ENTREVISTA

Professor Pierre Issalys

CURSO DE LEGÍSTICA COMPARADA

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Entre os dias 11 e 14 de setembro e 30 de outubro a 1º de novembro o Programa de Pós-Graduação em Direito e o Núcleo de Ensino, Pesquisa e Extensão, ambos da Faculdade de Direito da UFMG, realizaram um curso de Legística Comparada em três módulos, sob a coordenação da Professora Doutora Fabiana Menezes de Soares, que leciona a disciplina Legística tanto na graduação quanto na Pós-graduação desta Faculdade. Foram convidados a ministrar as palestras os seguintes professores: Tito Gallas, das Universidades de Pisa e Gênova (Itália), Colônia (Alemanha) e Nacional do Rosário (Argentina), chefe do Serviço de Jurislingüistas do Conselho da União Européia e membro do Conselho da European Association of Legislation; Marta Tavares de Almeida, da Universidade Nova de Lisboa, diretora da Revista "Legislação – Cadernos de Ciência da Legislação", membro do Conselho Diretor do Instituto Nacional de Administração (Portugal) e membro da Diretoria da European Association of Legislation; e Pierre Issalys, da Universitè Laval (Canadá) e pesquisador do Governo de Quebéc. O objetivo da palestras residiu na análise das experiências européia e canadense acerca da formação dos atos normativos – desde o impulso para legislar, passando pela determinação do conteúdo e redação de cada ato normativo até a avaliação de seus impactos, tendo em vista a melhoria da qualidade destes atos e sua coerência com o ordenamento jurídico. O curso contou com ampla participação de estudantes da graduação e da pós-graduação, servidores públicos municipais e estaduais do executivo e do legislativo e operadores do direito.

O sucesso dos módulos 1 e 2 motivou, já no momento da organização do terceiro módulo, ministrado pelo Professor Issalys, a celebração de uma parceria entre Assembléia Legislativa de Minas Gerais e a Faculdade de Direito da UFMG para a realização de um workshop, que teve lugar no dia 6 de novembro na ALMG, cujo fito incidiu na abordagem de situações práticas de produção normativa, nas quais foram enfatizados diversos desafios que a ela se impõem, bem como os métodos utilizados para sua solução.

A Legística é disciplina ainda pouco conhecida, e seu escopo consiste na melhoria da redação normativa – não apenas das leis em sentido estrito, como o nome sugere, mas de todo ato jurídico-normativo – para que a norma configure de fato instrumento de concretização dos objetivos visados pelo legislador no momento de sua

criação. Ainda que no passado já se tenha percebido a importância da racionalização do processo legislativo, uma vez que este consiste, inclusive, em instrumento de solução de demandas na esfera social, a Legística só surgiu como disciplina autônoma na década de 1970, com os estudos de Peter Noll, que previu técnicas de planejamento legislativo. A partir daí novos estudos foram publicados por diversos autores. Visto que o custo que recai sobre o Estado em virtude da má qualidade da legislação é imenso – como demonstram o Relatório Mandelkern (2001) e os relatórios anuais publicados pela OCDE desde a década de 1990 – setores da administração pública também se interessaram pela Legística. A disciplina foi introduzida no universo acadêmico brasileiro pela Professora Fabiana de Menezes Soares, de forma que a Faculdade de Direito da UFMG é a única do Brasil a oferecê-la a seus alunos. A docente também criou, em 2004, um grupo de estudos na área, chamado Observatório para a Qualidade da Lei, o qual, além de buscar sintonia com os acontecimentos na área de Legística em nível mundial e produzir seus próprios conhecimentos por meio de pesquisas, encontra-se também engajado na missão de conscientizar os brasileiros sobre a importância de se exigir dos governantes a produção de normas jurídicas de qualidade, as quais sejam eficazes, bem como de envolver a sociedade civil no próprio processo de elaboração dessas mesmas normas.

A iniciativa da Professora Fabiana Soares em trazer a esta Universidade docentes e profissionais da área de Legística provenientes de países com práticas legislativas diversas teve o intuito de promover um intercâmbio de experiências relacionadas ao processo legislativo, estimulando assim a reflexão acerca do mesmo, no Brasil. A União Européia, em razão do processo político de integração, e o Canadá, onde coexistem os sistemas jurídicos de Civil Law e Common Law, constituem terrenos férteis para o desenvolvimento da Legística. Em ambos, fatores econômicos, culturais, sociais e lingüísticos se colocam como entraves a ser vencidos para uma legislação eficaz, que alcance e responda aos anseios de todos os cidadãos. E uma vez que o Brasil é também uma federação de largas dimensões, que reúne uma sociedade plural e que enfrenta muitos problemas no que se refere à iniciativa, edição, implementação e eficácia dos atos normativos, torna-se imprescindível buscar formas de racionalizar o processo legislativo em nosso país.

Durante sua estadia em Belo Horizonte, o professor Pierre Issalys nos concedeu a entrevista que se segue, pelo que muito lhe agradecemos.

Besides being a Professor, you are known by your social activism. What made you to get involved with social causes? What kind of cooperation means to you make use of?

Actually, being an university professor implies by itself some form of involvement in social issues, beyond teaching and doing research. This involvement can take many forms: writing letters to newspapers about current issues, sitting on the managing board of a hospital, acting as spokesperson for an environmental group, etc. I am occasionally asked to prepare researched analysis and opinions on matters of social legislation by citizens' groups or government departments. My involvement has been more intense since 1999, when I joined a broad movement within civil society in Québec, working for the

adoption of a legislative programme to fight poverty. This turned out to be a reciprocal learning process, as I gained a clearer consciousness of what it means to be poor in a rich society, while I helped fellow citizens with little power to gain access to the political and legal system, to understand its working and bring it to express some of their aspirations and values.

How do you think Law can contribute to the reduction of social inequalities in the world? What are the main difficulties that prevent Law from accomplishing this role?

On both the national and global scenes, jurists should relentlessly frame the question of social inequalities in its real terms, that is: in terms of basic human rights. There comes a point at which social inequality prevents the full realization of basic human rights. Then the very meaning of Law is radically at stake: what does the Rule of Law mean, what do rights mean, for the destitute person lying on the pavement in an affluent city, of for the hungry child, or the angry jobless youth? The main problem about Law, as it faces this challenge, is its inclination to do as if none of all this really mattered, to insulate itself from everyday life-and-blood issues and seek shelter in ready-made answers of the "business-as-usual" type.

How did you meet Legistics? For how long do you work in this area?

My first job as I came out of Law School consisted in revising the French version of decrees and regulations made by the Canadian federal council of ministers. This sparked an interest for the drafting of legislation, which has kept alive for nearly four decades. In addition to being intermittently involved in actual drafting, I have been teaching Legistics – including parliamentary procedure, the theory of legislation, and the interpretation of statutes. My long-standing interest in Administrative Law has also led me to approach legislation as one of the many instruments of State policy and action.

What conditions must a legislator observe in order to create an effective law?

I would say that the most critical requirement is that legislators have a thorough knowledge of the subject-matter of legislation. To be effective, legislation depends on adequate information. Yet, relying on expert knowledge is not enough. Real effectiveness of legislation ultimately involves its legitimacy; and that can only be obtained through a subtle combination of expert knowledge, political leadership, citizen involvement, concern for fairness and optimal use of available resources.

People in Canada have a civic consciousness and share a culture of good legislation. The high degree of development of Legistics in Canada is mainly due to the sui generis situation of coexistence of a dual legal system in the same country. How can Canada help other countries, especially the American ones, to find out mechanisms for legislative planning, since these are, beyond doubt, an urgent necessity?

I would agree that Canadians generally attach great importance to the working of the Law, in a way that is less litigation-prone than the American concern with the Rule of Law. I would also agree that Canada has gradually developed, since World War II, a fairly sophisticated approach to the quality of legislation. This development is, however, to a large extent unrelated to the general legal consciousness of Canadians; it has more to

do with technical preoccupations among jurists and politicians. It is only in recent decades that the issue of the relationship between citizens and legislative texts has emerged. No doubt, other countries may derive benefits from the Canadian experience. But inasmuch as in any society legislation is part of a cultural complex, foreign models for legislation-making cannot be imported wholesale: practices must be tested and developed over time, by building on appropriate home-grown assets. Legislation may be part of an overall strategy for cultural change; but it must first find its roots in pre-existing culture.

Brazil faces serious problems in what concerns the participation of civil society in political processes, especially the legislative process. The main causes of this apathy are connected to the belief that people's demands will not be attended, to insufficient social organization, to the ignorance of available forms of participation or to the inexistence of such forms. Which means do you believe to be the most efficient ones to change this conjuncture, since the participation of citizens is essential to let the government know their real will?

Precisely because of what I have just answered, I find it difficult to offer an opinion, the more so since I know little about Brazil. Should my limited experience about Canada and Québec be any guide, I would believe that much depends on the attitude and outlook of jurists. So long as jurists promote the view that Law is strictly a set of fixed rules, spelled out and developed in a technical way, that is best left out of the hands of ordinary people, citizens cannot be expected to regard Law as something that is really meaningful for them. Of course Law *is* about rules and *is* to some extent necessarily technical. But jurists should be mindful, and remind others, that Law is *also* a *medium* for continually discussing, defining and expressing values, and that those values should emerge from society at large, not just from a circle of "insiders". The role of jurists, it seems to me, is basically to help this whole deliberative process along, to provide it with structure, and to bring into it their own specific values – fairness, order, creativity.

The Swiss Jean-Daniel Delley has written that "Avant de rédiger la loi, il importe de la penser". It is also known that the Law cannot solve all problems, and many times it becomes necessary to add to the introduction of a new law some procedures of education and monitoring. Sometimes, the best solution does not belong to the domain of Law. You have developed a toolkit including five criteria for a better fit between government action and the regulatory techniques that may be used to accomplish it. Could this model be understood as a check-list for the decision of making laws? Has it been ever adopted somewhere? What were the results?

It is true that one should become critical about the "legislative reflex", by which I mean the impulse to throw a new piece of legislation at any problem that pops up on the political agenda. Legislation hardly ever is the only, or even the best, solution. Choosing the "right" solution, or more likely the "right" mix of solutions, is now more clearly perceived to be a question on its own, to be analytically distinguished from the question of determining the desired objective. To put it simply, one has to decide not only about the aims of action, but also about the specific means by which aims are to be pursued. Both decisions must meet a standard of legitimacy. In my work, I have proposed five components of a legitimate choice of means for a given State action – legislation being one of the

available means. Shortly stated, the five components reflect five perspectives on that choice: respectively, that of the political leader, the citizen, the jurist, the expert and the public administrator. Each perspective promotes a specific *criterion*, its own basic principle and its central value. As I see it, optimal legitimacy for using a particular instrument – legal or non-legal – to carry out a given State action will result from combining the five perspectives and giving each its proper weight in relation to the others. All of this reads very complex and abstract, and I agree it is, though I have tried applying this reasoning to some techniques for State action that are currently in favour. Much remains to be done to design a "toolkit" out of this. The need for guidance on this aspect of government policy-making is clearly felt at the moment in Canada, and my contribution, along with many others, might hasten the adoption of more rigorous analytical instruments.