

Education reform and the law: An elusive partnership

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Abstract

Schools are charged with the Education of society and the legal system provides the rules under which it takes place. When changes in Education are proposed, there is strong likelihood that laws will need to be altered. But the interaction between Education and laws is elusive, full of perplexities and disappointments. The purpose of this essay is to explore the intricacies of this elusive relationship.

Keywords: Education. Reform. Change. Laws. Democracy. Implementation.

This is not a crisp and analytical paper. It leans towards a rambling essay about my perplexities trying to understand the nexus between Education reform and the legal world. After observing, studying, and participating in the process of educational change for around half a century, I have collected hypotheses and doubts about this complex issue. In this paper I share them with my readers in the hope that they may help them make sense of these convoluted processes.

Is this a “scientific paper”? The answer is negative in case we believe that we begin by defining what is the “proper method” and then finding the problems where it may apply.

But what pushes the frontier of knowledge are powerful and perplexing questions. Facing an important and confusing issue, why should it not be examined with whatever tools are available. Science may help more our understanding when thorny issues are examined. The relevant criterion is whether the problem will be treated as rigorously as possible. Ultimately, this is what the scientific method is about – it is not a set of fixed rules.

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This is the case with the elusive and poorly studied relationship between Education and legislation. The paper explores some thorny issues by means of an analysis that is as rigorous as the state of the arts permits.

To make matters more concrete, the hypotheses are illustrated by real world examples. Mind you, they are mere examples, not systematic evidence to substantiate a hypothesis. I make no claims of representativeness in the cases chosen. It is up to the readers to decide how relevant they are. The paper is logically organized around themes, not around levels or modalities of Education.

The four propositions below are the foundations of the paper:

- I. Schools are charged with the Education of society
- II. The legal system provides the rules under which Education takes place
- III. When changes in Education are proposed, there is strong likelihood that laws will need to be altered
- IV. The interaction between Education and laws is elusive and full of perplexities and disappointments.

Most reforms go together with new laws, as could be expected. It makes much sense to begin with a “textbook-style” example, i.e., a reform that moved according to the most “natural” model: need to reform lead to passing the requisite laws and then to successful implementation.

The Organisation for Economic Co-operation and Development (OECD) considered as quite successful the educational reform that took place in Portugal in the nineties. A country with little to boast in Education, throughout its history, managed reach the mean scores of OECD countries, not a minor feat. This is what *Programa Internacional de Avaliação de Estudantes* (Pisa) tells us (OECD, 2015).

The Portuguese reform consisted in closing very small schools, moving its students to larger units, expanding the coverage of day-long schools, improving teacher training, and strengthening the participation of local leaderships.

The Portuguese Constitution is quite detailed in matters of Education and has not changed in the last decades. However, specific legal provisions were approved for each segment of this significant reform. And it was successful.

1 Going against the grain: Reforms without laws and laws without reform

The case of Portugal is a good example of laws changing to accommodate new Education needs. This is the classic virtuous case.

But it is not always like this. This Education and law interaction may be more complex than imagined. Discrepancies may go in either direction. To wit, *changing laws to accommodate Education reform is neither necessary nor sufficient*.

The first situation is when legal *changes are not necessary to reform Education*. This is illustrated by cases of serious reforms being implemented without altering the legal framework.

A highly successful reform in the state of Minas Gerais (Brazil) did not require changes in laws. This nineties reform included better data gathering, the evaluation of student performance, the provision of discretionary funding to schools, the organization of “parent-teacher associations” and changes in the rules to choose principals. All these changes and a few more could be implemented at the level of the state’s Secretary of Education. This avoided the legal battles with unions, the opposition from disgruntled groups, as well as the endless hurdles at the State Legislature. After less than ten years, the gains in student achievement were quite impressive (Mattos, 2000).

Here is another example from Brazil. In the early eighties, the Ministry of Education created a very comprehensive system to evaluate master and doctoral programs. Subsequently, I became the head of *Fundação Coordenação de Aperfeiçoamento de Pessoal de Nível Superior* (Capes), the department in charge of post-graduate Education schools (in the U.S. these would be termed graduate schools). One of my tasks was to create the machinery to implement these evaluations. Despite the complexity of the system created, the Ministry never had to approach Congress to legislate on such matters. Internal decisions were sufficient. The same happened with the comprehensive system of evaluation of K12 Education, created in the nineties. These are reforms without changing laws.

The contrary scenario is when *laws are passed but no reforms materialize*. This is not at all rare.

The largely failed attempt to enforce the laws to change the *Gesamthochschulen* in Germany is a good example. A very comprehensive set of laws (both Federal and State-level) was approved, having as its major goal the integration of academic Higher Education and the college-level technical schools (*Fachhochschulen*). It included the merging of administrative personnel, different profiles of faculties, hiring practices and much more (Cerych, 1981).

Less than half a dozen integrated institutions were created, following the new model. But all of them were in cities where Higher Education did not exist previously. In other words, it was not reform but creation of institutions. Except for those few, nothing else materialized. The resistance to change was formidable. And actors were powerful enough to fatally cripple the law. Over one hundred universities and two hundred *Fachochulen* did not merge or even approach each other. In so many words, the reform was an almost complete failure.

Another egregious case of laws that stalled comes from the No Child left Behind Act, in the United States (U. S. Department of Education, s. d.). To wit, this is the only rich country to have a non-negligible proportion of its youth with unacceptable performance in Education. The federal government proposed the creation of a standards-based funding program to beet-up the Education offered by the weaker states.

In such a program it is necessary to measure school achievement, to find out whether some children are being left behind and to allocate federal funds to states. But given the high level of autonomy of American states and local school boards, some of them refused to adopt the same tests that the federal government intended to apply to all children in the country. Worse, some decided to “doctor” their tests to boast better performance or hide embarrassing results. Ultimately, the program failed, and the United States remains a country that does not possess a national comprehensive and reliable system to measure the educational achievement of its students.

Those latter cases suggest that passing laws is not sufficient to change Education. This is a sobering thought. But it soothes the egos of less affluent nation contemplating their own failed reforms. These examples are in line with the central hypotheses of this paper: the relationships between efforts to change Education and the legal apparatus remain volatile and unpredictable.

2 Some contradictions and perplexities

In principle, laws provide the framework under which changes are to take place. To wit, in some situations, budgets may have to change, and this may require legal blessing. New institutions also require legal changes.

Contrarywise, the impact of laws is not always benign. They may perpetuate mistakes or prevent welcome changes. Even more confusing, who determines what is desirable and how to define success and failure?

Reviewing concrete cases, we can perceive that the path to pass new laws can be tortuous and the outcomes uncertain.

3 Do laws help or hinder Education?

As an answer this question, it seems that they can do both.

Some laws end up offering less than what its proponents desired. In the same matters of Brazilian evaluation of students, a legal mandate turned out to be required in one case. In the nineties, a unique system was created to evaluate undergraduate programs. It consisted in testing the students and assigning grades to their respective schools, based on such results. But Congress had to approve it, since the results generated high stakes for individual courses and students. Low grades would be vexing and would bring heavy economic losses, especially in the case of private institutions of Higher Education. The legal mandate was approved, at the end of delicate negotiations with Congress. However, some restrictions were imposed on how to use the data. The individual scores of students could not be revealed. This had the effect of reducing the motivation of some of them to take the tests seriously. This may hurt the results for some schools. The case illustrates that, to approve laws, concessions are often unavoidable – and they may reduce or undermine the intended result.

The opposite case is when *laws may offer protection to fragile programs*. In the early years of the new millennium, this same Higher Education evaluation program was threatened. With the Labor Party in power, the new director at the agency in charge of testing (*Instituto Nacional de Estudos e Pesquisas Educacionais Anísio Teixeira* – Inep) was an adamant critic of such initiatives and wanted to cancel them. But, as he admitted during a board meeting, he could not do so, because there was a law protecting it. The lesson is clear. It may prove time consuming to have laws approved in Congress. But in this case, the effort paid off, by protecting the program created under its umbrella.

In short, some laws fall short of its intentions. But in others, they may protect fragile initiatives, particularly in their early-year stages.

4 Laws are engineered to resist pressures do be changed

Laws must be in place to prevent inappropriate behavior on the part of some people or institutions. This has consequences, good and bad.

If degrees are granted without reaching minimum performance standards, this hurts the system. It discredits the value of diplomas as a proxy for the learning acquired. When this happens, the operators of fly-by-night schools have an easy life. Furthermore, some students are perfectly happy with the little effort required. Therefore, it is no surprise that those unhappy with the legal imposition of higher standards will try to bend or revoke such laws.

Therefore, the rites and procedures to alter laws are designed to offer the most arduous path for those trying change them. It makes much sense.

However, laws respond to the needs of a particular moment in history and later may become obsolete. Here is a bizarre example. During the XVIII Century, the Lycée Louis Le Grand, in Paris, had a dungeon to keep unruly students, with laws regulating matters of who goes for a stay there. But at later dates such laws no longer made any sense. They had to be removed.

The irony is that the hardships to change anachronistic laws can be the same as those that wipe out legitimate legislation that hurts someone's particularistic interests. In conclusion, the hurdles are there and may create formidable barriers, in all cases. Even though changing laws is part and parcel of good governance, the difficulties always remain, also preventing welcome and necessary reforms.

The structure of Brazilian high schools was modified in the mid-nineties (Castro, 2004). Instead of offering a range of alternatives to students, it created a single curriculum and a single model for all secondary schools. Everywhere, diversification is the norm. I was not able identify other countries imposing the same curriculum for all. Could Brazil be the only country with the correct solution?

However, it took over three decades to approve a new legislation that, again, permitted diversification. State secretaries of Education exerted pressure, the Minister of Education and the President deployed their prestige in Congress to

effect the changes required. It was a major endeavor to cancel a law that created a system entirely at odds with international practice.

Why not end with a funny footnote to this long-drawn campaign to change a law. States' Secretaries of Education met in a resort hotel to discuss the last touches of the proposal they were submitting to Congress. The positions of the states were largely consensual. However, on one issue there was no agreement: should the English language be optional or mandatory? Almost all the participants thought that every student ought to take English, except for a vocal pair of nay-sayers. During the long-drawn out discussion that followed, waiters were circulating with water and coffee. Suddenly, one of them stopped in front of the audience and exploded: "Argentinians come here and speak English to me, Japanese, Germans, French do the same. I don't want my son unable to converse in English and I cannot afford private tutoring. Why are you people saying that English should not be mandatory?" That outburst settled the question.

As famously quipped by Otto von Bismarck, don't ask how sausages and laws were made. Confirming his wisdom, a waiter's intemperate but timely intervention helped to decide the language curriculum of all secondary schools in Brazil.

5 The convoluted birth of laws

Maybe, a given set of laws was once appropriate to realize the desired educational objectives. However, some laws could be misguided. In both cases, there may be consensus that the legal framework needs to be altered.

As new laws are proposed, some powerful interest groups may become active, hovering very close – be it in favor or against.

A loosely defined "left" has its favorite subjects and may become a loud presence, sometimes, through unions or associations of university professors. "Privatization" remains a constant enemy to be combatted.

Teacher unions are a constant presence, usually lobbying for a few recurrent themes (against evaluation, against merit pay and so on).

As if those complications were not enough, in many countries, laws are discussed and approved by a two-chamber Legislature. Both are proper arenas for discussions. But in some cases, the chambers do not agree.

The legislature has its own multiple agendas, in which party politics may play a role. Approval of an Education law may be the result of a deal involving non-educational issues. In the United States, the so-called “pork barrel” politics links the approval of important legislation to the inclusion of specific, often unrelated, provisions to benefit recalcitrant State representatives.

All in all, approving laws is a messy process. However, sometimes the topic does not arouse much interest and the new legislation goes through, smoothly and quickly.

An interesting case was the approval of the act that redistributed the federal funds to primary Education in Brazil. Members of Congress did not pay much attention and it was approved in no time. But had the wealthiest states done the arithmetic, they would have discovered that the rules prescribed a redistribution of their funds in favor of the poorer states. Were they more attentive, it is very unlikely that the law would have been approved.

Another curious case was the approval of the new Act restructuring the curricula of Brazilian high schools – already mentioned. It took decades to get it approved. However, at the last minute, the Minister of Education included a provision to steeply increase the proportion of schools operating full time, instead of just in morning sessions. This had nothing to do with the reform and would have required substantial extra expenditures, justifying much further discussions. By piggybacking on the first Law, highly controversial, nobody paid much attention to it, and the package was approved without further ado.

Law makers and ministries of Education may use different strategies to approve a new law. They may choose a surprise attack, proposing the act and moving quickly. The tactic is to find the potential opposition unprepared to organize and resist. When they recognize the implications of the maneuver, it would be too late.

As an alternative, proponents might take the slow road of approving a general and somewhat vague law. Then, as implementation begins, they expect to overcome, one by one, the hurdles that were hidden in the general law.

As already mentioned, in the early sixties, the German parliament approved the act of the *Gesamthochschulen*, establishing thereby a fusion of the academic Higher Education programs with those of undergraduate technical schools. Altogether, this law implied a very profound transformation. Had the initial law

been more detailed, perhaps, the Parliament would not approve it. But when time came to define its concrete steps, the proposals stalled, and the law was never implemented (Cerych, 1981).

In several countries, a frequent battleground erupts when laws come from a movement sometimes called “rationalism.” Ministries and multilateral banks are concerned with the quality of Education as well as the economic efficiency of the school system. Evaluation of students is often part of this package, as well as cost-benefit considerations.

But left-leaning groups often contest such proposals. Battles ensue between “rationalism” and ideological groups, without a clear pattern of winners and losers. Ultimately, behind these disagreements lie ideological clashes. In fact, equivalent confrontations also appear in the health sector.

Lawmakers envisaged the reform of Paraguayan vocational training as a two-pronged operation. In one of them, they allocated budgets to fund a collection of private-sector small training schools. In the other, they drafted a provision that altered the functioning of the local public network of trade schools.

With the financial support of an Interamerican Development Bank loan, the funding of private initiatives proceeded quite well, as it was a new operation that did not conflict with established interests. However, the changes in the operation of the traditional system met strong internal opposition and stalled. If the agreed-upon changes were implemented, the IDB funding could be disbursed. But that did not happen. Therefore, the schools were paralyzed for a long time, even though the administrative staff remained on the payroll.

In this Paraguayan loan, one of its provisions was implemented, the other not. Some new laws require deeper interventions and may affect or hurt many actors. This was the case in Paraguay and Germany. As a result, in both cases, the laws stalled.

A counterexample is the law that permitted the Brazilian Ministry of Education to evaluate individual college students – already mentioned. By its nature, it did not depend on too many actors or organizations to put together the machinery to implement it. One single institution inside the Ministry could handle the job (Inep). And students were not powerful enough to sabotage the initiative. Despite bitter grumblings from some groups, it was fully implemented and the results materialized.

Along the same line, a most important Education reform in the United Kingdom centralized curricula and evaluation, while it decentralized the operation of schools. Even though it was a major intervention in the logic of the whole system, it did not need the support or acquiescence of thousands of principals and teachers. Ministry agencies were able to prepare and implement curricula and tests. Whether the lower-level operators liked it or not, decision making on everyday operation of schools was delegated, and the local levels were given autonomy to run their schools. It was a fully implemented reform (Fisher, 2008).

Numerical indicators showed considerable gains for students. But left-leaning professors bitterly complain about less measurable losses.

Sweden constitutes an interesting case of well-planned reform. Its implementation begun the early seventies. The strategy was to proceed slowly to complete the process within a ten-year period. All indications suggest that it was fully completed (Lundhal, 2002). One might add that such long periods to put in place the new provisions require a politically mature society. Poorer countries tend to have more volatile environments, making it difficult to plan for such long-lasting implementation period.

As implied in some of these examples, reforms that involve many people, at all levels, are far more difficult to approve and implement. In addition, it is harder to manage the reform, as more and more people have the power and the means to sabotage it.

In contrast, let us imagine a new law on funding Education. As mandated, it goes to the financial officer. He immediately changes procedures or allocations. This can take place overnight. It is relatively straightforward to alter budget procedures inside a given Ministry. Such reforms are handled by bureaucracies loyal to the Minister proposing them. Regardless of how good or bad the proposals are, they tend to be easier to implement.

In contrast, there are the so-called “people-centered reforms”. Requiring the participation of many actors, they are inevitably much harder to manage and the outcomes uncertain. In Brazil, when regular academic schools were mandated to develop vocational courses, this involved entering a process in which critical actors were not comfortable with. And, worse, had little or no appreciation for it. This happened in the past and is beginning to happen in the reform of secondary Education. With so many nay-sayers, the outcomes are uncertain.

6 Does democracy ensure good laws?

In a democratic society, by design, laws reflect the will of the people. The mechanics of the system ensure that representatives - freely chosen by society - are given an explicit mandate to approve laws.

Perhaps one can also say that in democracies the legal apparatus tends to be far more in consonance with ensuring the well-being of its citizens, when compared to authoritarian alternatives. Just looking at this critical dimension, democracy is a more desirable form of government. In addition, democratic societies are more stable and, in theory, protected from wild swings or political earthquakes. Robust legislation resists attempts to be revoked by interest groups. They are conceived and protected, having in mind such defenses.

Be that as it may, the undisputable advantages of democracy also have their downsides. As mentioned previously, the world changes and what was adequate legislation when it was passed, may later become inadequate or even a hindrance. Therefore, that same machinery conceived to protect laws militates against the need to change.

Majority rule versus the rights of minorities is a conundrum already explicit in the Federalist Papers of the young American republic. The majority may oppress minorities, while respecting legitimate voting rules. For a long time, the majority of voters in several countries did not think the poor, women or ethnic minorities should be educated. Being a majority don't they have the right to vote to impose any scenario they choose? Hedging such conflicts is always a delicate matter, even in highly democratic the societies.

But the opposite is often true, minorities can use laws to acquire or preserve privileges. The rich are a minority everywhere. And they can use their power and political savvy to pass laws that favor them in many different ways – tax loopholes, for example.

In many countries, tuition-free public universities favor the children of better off families, with superior preparation to pass the entrance tests. Also, budget allocations tend to be more generous towards schools catering to the richer areas of cities. Urban schools get more resources, compared to their rural counterparts.

All this can happen in legitimate democracies. If the majority, i.e., the poor, were directly asked whether they want more money allocated to the schools attended

by the richer families, the negative is obvious. But since direct democracy is not possible in complex societies, the intricacies of representation open hundreds of doors to political maneuvering. And those more competent in this art are not the most deserving of the benefits.

In addition to these moral concerns, there are also operational issues. The agendas of the Legislative and Executive may not agree on some matters. In Brazil, a case in point is the creation of market reserves for this or that Higher Education diploma holders. Members of congress may want to please their constituencies by passing laws that prevent those who do not own the requisite diplomas to occupy the corresponding positions. In the case of medical doctors, nurses, and other occupations with high risk to the clients, the certification requirements make much sense and are not contested. But why should economists and journalists with diplomas have market reserves? It benefits those contemplated with monopoly privileges and hurt those lacking them. The gains for society as a whole are unclear. Congress, ministers of Education and ministers of labor may have different ideas on the subject. These conflicts are inherent imperfections of the democratic systems.

In a hypothetical direct democracy, citizens may be asked whether they want to create a new school. This still happens in remote parts of Switzerland. But other than in small cohesive communities, such decision rules are not practical. Oscar Wilde is supposedly credited with commenting on the modestly sized New England town democracies “they take too many evenings!” The practicalities in democratic processes are not at all a small concern (Quote Investigator[®], 2019).

In a modern representative democracy, there are many layers of people and institutions, including parties, between those who vote laws and citizens who elected them. And the degree of organization and ability of these intermediate groups to influence the outcomes cannot be underestimated. They can make noise and obstruct the flow of procedures. Or they may support the proposals by many different means. Ultimately, they make a difference between failure and success in changing laws. And, whether the new laws are fair and productive.

There are examples of vocal minorities defeating a “silent majority”. Perhaps, the noisiest case was the “Scope’s Monkey Trial”, in 1920’s Tennessee. In the year of 1925, “fundamentalists” and “modernists” engaged in a bitter and highly publicized legal confrontation. Vocal religious groups wanted to banish from classrooms the teaching of Darwin’s Theory of Evolution. Modernists thought it was nonsense and violated the liberty of teachers. But they lost. The law forbidding

the teaching of Darwin's theory was upheld and several subsequent efforts to repeal it failed (Scopes Trial [Encyclopaedia Britannica, 2024]).

Was the teaching of evolution something that the majority of citizens would have objected in 1925? Probably not. Later on, it was perceived as ever more inappropriate by the average citizen. However, it was a minor hiccup in the legal framework, not worth the fight with the pugnacious religious groups. Therefore, it was not repealed.

In practice, the Tennessee law did not hurt in the day-to-day operation of most schools. When I became a student at Vanderbilt University in Nashville, Tennessee, upon visiting the library, I searched for Darwin's book. Indeed, it was there, with the visible signs of the physical wear of having been read by hundreds of students.

Notwithstanding, it was an embarrassment for a state that wanted to industrialize and create an image of modernity. Low and behold, the same initial configuration of political forces remained alive. Most citizens considered it ridiculous, but not worthy of much effort to revoke. In contrast, fundamentalist religious groups continued to fight bravely and vocally for its preservation. Only in 1967 was it possible to repeal the Monkey Law. This is the classic case of vocal minorities prevailing over lukewarm majorities.

In many societies, – whether this term is used or not - lobbies are created to defend the interests of groups able to afford the requisite costs. In countries such as the United States, lobbying is legal. In others, illegal. It is a delicate issue to decide whether they distort the principles of democracy. The fact remains, they are a reality.

All in all, democracies have imperfect mechanisms to translate into laws preferences that fully reflect the choices of society. And the more egregious shortcomings concern the need to change laws that have become dysfunctional. This difficulty results from the justifiable built-in provisions to protect them.

Authoritarian regimes present the opposite scenario in matters of legislation. Dictators pass the laws they want when they so desire. And they are responsible for some of the most barbaric laws ever recorded. Let us not forget, Hitler did not infringe German laws in his persecutions of Jews. Any absurd legislation is possible under dictatorial regimes.

A bloody and bizarre case of authoritarian regimes enforcing legislation took place in Kirgizstan, between the two World Wars. According to USSR legislation, all children were obliged to attend schools. However, a substantial proportion of Kirgizstan's population was nomadic, from time immemorial. This meant that for children to attend schools, their parents had to remain in one place, abandoning their pastoral livelihood and potentially ruining them.

It was inevitable that a conflict ensued. Stalin would not change his mind and the shepherds refused to leave their nomadic life. Statistics of the period are not reliable, but it seems that in the resulting conflicts way over one hundred thousand people perished.

These are extreme cases. Most authoritarian regimes either have limits to what they can get away with or prefer not to displease too much its citizens.

A good example comes from Brazil under military government (1964–1983). According to the Constitution, public schools cannot charge tuition. But many Education authorities and educators – supported by a considerable number of citizens – thought that some Higher Education students should pay for their Education in public universities. After all, a large majority hailed from higher income homes and could perfectly afford the costs – as did their siblings who attended private institutions.

Nevertheless, the opposition was so furious that the military government backed off. It never went as far as formulating a proposal to change the law. Even authoritarian regimes can succumb to public pressure if it comes from circles that are noisy and politically powerful.

Peculiar as it may be, this is an example of a military regime, clearly supported by some people from the middle and upper classes, taking a stand in favor of the poorer segments of society. It is also evidence of the great political strength of the middle classes to protect their privileges. Ultimately, it shows the imperfect translation of majorities' preferences, the poor, into laws that benefit them.

Let us also consider that approved legislation is not the same as implementable legislation, even under non-democratic governments. In 1971, the Brazilian military regime decreed that all secondary schools had to offer vocational alternatives to students. This was a well-meaning law, mandating the provision of the kind of skills the students could immediately use, should they enter the workforce upon graduation.

However, the legislation ignored the elitist nature of secondary schools in the seventies. The few who reached this level of Education had no interest whatsoever in vocational training. Attempts to enforce the law lead nowhere. It went against the grain of the school *ethos*. In some elite schools, purportedly vocational “tourism” courses were a cosmetic repackaging of the traditional courses in geography and history. The Minister of Education, an Army Colonel, was not able to make the law stick and it had to be revoked.

However, authoritarian regimes, in matters of Education, may bring some surprises. Laws that could not be approved under a democratic regime become possible in dictatorships. And there are eloquent examples of good laws. (Castro, 1999).

Pinochet is a favorite object of hatred among many Chileans, with ample justification, considering his murderous rule. Low and behold, his ministers of Education were able to redesign the entire structure of Chilean Education. As far as I know, it is the only Latin American country with a clear and well-thought-out structure, particularly in Higher Education. During decades of the subsequent civilian governments, successive ministers benefited from the design dating from the Pinochet period. They never considered changing it. Surely, it is not perfect and accusations of being “neoliberal” abound. But, overall, it was a substantial step in improving Education. It is worth repeating, to create such a neat and well-structured system remains often beyond the capabilities of democratic regimes. In democracies, approving laws involve an intense wheeling and dealing. Each paragraph is disputed. Whatever is approved can be quite distant from what was dreamed by whoever proposed the law.

Another example in the same direction was the Brazilian reform of Higher Education. The blueprint was designed in the late sixties, still under the military government.

At the undergraduate level, it extinguished the tenured chairs, under which each professor “owned” their courses. It also created department structures, like the ones in American Universities. The reform created a basic cycle of two years, something that did not thrive in the local cultural *ethos* (Fraga; Siano, 1991).

But the creation of an intelligent and modern structure for post-graduate Education was an even greater success. And it took place long before most European countries updated their doctoral programs. Before the reform, the country possessed hardly any programs beyond college level. Under the new umbrella, it developed a most

impressive network of master and doctoral programs – at the present, totaling over five thousand.

One is forced to recognize that no such reform would have been possible under a democratic regime. At least, one that took place in such a clear cut and rapid manner. These are perplexing thoughts. As mentioned, democracy often has difficulties in approving welcome legislation. Dictatorships can do it, sometimes easily. But of course, they can also produce horrendous laws.

To sum up, having laws approved is a very complicated business. In principle, democracy is a vastly better choice. But under it, sometimes, changing laws can be a nightmare, no matter how desirable they be. In contrast, authoritarian governments are unpredictable and uncontrollable, in matters of creating laws. But in some cases, they may approve some excellent laws, a feat that would be impossible to undertake in democratic countries. These are sobering and somewhat scary thoughts.

7 What makes a law hard to pass and implement?

Schools need rules to operate. Some of them are locally decided, like the time to open the gates and for how long students may borrow books. But unless the more important rules are decided at a central level, the ensuing confusion could become unmanageable.

Some good Education laws, it is easy to believe, are “forever”. This is the case with the obligation of parents to send their children to school. But others turn out to be a mistake, perhaps from the beginning. They need revision. Some laws might have been appropriate when created, but as societies change, new and better ideas appear in the horizon and different forms of operation need implementing.

One of the core themes of this essay is that changing laws is a complicated proposition. Usually, ministries of Education are the institutions that perceive the need for change in legislation, in order to implement new policies. But laws also originate in the Legislature. These are distinct entities, driven by diverse motives and rules, even though we want to believe that both desire the best for the students.

To such matters are complicated. As mentioned, some Education reforms can bypass the rules and be accomplished within ministries. Even more importantly, some laws stick, and some are not taken seriously, even in authoritarian governments.

However, approving a new legislation is just the beginning. Then comes implementation. It can be easy or impossible. However, there is one difference in this latter stage. It is somewhat easier to predict the difficulties ahead. The complexity of the law, the nature and number of actors involved are known factors and suggest how bumpy will be the path ahead.

Perhaps we can derive some common threads in the collection of examples already examined. But they are no more than suggestive speculations.

1. Approving a law is but the first step. Implementation is another matter. It may be easier or more arduous. In addition, success in either case depends on different skills on the part of educational authorities.
2. Laws that impose change in the ways people and institutions are used to behave tend to be harder to be approved and even harder to implement. The more profound the changes imposed, the stronger the opposition can be and the easier for disgruntled groups to sabotage implementation.
3. Laws that challenge strong ideological beliefs are also harder to approve and implement. Opposition becomes a “holy crusade”, and reason ceases to be a criterion to decide.
4. Laws that create new institutions, especially when they bring fresh money, are easier to approve and implement.
5. Laws dealing with financial matters are the easiest to implement, since all the action takes place in the central offices.

8 The art of having laws approved

Implementation is not necessarily easy but is part and parcel of managing the Education system. It is a relatively well-studied subject and needs no further explorations here. But the art of proposing and approving laws remains a fuzzy subject.

In this final topic, I want to return to one of the original themes of this paper, namely, the challenge of getting laws approved.

This process has some similarities with the strategies to plan a battle. For starts, it is a perilous adventure. As understood by Napoleon, one must understand the

mind, the soul and the strengths of the “enemy”. It is necessary to develop plans to “win the battle”.

Future generals go to war colleges, in order to learn the art of war. There, they spend time studying the intricacies of all important battles recorded in military history. Unfortunately, educators do not attend equivalent types of institutions to learn the art of having laws approved. I know of no program teaching how to conduct the process that leads to the approval of the desired laws.

Some educational authorities are quite savvy in such matters. Usually, those with a political background or longer presence in the bureaucracy are better able to steer the proposed laws through the meandering paths of Congress – or its local counterparts.

But many are quite naïve concerning such matters. The usual result is a failure to get their laws approved. Or, sometimes, what is approved is a far cry from what was expected, defeating the purpose or almost.

In this paper I conveyed my perplexities when trying to understand such matters. Therefore, the best I can say is that administrators cannot take for granted that good ideas and good intentions will be understood by all and translated into the good laws. Instead, the road tends to be twisting and bumpy at best. And frequently, it is blocked.

Reforma educacional e a lei: uma parceria indescritível

Resumo

Cabe às escolas o papel de educar a sociedade, necessariamente sob um marco legal apropriado. Mas quando mudanças na Educação são consideradas, é altamente provável que esse marco precisará ser alterado. Contudo, as interações da Educação com a lei são confusas, cheias de perplexidades e desapontamentos. O propósito do presente ensaio é explorar os meandros dessa interação prenhe de interrogantes.

Palavras-chave: Educação. Reforma. Mudança. Leis. Democracia. Implementação.

Reforma educativa y la ley: una alianza difícil de alcanzar

Resumen

Las escuelas se encargan de la Educación de la sociedad y el sistema jurídico establece las normas en virtud de las cuales se lleva a cabo. Cuando se proponen cambios en la Educación, hay una fuerte probabilidad de que las leyes necesiten ser alteradas. Pero la interacción entre Educación y leyes es esquiva, llena de perplejidades y decepciones. El propósito de este ensayo es explorar las complejidades de esta relación esquiva.

Palabras clave: Educación. Reforma. Cambio. Leyes. Democracia. Implementación.

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