

The unwitting victims of arbitration's success

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As a university professor and a member of one of the last generations of arbitrators not initially trained in this field (in my case, coming from administrative law), I have been wondering for some time on the effect that the blossom of international arbitration is having in Latin-American students and young practitioners.

There is no doubt that for those foreign to it, arbitration appears as a particularly appealing field of practice. Not only it provides the opportunity of working in some of the most interesting matters and encountering some of the best lawyers and academics but it opens the door to developing a real international practice, something extremely unusual for those raised and trained in developing countries.

The attraction that international arbitration raises among non specialists is expressed in different ways. Partners of large firms with little or no experience in arbitration or litigation look at it with increasing interest when their time for retirement approaches. A surprising number of law firms periodically announce the opening of their arbitration practices and hundreds of participants gather in arbitration events even in locations with little-to-no arbitration tradition or work. Finally, the growing interest in arbitration reflects in the increasing curricular and extracurricular activities offered by universities, normally in the form of arbitration courses and moot competitions.

While most of these developments should be warmly welcomed, others generate some reasonable concern.

There is no doubt that moot competitions constitute a fascinating experience for all of those involved in them. Law students enjoy exciting experiences, and the moots provide teams coming from communities with no arbitration history with the opportunity to compete against (and often beat) others coming from places where arbitration practice is commonplace.

Competitions of this kind provide students with a unique opportunity to get in contact with other legal systems and cultural approaches, develop teamwork and technical skills in a format that they have never encountered (and in many cases will never be exposed to again), make new friends, etc. Therefore, it not only becomes an extremely valuable educational experience but a personal one that they deserve and will be grateful for life.

As moot competitions, short arbitration courses (either at undergrad or graduate level) will in general provide only benefits to their participants by allowing them to obtain a useful insight and a better understanding of the arbitration field and practice.

Extended graduate programs should, in my view, be looked in a different way. While it is true that most of them will provide participants with a better preparation and skills, the decision to concentrate a legal education in arbitration should be analyzed with caution, on a case by case basis and with an informed knowledge of the existing professional demand.

There is no doubt that increasing the opportunities to specialize where a market is demanding more arbitration professionals should be praised and encouraged. However, is that the current situation in most cases?

Notwithstanding its appeal, that doesn't seem to be the general situation in areas within Latin America. It is true that countries as Brazil or Perú have significantly increased their arbitration practise in the last few years, mainly in the domestic side. However, most of the other countries in the region are far from having the number of arbitration cases to cope with the amount of young lawyers expressing their interest in joining this field.

Arbitration is essentially a practice, which as such can still be reasonably well

trained when joining a good arbitration team. On the contrary, the lack of a solid education in a substantive field of law is a defect usually found in young lawyers that very rarely can be solved but through legal education. Taking an extended graduate program primarily focused in arbitration will, in most cases, guarantee a deep knowledge of the process but also mean a more limited education in a substantive field of law (commercial law, international law, administrative law, etc) that the one to be obtained through other specific programs. And generally it is the substance, not the process, that legal disputes (including those to be settled through arbitration) concern.

Therefore, if some legal markets are not demanding such a number of arbitration specialists, are we helping students and young lawyers by encouraging them to train and become arbitration specialists? Aren't we providing them with wrong signals for their professional development that could drive them away from paths in which they could find more success?

A "market approach" answer will most probably simply dissipate such concern by stating that if that was the case incentives to specialize in arbitration will not last long.

Although that could be right in the long term, the truth is that most of our young colleagues who are currently choosing this path instead of others will have little opportunity to correct in the future the decision that they take today.

Many of those reading this blog frequently receive resumes of outstanding candidates with impressive academic qualifications (many of which we could even envy) interested in joining their arbitration practices. Unfortunately, after a few years many of those very same candidates are still trying to insert themselves in this area being no longer young graduates but colleagues that could have consolidated in other fields of practice should they have taken different decisions.

On the long run, market rules will probably prevail and unrealistic expectations will accommodate to the real professional demand. However, until that time comes it is our duty as more experienced professionals and academics to guide our students and younger colleagues wisely and when necessary raise our voices as what we do (or do not) could influence significantly their future.