

Reforming Legal Education in Brazil: From the Ceped Experiment to the Law Schools at the Getulio Vargas Foundation

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In the 1960s a group of Brazilian legal educators dissatisfied with the state of legal education in their country sought support from the Ford Foundation and USAID for a project designed to spur reform. They created the *Centro de Estudos e Pesquisas no Ensino do Direito* (Ceped) and developed an innovative course in economic law. The project was very successful. The course lasted seven years but closed down in 1973 and the reform effort faltered. Thirty years later Brazil's prestigious *Fundação Getulio Vargas* (FGV) created new law schools in Rio and São Paulo: these schools looked back to Ceped for inspiration. In this essay, written for an informal history of Ceped, I reflect on this 40 year experience. I ask why Ceped failed to overcome the barriers to reform it faced in the 1970s and show how, many years later, FGV overcame these obstacles and developed a sustainable model for modern legal education.

The original Ceped course was conceived as a pilot project operating outside the normal structures of legal education. Ceped was a sort of laboratory: the name means "Center for Studies and Research on Legal Education". The course provided post-graduate training in economic law for a small group of young lawyers from the public and private sectors. It was designed to develop ideas, methods and materials for law school reform. The pilot was a great success. But Ceped itself never went beyond this first stage: it did not deal with reform of the law schools and the course closed after seven years.

At the time, many who had hoped for speedy reform of law schools in Brazil wrote Ceped off as a failure to be filed among the long list of unsuccessful legal education reforms in Latin America. That has changed. Suddenly there is interest in this long-defunct project. Thirty years after Ceped closed its doors FGV decided to create new-style law schools and looked back to Ceped for inspiration. Now that these schools have become established, FGV asked people to review what happened in the 1960s and 1970s. Like detectives in an episode of one of those TV dramas where the "cold case" files of old crimes are reopened, we find ourselves revisiting events well in the past. What do we hope to learn by re-opening "The Ceped File"?

I think this foray into history casts light not only on the past, but also on the present. By looking at this story, we can learn something about Brazilian legal history in the past 40 years; understand the obstacles to legal education reform; trace the genesis of recent developments including the creation of the FGV law schools; and gain perspective on the challenges that lie ahead.

To that end, I will explore four issues: why did Ceped initially succeed; why, despite that success, did the project come to an end; what kept the idea alive after the course officially ended; and why was FGV able

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to succeed in the 21st century when Ceped had failed in the 20th? My views are based on largely on personal knowledge. I have followed the Ceped story from the beginning. I helped launch the Center; observed the course while it was being taught; discussed the project with various members of the Ford Foundation staff; kept in touch with some Ceped professors and alumni after the course ended; participated in the effort to record its history; and worked closely with both FGV law schools since their founding.

a) Why did Ceped succeed?

No one doubts that Ceped's one year post-graduate course for lawyers was a roaring success. The students found the experience eye-opening and rewarding. Employers valued the training—ads even appeared in Brazilian newspapers announcing law jobs and indicating a preference for Ceped graduates. Ceped alumni went on to successful careers in law, government, business and the academy. Lots of people criticized Ceped for one reason or another. But even its strongest critics acknowledged that the course in itself was a great success.

Ceped succeeded because it was designed by Brazilian legal educators who understood what lawyers in Brazil needed. Some have characterized Ceped as an effort to import US legal educational ideas and methods into Brazil. They have suggested that its apparent failure came about because these ideas were unsuitable for the Brazilian scene. These critics saw the project as a failed effort at “legal transplant” and its demise as evidence that Brazil rejected the transplant.

This is just plain wrong. To be sure, the Brazilians learned a lot from the US and financial support from Ford and USAID was vital. The exposure to US legal education demonstrated a new style of teaching. External funding made an ambitious experiment. American professors helped. But the basic ideas came from the Brazilian professors.

Ceped emerged at a time when a few Brazilians were beginning to question traditional approaches to legal education. In 1955 Santiago Dantas, a leading jurist who later became a major political figure, called for major reforms including abandonment of the lecture method in favor of dialogic interaction in the class room and introduction of interdisciplinary perspectives. Although Dantas' call was not heeded by the establishment, a few professors began to experiment with new approaches to teaching and there was a significant but short-lived effort at reform at the newly created University of Brasilia.

Perhaps more important for the Ceped story were the experiences with in-house training programs for lawyers in advanced legal offices including the prestigious legal department of the energy company called the Rio Light. The Canadian-owned Light Company was one of the largest multinationals operating in Brazil and its legal department was one of the most sophisticated centers of globally-connected lawyering in the country. Offices like the Light developed internal methods to prepare newly hired lawyers.

The people who created Ceped were aware of stirrings within the hidebound world of legal education and familiar with these in-house training experiences. Many had read and approved of Dantas' call for reform. Several had tried new approaches in their own law school classes. Some knew about the

experiments in Brasilia. And three of the most important figures in Ceped's early days were associated with the Light's legal department. This included Ceped's Director Caio Tacito, Alfredo Lamy Filho the acknowledged academic leader of the project, and Alberto Venancio Filho its first Executive Director.

Contact with the US undoubtedly helped the Ceped professors figure out how to scale these efforts up so they would work for a year-long course. It showed them techniques like the use of prepared teaching materials designed for class discussion. And it probably helped them see how insights from other disciplines could be integrated into legal education. But these "imported" tools and techniques were put at the service of ideas about law and legal education that Brazilians had been talking about and trying out before Ceped came on the scene.

The Ceped course had many goals. But I think it was driven by a belief that Brazil needed a new kind of lawyer to deal with the complex demands of its fast growing mixed economy. Both the Ceped professors and the project's US supporters recognized that Brazil needed a new kind of lawyering to cope with the demands of development in a mixed economy where the state played an important role but the private sector was essential for growth. Ceped was an effort to figure out what kinds of legal education would meet that need.

Ceped emerged when new development policies were being carried out through massive law reform. If these systems were to work as planned, they needed the support of a new kind of lawyer in both the public and the private sectors. These "new" lawyers needed to understand both the formal rules *and* the policies lying behind them; think of themselves as team members; and solve problems not just passively monitor activities.

The Ceped professors understood what this type of lawyering demanded because *they were "new" lawyers themselves*. Many taught in one of Rio's law schools. But, like almost every other law professor in Brazil at the time, they also worked for law firms and corporate legal departments where they had learned how to impart the skills required by this form of lawyering. Ceped was as much about finding ways to scale up experiences already in existence in these elite practice venues as it was about adapting educational ideas from the US.

The founders of Ceped understood the need for new forms of lawyering before Ceped started and before they had any contact with US legal education. To be sure, this was not purely "local knowledge" because it came in part through prior contacts with foreign law firms. I am sure that when the history of the Light's legal department is written, we will find that some of the ideas about lawyering and the training of lawyers that developed within this institution were influenced by foreign models. The Light was a Canadian corporation listed on the New York Stock Exchange and the Brazilian legal staff had substantial contact with corporate lawyers from the US and Canada. I suspect these contacts led to the diffusion of ideas about lawyering that were adapted to Brazilian realities by the highly talented team of Brazilian lawyers at the Light and similar globally connected legal departments and law firms. It was those ideas that inspired the Ceped course.

So, while in this indirect way ideas about lawyering derived from the corporate practices of North America probably did influence the design of the course, they would have already been filtered by

sophisticated Brazilian professionals and adapted to Brazilian reality before Ceped started. If that is the case, then whatever the reasons that Ceped failed, it was not because it was trying to import lawyering ideas and educational models that were completely alien to the Brazil scene.

Indeed, it was the very fact that the course filled a real need in Brazil and offered a kind of training already tested in elite law offices that explains why the course was such a success. The Ceped teachers knew what kind of lawyering was needed because they were already doing it. They crafted a course that drew on their own in-house training efforts. The contact with US legal education did not open their eyes to a new reality or a wholly new idea of lawyering. Rather, by showing how a sophisticated and advanced system of legal education operated in a culture where this kind of lawyering was commonplace, the contact with the US inspired them to make a break with prior educational practices and provided tools needed to create a formal course adequate to the needs of the time.

2. Why did Ceped come to an early end?

Formally, Ceped was part of the University of the State of Guanabara but that was largely a fiction. It really was free-standing operation housed at the Fundação Getulio Vargas and governed by the professors under the leadership of Caio Tacito. In 1973 Tacito announced Ceped was closing its doors. Why did the Ceped leadership decide to stop operations after seven successful years?

A lot of us thought that a major reason for the demise of Ceped was the end of the external funding. Ceped received very substantial grants from USAID and Ford and these grants allowed the Center to mount a very effective but expensive course. Clearly, the loss this support would have been a major blow.

But we have learned that the Ceped course ended before the external support ran out. It is true that the money from USAID had dried up by 1973. As far as I can tell, this was not because of dissatisfaction with Ceped. Rather, it was part of the general winding down of all USAID operations in Brazil. While USAID was out of the picture, Ford funding was still available. However, this support was made conditional on Ceped moving to the next stage by disseminating what had been learned in the “pilot” course. This might have involved sharing materials, holding seminars, and developing training programs for professors. Ford set aside a significant amount of money to be used by Ceped for these purposes but Ceped never used the funds. Eventually, the allocation was cancelled and the grant closed.

So the question of why Ceped abruptly came to an end in 1973 turns largely on why the leadership was unwilling to move the project to the next stage. The decision seemed to have been taken by Caio Tacito without much consultation with the other professors. Sadly, he died before our study began so we may never really know his reasons. But I suspect he decided that the task of reforming the law schools was just too daunting.

The Brazilian law schools of the 1960s and 1970s did not focus on the needs of legal professionals and graduates went into a variety of careers. They were staffed almost exclusively by practicing lawyers and judges who received token salaries and devoted a few hours a week to teaching. Bored students attended routine lectures. Those who wanted legal careers picked up professional knowledge and made

valuable contacts by interning in law offices. Universities spent little on law schools: they paid professors a pittance and legal education required no expensive facilities. There was a mandatory curriculum dictated by the Federal Ministry of Education that left little room for innovation.

In this system, Ceped was revolutionary. The Ceped course was designed to train legal professionals, not offer general education. To adopt its methods and materials, teachers would have to spend much more time on classwork; students would need to devote much more time to studying; new courses not included in the mandatory curriculum would have to be developed and standard courses rethought. And all this was certain to cost a lot of money.

While Ceped supported revolutionary ideas, it was a revolution without a constituency. Most professors were happy with the existing structure and would resist the need to rethink materials and devote more time to teaching. There was no demand from students for reform. University leadership had no interest in launching costly and potentially unpopular changes. The law firms and corporate legal departments were satisfied with the existing system which relied more on apprenticeship than university education to impart professional values and skills.

If the challenge of law school reform may have seemed overwhelming to some in the Ceped leadership, it also may not have seemed necessary. If the primary goal was to train a cadre of “new lawyers” for advanced work in the public and private sectors, there really was no need to confront the legal education establishment. The founders knew all along the experiment would run into stiff opposition: that is why Ceped was created outside of the existing system. If the need for a cadre of new lawyers could be met in specialized courses like Ceped, why provoke a storm by taking on the law schools?

Add to all this the repressive political climate of those days and it easy to understand why the more conservative among the Ceped leadership balked when presented with demands that they take on comprehensive reform. But this reluctance led to a major breach between Ceped and Ford. Both Ford and USAID had understood the project to be the reform of legal education generally, not just the education of an elite that would serve economic actors in government and the private sector. This split revealed that the external donors both had more ambitious goals for the project than the leadership of Ceped and/or much less awareness of the obstacles to reform.

The strength of these obstacles was confirmed by the subsequent experience at PUC-Rio. One of the things Ceped had done was to give grants (*bolsas*) to 14 lawyers, mostly graduates of the Ceped course, to study in the US. These *bolsistas* were more influenced by the US scene than were the original Ceped professors. None of the founders had studied in the US. A few did take a short trip to the US to observe several schools before the course started and most participated in occasional discussions about legal education with Harvard Professor Henry Steiner who taught at Ceped for 18 months. But the *bolsista* experience was very different: they all spent one or two years in LLM programs at Yale, Harvard, Berkeley and similar US law schools and really absorbed the full ethos of US legal education. As a result, they returned enthusiastic about legal education reform and eager to push beyond the point where Ceped had stopped.

As Ceped was closing its doors, they got their chance when several former Ceped students and *bolsistas*, led by Joaquim Falcão, Jorge Hilario Gouveia Viera, and Gabriel Lacerda, carried out a major reform at the PUC law school. Inspired by Ceped, this reform sought to bring about the kind of changes Ford and USAID had hoped Ceped would take on. The ex-Cepedistas at PUC secured short term funding from the Inter-American Foundation and developed innovative programming both for the first degree program (*graduação*) and the Master's level. However, the experiment ran into stiff resistance from the existing faculty. After a few years the administration ended it. Control of the law school reverted to conservative forces and the ex-Cepedistas mostly departed.

3) How did the Ceped idea stay alive after 1973?

Perhaps the most interesting thing that we learned from the oral history project is the way the ideas promoted by Ceped were kept alive during the quarter century between the end of the project and the decision to create Ceped-inspired law schools at FGV. Gabriel Lacerda has told this story in his chapter in this volume. Basically, what happened was that Ceped created an informal network of former faculty and students that found ways to keep some of the ideas alive. This was done in part through specialized Ceped-type courses organized in law firms and government agencies and by limited experiments in courses in regular law schools.

Especially important was the course created by José Luis Bulhões Pedreira and Alberto Venancio Filho at Bulhões' law firm and courses at the Ministry of Mines and Energy and at CVM (the stock market regulator) led by Jorge Hilario Gouveia Viera. Much was learned from these later *ad hoc* post-Ceped courses. They also expanded the number of people who had contact with the Ceped idea and all these people kept alive the ideas propagated by the project. When FGV decided to create new law schools and looked back on the Ceped experience for inspiration it could turn to the network of people who had been through a Ceped or Ceped-like experience for ideas and advice. Moreover, in Rio, they were able to recruit Joaquim Falcão, an ex-Ceped *bolsista* and instructor, to lead the project.

4) Why has FGV succeeded where Ceped failed?

Reopening the Ceped file helps us understand the problems confronting legal education reforms in the past. But it also raises another question: in light of what was learned about the barriers to reform, how was FGV able to put many of the Ceped ideas into practice 30 years after Ceped closed its doors? FGV has created two law schools that include many of the ideas and practices that Ceped and later the *bolsistas* fostered or tried to foster. That includes a significant percentage of full time professors; students in class full time at least for the first three years; sophisticated teaching materials and regular pre-class assignments; interactive classrooms; problem oriented courses; interdisciplinary perspectives; advanced research; and global linkages. Why could FGV overcome all the barriers Ceped had faced and had shied away from confronting?

To answer that question, we need to look at the changes that occurred in Brazil during that thirty year period. The FGV experiment emerged in a very different Brazil than the world Ceped experienced. By

2000, while many of the old obstacles still persisted, new possibilities had emerged. These possibilities were grasped by FGV.

The success of the FGV experience owes much to the vision of the top FGV leadership, the energy and imagination of founding Deans Joaquim Falcão in Rio and Ary Oswaldo Mattos Filho in São Paulo who designed and led the experiment, and the hard work of the bright young professors at both schools. Both Deans had followed the Ceped experience during the heyday of the project. They knew the problems it had encountered. Both knew that many of the old obstacles to reform were still there. But they also saw that changed conditions might make it easier to overcome some of these barriers.

What are the changes that facilitated the FGV experiment? They can be summarized in four words: democratization, liberalization, privatization and globalization. In the 30 years between the end of Ceped and the start of the FGV experiment, a new Brazil emerged.

a) Democratization

Ceped was conceived during military rule. The military was happy to support reform in technical and scientific education which was seen as important for national development. But they were not interested in law schools—except possibly to monitor any signs of political dissent. I think the military's attitude toward law was very contradictory. They were legalists who were against law and lawyers! While the technocrats the military put into power saw law as a tool by which they could transform the economy, the regime routinely acted extra-legally and saw courts and an active legal profession as possible threats to their rule. And they were right: it was no accident that the Brazilian Bar Association (OAB) played an important role in the effort to oust the generals or that the democratization movement chose the restoration of "The Rule of Law" (*Estado do Direito*) as a rallying cry.

With the restoration of democracy and the promulgation of the new Constitution, law became a more important force in Brazil and the law schools were freed of the repressive hand of the military. The prestige of the legal profession was enhanced. Law schools had more leeway to introduce new courses and explore new methods of teaching. These developments also changed the professional market. With democratization the judiciary took on more important roles and bodies like the *Ministerio Publico* were strengthened thus creating attractive new opportunities in the public sector for law graduates.

a) Liberalization, Privatization and the Corporate Law Boom

Starting in the early 1990s Brazil embarked on a major program of liberalization and privatization. Tariffs were lowered, limits on foreign direct investment reduced, and many state-owned enterprises (SOEs) were privatized. Foreign investment increased and Brazilian firms were able to raise money in the international capital market. In place of direct state control of sectors like telecommunications and state ownership of major enterprises in steel, mining, and aircraft production, many SOEs were sold to private groups. At the same time, independent regulatory agencies were created to monitor and regulate the newly privatized sectors. Antitrust law was updated and enforcement strengthened. A vibrant capital market began to develop and securities law was updated.

These changes created new areas of law and generated new demands for corporate legal services. Many new laws were both complex and unfamiliar to most Brazilian practitioners: for example, independent agencies were largely new to the Brazilian scene. Lawyers had to deal with new clients and unfamiliar transactions. More and more Brazilian companies found themselves working with foreign corporations. Transactions rarely seen in Brazil like transnational mergers and acquisitions and overseas bond and stock issues were introduced. Moreover, some of the new legal rules were derived from international sources like the WTO requiring Brazilian lawyers to master international texts and understand international institutions.

Companies and governmental entities found themselves operating in a new, complex, transnationalized regulatory matrix. This created a huge demand for corporate legal services. For example, as foreign firms sought to acquire Brazilian entities and Brazilian firms began to make acquisitions abroad, a major M&A market developed. Total Brazilian M&A volume in 2010 reached \$30.9 billion dollars. Of this, \$10.2 billion represented acquisitions abroad by Brazilian firms. One Brazilian source estimated that this market could represent as much as a billion dollars in legal fees.

The surge in demand sparked the phenomenal growth of the corporate law sector. While in 1990 there were only 90 firms with over 10 lawyers in Brazil, by 2010 the number of Brazilian firms with 10 or more attorneys had quadrupled to a total of 398. Of these, 101 had over 50 lawyers and the largest employed 515 lawyers. But the changes were much deeper: the firms not only had to grow; they also had to develop new styles of lawyering and new forms of organization.

The market for legal services was strongly influenced by global companies, whether Brazilian or foreign-based. And global clients demanded “global law” and lawyering. Brazilian lawyers had to adopt international lawyering styles and Brazilian firms began to create organizational forms similar to the global law firms they worked with and competed against. Domestic firms created specialized departments, career ladders, new compensation systems, and hierarchical management arrangements. They changed recruiting practices. These rapidly growing firms needed lawyers who could understand the needs of business clients; master complex regulations; and deal with foreign firms and foreign legal materials. Legal education became more important and a premium was placed on overseas study and experience.

b) Globalization of knowledge

Simultaneously with the privatization and liberalization of the Brazil economy, Brazil became part of the information revolution and the consequent globalization of knowledge. It is much easier now for Brazilians to get information about legal ideas and developments around the world. For example, when Ceped was founded it was almost impossible to access law reviews from the US and Europe: today many Brazilian lawyers and legal academics have immediate access to much of the world’s legal literature. This, plus an increase in the number of Brazilian academics and corporate lawyers who have studied abroad, has facilitated the internationalization of the Brazilian legal field.

5) The FGV model

FGV saw the need for a new form of legal education that would meet the needs of the legal profession and their clients in the 21st century. They felt that the existing system of legal education was not supplying the kinds of legal knowledge and the kinds of lawyers that were demanded by the new world of Brazilian law. Brazil needed better lawyers in both the private and public sectors. But firms and government agencies could no longer rely primarily on social networks and internships for the lawyers they needed to hire. Some began to look to law school training as an important factor in hiring. There was a market niche for law schools that could meet these needs. And thanks in part to economic growth there were more people who would pay for this kind of training and knowledge.

FGV was able to draw on the Ceped experience to do things that Ceped was unable to accomplish. The new market for legal training and knowledge meant that FGV could overcome one of the biggest obstacles that had stymied Ceped: the cost of full time legal education. Using a financial plan that combined high tuition in the *graduação* and substantial fees for post-graduate continuing professional education, FGV was able to hire a number of full time professors, encourage them to do innovative research, and create well-equipped facilities and good libraries. Prospective students especially in São Paulo were willing to pay a very high tuition to get the kind of training they thought the corporate legal sector was looking for. In Rio this also happened, but in addition many students looked to FGV as an entry point into well-paying positions in government and the judiciary.

FGV had another advantage: it was starting completely new institutions. There were no entrenched professors who would fight any reforms; no angry students unwilling to accept higher fees combined with more work; no alumni to oppose tinkering with sacred tradition.

6) Ceped, FGV and the future of legal education in Brazil

Those of us who had been involved in the Ceped experience and suffered the frustrations of its premature demise can only celebrate the remarkable achievement at FGV. While the new conditions in Brazil made it easier to realize much of the Ceped dream, nothing was guaranteed and FGV had to take a lot of risks to get to where it is today. The recent celebration of the schools' 10th anniversary was a milestone in the history of legal education in Brazil.

What effect this will have on the rest of legal education? There are over 1200 law schools in Brazil. Many are precarious operations: the OAB recent issued a list of law schools it considers qualified to train lawyers. They came up with 90 schools. It seems like a lot but represents less than 10% of the total. And most that were deemed to be acceptable lack many of the features to be found at FGV.

Will the success of the FGV schools serve to spark major changes in the larger world of legal education or will they remain islands of excellence in an otherwise low quality educational scene? It is too early to tell. But one thing is clear: it will be extremely hard to replicate the FGV model as a whole. That is because the FGV schools occupy a unique niche and rest on a financial structure hard, if not impossible, for other schools to copy. To be sure, some of the new curricular ideas, teaching methods, and instructional materials developed at FGV may diffuse to other law schools. But other features, such as a

large contingent of full time faculty, research support for professors, state of the art facilities, and expensive global linkages will be harder to develop in institutions that lack the financial base and market power of the FGV schools.

In the first place, the student demand for very expensive legal education may be limited. Students at FGV seem willing to pay the high tuition these schools charge in part because they see it as an investment in an education that will give them access to high-paying jobs in both private and public sectors. How many such jobs are there and how many people will be willing to invest large sums to get better access to them? Secondly, the FGV schools have another source of income not easily replicated by other schools. Because of its success in areas like business administration and economics, FGV is a powerful brand. The financial plan of the FGV schools rests in part on revenue from the continuing education courses taught to practicing lawyers. The overall FGV brand gave these courses cachet even before the law schools' highly deserved reputations were established: it would be hard for other institutions to compete for this market.

In a sense, the FGV experience shares some things with Ceped. Both took advantage of unique conditions to pioneer new approaches to education and promote new roles for lawyers. For Ceped, the opportunity was the relatively massive dose of external support made available by Ford and USAID. For FGV it was the new market opportunities created by economic and political transformation.

Both had success training an elite group of lawyers. Unlike Ceped, FGV was able to develop a sustainable model and will not suffer the fate of its predecessor. But the conditions that make FGV successful and sustainable are not easily reproduced. Many of the barriers Ceped faced still exist and the quest for viable for legal education reform strategies must go on. This will take more thought and work including close study of the FGV experience and investment in other types of experiments.

FGV could play an important role in such an effort and thus claim to be the heir to Ceped in every sense. Remember that Ceped means "study and research on legal education". We still need that today. Ceped is dead; long live Ceped!