’s *own* positionality is discussed (Edwards, 2014). Critical realists have argued that such an awareness of one’s own ‘standpoint’ is critical for ‘learners’ subjectivity, and their approach to and ability in relation to learning, [which] is informed by their life experiences and positioning within social structures’ (Eslava, 2020, p. 372). Including the perspective of marginalised voices and perspectives helps to contextualise one’s own standpoint and the biases that it naturally entails. Finally, to make the teaching of L&D more inclusive by acknowledging one’s own standpoint also has a broader epistemological dimension. It contributes to a productive ‘suspicion about truth claims’ (Eslava, 2020, p. 373) and recognises the immense epistemological diversity of the world (Santos *et al.*, 2008). Such plurality and contestation are already taking place inside classrooms according to our empirical findings about the notions of ‘law’ and ‘development’ outlined above. For L&D, this holds great potential to bridge the numerous power asymmetries and to counter dichotomous thinking by ‘striv[ing] for a higher consciousness of incompleteness and pluriversality’ (Santos, 2018a, p. 275).

4.3 The methodological heterodoxy of L&D

Another characteristic of L&D that can be helpful for provincialisation through teaching is the methodological heterodoxy of the field. An L&D scholar is ill-advised to adopt a purely formalist or doctrinal approach in their analysis – perspectives that tend to overemphasise internal logic and coherence of a formal legal body over aspects of pluralism, justice and ownership. Rather, socio-legal approaches are able to complement a doctrinal analysis by not only considering legal texts, ‘but also the contexts in which they are formed, destroyed, used, abused [or] avoided’ as well as their subtext, namely the texts’ moral dimension (Perry-Kessaris, 2012, p. 6). For international economic law (IEL), Tan has addressed the methodological tension between the formalism of epistemological approaches to IEL, which fail to acknowledge the plurality of normative orders and tend to prioritise the nation state and its organising principles, and the actual messiness of IEL practice (Tan, 2019). We agree that such messiness is also a characteristic of L&D and see our empirical analysis as an exemplary illustration of it. This messiness requires methodological reckoning in order to not fall prey to ‘methodological othering’ (Tan, 2019) through formalism.

To counteract these tendencies, we would like to go back to the potentially disciplinary effect of teaching and bring Foucault’s notion of ‘disciplinary’ into the methodological realm. From a semantic perspective, this seems particularly fitting since the mainstream methodology within a discipline like law exercises such disciplinary force. This means that breaking out of the orthodox methodological framework that we are socialised in gets more and more difficult the longer one is exposed to a field. Methodology thus disciplines us by preconfiguring what kind of questions we raise and how

we approach answering them in our research (Sokhi-Bulley, 2016). And while such socialisation within a discipline is natural and inevitable to a certain extent, it can also be challenged proactively.

For this purpose, a teaching approach that nurtures reflexivity can provide a first step towards broader efforts of defamiliarisation and unlearning (Santos, 2002) in order to become aware of our methodological default framework and expand it. Archer's concept of reflexivity is useful for understanding how, on the one hand, our methodological approaches are preconditioned according to the social structures in which we act and have been socialised and, on the other hand, the agency we possess within such a framework (Archer, 2007). Joseph emphasises in Archer's concept that 'individuals are seen as active agents who *mediate* their subjective considerations (values, priorities, knowledge and capabilities) and their objective circumstances (e.g. curriculum and assessment standardisation, accountability, etc.) to act in certain ways' (Joseph, 2014, p. 6). This mediation between structure and agency appears worthwhile also in terms of methodology: while we cannot get rid of or completely ignore the methodological framework within which we were educated as lawyers, reflexivity underlines the agency we possess to question this framework and find a way to *mediate* between our methodological default framework and more heterodox socio-legal approaches. Reflexive pedagogy can therefore render explicit the discipline-specific concepts or frameworks that would otherwise remain unmarked (Joseph, 2014). If self-reflexivity is not conducted as a 'self-contained intellectual exercise' (Santos, 2018d, p. 28) but rather viewed as the 'discovery of hetero-referentiality' under the inclusive parameters outlined above, then it can also contribute to epistemological defamiliarisation and unlearning as the first steps towards recognising the epistemological diversity of the world (Santos *et al.*, 2008). Santos writes that such learning from the South can be facilitated by learning from the North as a kind of 'negative learning' or 'unlearning of what claimed to be universal only because it was more powerful' (Santos, 2018b, p. 215). We argue that if we acknowledge the methodological heterodoxy of L&D and see it as a chance to practise methodological self-reflexivity, then methodology can have an explicitly epistemological impact by pluralising what kind of questions we ask and how we approach answering them (Sokhi-Bulley, 2016). Eventually, this contributes to 'pluriversalising' L&D knowledge more generally. It also connects to a broader 'move to more reflexivity' in L&D literature and practice, which urges us to reflect on an inclusive multi-stakeholder basis about development problems and creatively redesign ways to reform them instead of oversimplified, top-down 'legal transplantation' (Dann, 2021; Desai, 2020).

4.4 The potential of teaching to provincialise L&D

Eslava writes that the 'human learning experience is not just an expression of power structures but also a means of challenging them' (Eslava, 2020, p. 374). The analysis above has built upon this ambivalence in an effort to raise awareness about the significance of teaching such a contested and plural subject like L&D, but also with the normative goal to put L&D studies on a more *inclusive* and *reflexive* epistemological trajectory. We offer the metaphor of time zones to understand the heterodox and provincialised forms of L&D knowledge after the plurality that our empirical study revealed. In this final part, we provide suggestions on how to operationalise an *inclusive* and *reflexive* classroom experience that can move L&D away from universality and closer towards pluriversality and subversity (Santos, 2002).

As part of our first suggestion, we would like to emphasise the value of historicisation. While historicising has been a dominant approach to researching public international law (PIL) over the last two decades (Koskeniemi, 2001; d'Aspremont, 2020), we argue that historicising can also be of great value to L&D studies. Just like in PIL, it opens up the possibility to become 'attentive to the continuities and discontinuities and conscious of the interplay between structure and agency' (Eslava, 2020, p. 383). In L&D, a close study of history alongside the law and the institutional framework that the law has created will often allow us to bring politics back into the picture, and show that many decisions made with reference to economic rationale indeed have a genuinely political dimension (Dann and Dollmaier, 2021). In short, historicising L&D in many cases allows us to repoliticise L&D by learning about the context within which historic events occurred. This is particularly important for

understanding a field like L&D that has been shaped by the intentional separation of the economic from the political with the goal to disguise political and contentious questions as genuinely economic, technical and objective, and to thereby limit contestation (Dann, 2019).

Coupled with historicisation, our second suggestion is to move away from trying to have a common theory of L&D. We have found in our data that while many courses acknowledge the significance of legal institutions for development, all the themes beyond that differ drastically. This might serve as a reminder for L&D scholars that efforts to develop a core theory on L&D are almost impossible to establish as a matter of epistemic feasibility as well as desirability. Rather, L&D can thrive on its multiplicity of themes and their corresponding theories and empirical findings. Therefore, L&D research and teaching do not necessarily need to relate to a common thematic and theoretical framework, but can host a wide range of inquiries into similar kinds of questions under a diverse set of approaches. This corresponds to the idea of the pluriversity, where multiple perspectives – even within an academic discipline or field – are amplified and allowed to thrive (Santos, 2018a; Cadena and Blaser, 2018; Escobar, 2018).

Third, in order to operationalise historicisation and acknowledge the lack of a common theory, we find it helpful to adopt an approach similar to the ‘global case-study methodology’ developed by Darian-Smith and McCarty (2017). Their approach situates the case-study in a global context that includes, but is not limited to, the following dimensions: the local–global continuum; the spatial and geographic dimensions; the temporal and historic dimensions; the intersecting political, economic, social and cultural dimensions; the intersectional dimensions (e.g. race, class, gender, ethnicity, religion); and the global ethical dimensions (e.g. structural inequality, asymmetrical power relations) (Darian-Smith and McCarty, 2017). The list of these dimensions already makes visible how closely they relate to the plural L&D characteristics excavated and outlined above. Our metaphor of time zones captures many of them. At the same time, our analysis of course descriptions adds a valuable insight regarding comparison: we have found that while courses in the Global North engage with case-studies from the Global South as a matter of methodology, courses in the Global South tend to be conceptualised and framed *as a whole* more closely around the experiences and notions of the ‘law’, as well as the ‘development’, of a specific country or region. However, we think that courses in both the Global North and the Global South could gain from comparison by balancing inward and outward perspectives: countries from the Global North can benefit from an ‘inward perspective’ as an additional lens to cases and theory applying to the Global South. This could occur, for instance, by digging deeper into the institutional and historical foundations of development co-operation in countries of the Global North, thus exploring the colonial antecedents of the field that prepared the ground for the legal analyses that started in the 1960s (Eslava, 2015; Pahuja, 2011). At the same time, countries in the Global South could look at ways in which they can actively shape developmental knowledge, thereby challenging dominant discourses by providing explicit counter narratives and contrasting perspectives to the North (Santos, 2018c; De Souza, 2020).

As part of our fourth suggestion, we would like to spell out in more detail what inclusiveness can mean for teaching and what aspects an inclusive approach can entail. We have described above how including the voices of the marginalised and oppressed can help to bridge the ‘abyssal line’ that separates the epistemologies of the South from the North (Santos, 2018d, chapter 1). Operationalising an inclusive classroom quite physically can further contribute to such a process. Inclusiveness in this regard entails critical reflections on how a course can bring together students from multiple disciplines connected to L&D, such as law, the social sciences and economics. Some of the courses we analysed require an economic understanding of law, others make references to history, while others draw from anthropology. This demonstrates that L&D – while usually housed at law schools – can still do more to ensure that the classroom is also constituted with more diverse voices beyond just the most immediate body of law students. Such disciplinary diversity can question and challenge the hierarchies of disciplines within the epistemological architecture of L&D. We therefore think that opening L&D courses up to students from disciplines other than law entails an epistemological opportunity. By exposing law students to different disciplinary approaches and encouraging interdisciplinarity, the courses can make

a strong claim towards encouraging thinking beyond disciplinary boundaries (Taekema and van Klink, 2011). It also helps tear down the disciplinary barriers that define modern science (Santos, 2018d, chapter 1) but that fail L&D studies because they are incapable of dealing with the substantive complexity and methodological heterodoxy of L&D. An inclusive teaching approach can further reflect upon the person(s) giving the instructions. Since the underlying normative ideal of L&D is to help make better the living conditions of people on the ground through social, political or economic development, asking practitioners to share their perspective in class can complement the students' mastery of theory in a productive and holistic way. It further corresponds to the objective of some of the courses analysed above that seek to help students to become socially engaged practitioners.

Finally, one of the promises presented in the courses that we looked at is the dialogue between the programmatic construct of the North and the South through the use of case-studies, literature, voices and resistance from different contexts. In this way, the conversation has very much begun and courses, irrespective of their geographies, have started talking *about* each other. However, a next stage could involve talking more *to* each other across time zones. In this regard, teaching can provide a framework for such discursive provincialisation by instituting a more *balanced and equal dialogue* inside the classroom itself, and by explicitly addressing why there are such varied ways of seeing and constructing the field. This could be an effective way to introduce more epistemic diversity (Mbembe, 2016) while at the same time addressing challenges of knowledge hegemonies in the production and circulation of legal knowledge (Darian-Smith, 2013a).

5 Conclusion: no social justice without epistemological justice

This paper has reflected upon the teaching of L&D keeping in mind what it means to teach a subject as plural and contested as L&D. An exploratory qualitative analysis of L&D course descriptions has revealed plurality and heterodoxy across time zones through the way in which they approach 'law' and 'development'. We see this contestedness of L&D as a manifestation of the historic evolution of the field and offered the metaphor of time zones to capture and better describe plural and contested forms of L&D knowledge. Having explored one important arena in which knowledge is created and power is ubiquitous, we sought to highlight the potentially exclusionary and disciplinary power exercised through teaching. We argued that making teaching more *inclusive* and *reflexive* is particularly important for L&D because it is a means to achieve provincialisation inside the classroom. Additionally, inclusive and reflexive teaching also impacts the epistemological trajectory of the field more broadly by highlighting the perspective of marginalised and suppressed voices and by defamiliarising and unlearning one's own methodological default framework. Our analysis and ideas contribute to a wider debate on the significance of teaching in legal academia and the epistemological struggles and inequalities that are not unique to but are particularly pervasive in L&D. At the heart of our approach is the deep commitment to Santos's argument that there cannot be social justice without epistemological justice (Santos, 2002). Since questions of development are inherently linked to matters of social justice, we think that greater epistemological awareness and an additional focus on teaching hold promising potential for future research. In this way, this paper is meant to start the conversation on teaching L&D.

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