

EUROPEAN GROUP OF PUBLIC LAW

REUNION 2015

Laudatio in honour of Prof. A. GORDILLO

Excerpts

Saturday 12 September, 2015



ISAAC AUGUSTO DAMSKY*

Mr. President, Members of the Steering Committee, Fellows of the European Group of Public Law and dear friends all,

This afternoon, I wish to humbly share with you some thoughts about AGUSTÍN GORDILLO. I wish to tell you of the many times I witnessed distinguished members of the academic legal community of Latin America claiming AGUSTÍN GORDILLO to be the most prominent jurist of our time. He is, undoubtedly, a beacon for all of us.

Without his light, without his outstanding work, without his utmost generosity that enlightens us, the study and application of public law in Latin America would be submerged in darkness: That same darkness that used to engulf our perception of public law, when an authoritarian bias was its rule of application, before the influence of this celebrated author.

He represents a turning point for the Latin American Public Law community. He was the only professor to propose the need to develop citizen participation as a true instrument of change in the defense of their rights. He did this as early as 40 years ago, in a time of political turmoil, when the military Junta was in power and there was no place for the defense of individual rights or grassroots activities. He is, for all of us, a huge step *ex umbra in lux*.

It would take the lifetime of a significant number of academics to achieve what AGUSTÍN GORDILLO has already achieved in more than fifty-five years of work, which make him the legal professor with the longest career in our young Latin America. All his writings are coherent, fully useful, up-to-date and visionary, even those he conceived at an early age. As a young man, he got to the top of the academic world and stayed there for all these years, being always one of the most original teachers there are when it comes to explaining to his students the world reality and how it pertains to Latin America. His skills in this area are surpassed by no one.

* Professor of Administrative Law at the University of Buenos Aires, Argentina.
ERPL/REDP, vol. 28, n° 1, spring/printemps 2016.

AGUSTÍN GORDILLO seems to have lived many lives in one. He is the treatise writer who taught us to place reality above theory, and also the Grand Master who showed us the keys to solve the cases straight from the facts, their legal value and the regulations. He is also a prominent attorney and advisor, ‘of counsel’ to many legal firms, national governments and associations throughout the world, as well as a prestigious Arbitrator and Judge in International Courts.

The epicenter of his original production is placed on his *Treaty of Administrative Law and selected works*, ranging from fifty years ago and up to the present, always being expanded and updated. Until today, the *Treaty* comprises more than eleven volumes and we hope there will be more than fifteen. His work is something larger than a mere theoretical formulation within the traditional canons of the legal writing of Hispanic America.

His methods, contents, and theoretical approaches are absolutely unprecedented in his field. His work intersects theory and practice of Law alike, while having a broad scope: He analyzes with a keen eye national, international and supranational institutions. AGUSTÍN GORDILLO offers the Latin American legal community an absolutely original method in Public Law, urging us to study the Law with a special focus on the facts. He is always inviting us to “*sapere vedere*” —know to see— the reality to understand the changes in our field of study and its theory within the national, international and supranational dimension. His method imposes the need to center our analysis on the facts before any theoretical formulation is made, and to link and connect those facts in order to find the legal answer that better suits the resolution of the problem at hand.

He was the first in Latin America to propose to Latin Americans the use of an own method in the study of Law. He was also the first to think and discuss Public Law with the system of rights as the starting point, unlike other authors whose starting point was the all-grasping state power system, lodged in decades of military governments. In sum, he was the first to fully explain the Administrative Law system in Latin America. In doing so, he led the “democratization of the legal speech,” long before the Inter-American Court of Human Rights even began to discuss this need.

In the preface of AGUSTÍN GORDILLO’s book *An Introduction to Law*, Professor SPYRIDON FLOGAITIS praises his academic quality by saying: “...Agustín Gordillo’s new book is different from his previous works. The difference lies within the content as well as within the style. This book is not another essay on administrative law. It is a book dealing with the true essence of law in general, legal studies, the relation between theory and practice in law; in a few words, this book reflects all the experience and the wisdom of a man who is already at an advanced stage of his legal career and feels ready to share with the world his findings in a lifelong learning process about law”. The importance that AGUSTÍN GORDILLO gives to the

context in which each of his works is written makes each of them “to a great extent, autobiographic,” as Professor SPYRIDON FLOGAITIS points out.

For these reasons, the works of AGUSTÍN GORDILLO are an incredible learning experience, useful and meaningful as they come. His works are much more than just a theoretical study of legal matters; they approach a multitude of aspects of interest to the legal studies. In the pages he has written we find the marriage between his wisdom and his practice. There, we also find the national, regional and international reality explained by the legal theory. We can also find a meeting point for such legal theory with politics, economy and history.

To properly assert the scope and brilliance of AGUSTÍN GORDILLO’S works in Latin America, it is necessary to understand the brutal historical context in which they were conceived. He started writing in the 1960s, a decade of turmoil for Agustín Gordillo’s region, marked by an escalation of political violence. Many of the countries of the Americas swung back and forth between democratic intervals and increasingly violent military dictatorships.

These fluctuations strengthened the state power system without precedent and gave rise to legal theories functional to those in power, which justified any transgression with alleged *raison d’Etat*. These theories deeply impacted on the civil rights and public liberties, restricting them to their lowest level. Administrative Law stagnated, reduced to only smoke and mirrors. Freethinking was suppressed. Universities were intervened.

Argentina and most of Latin America suffered an escalation of political violence and social repression during the 1960s, both of which reached a peak in the 1970s and would last until the first half of the 1980s. During this period, the Latin American Public Law became power-centric. From that time onwards, the only influence that Latin America took from the European continental Public Law, were some isolated elements of its theory to justify the naked use of state power by its dictatorships, in the context of a weak judicial system, unable to exert any control. Theories that justified state power prospered and public freedoms withered. This reality became consolidated through a legal philosophy that increasingly distanced the constitutional rights from Administrative Law.

AGUSTÍN GORDILLO was the first to question the dominant ideology of that time. He defied the power system by proposing the preponderance of a system of rights. He created a literature equally filled by theory and practice. He studied our legal reality far beyond the laws; he also considered other conditioning elements such as politics, economics, social and cultural aspects. He created a method. He denounced the workings of the schizophrenic and corrupt state apparatus in Latin America. He unveiled the existence of a “parallel public administration.” He stood his ground against a power that used the law to justify itself.

His thought, wit and works inspired many of us. He initiated a legal activism in Latin America that knew no precedent. His theories enabled us not only to comprehend the reality of the Argentinean and international legal context but also to improve our administrative judicial review. In a state of darkness, AGUSTÍN GORDILLO was the first author to speak to us in a straight, clear and meaningful language.

AGUSTÍN GORDILLO was the first Latin American author to teach us that Administrative Law takes place in an International open space, in a public arena within a global governance. This reality, masterfully analyzed in Europe by SABINO CASSESE, was firstly introduced in Latin America by AGUSTÍN GORDILLO. He was the first to explain to the Latin American community about the international and supranational scope of Public Law; the first one to show the interaction between international human rights treaties and the public administration, thirty years ago.

AGUSTÍN GORDILLO is an intellectually honest man. He lives as he thinks. He is a freethinker. He is only committed to the search of the Truth. No strings attached. He is the pioneer of technology in favor of the application of law. He was the first one to upload his Treaty and all of his works on the internet for all students to be able to access them. He was also the first to show us the need to modernize the Argentinean public administration through information technology empowerment.

Dear friends,

Allow me to say that AGUSTÍN GORDILLO is a revolutionary jurist and a brilliant interpreter of the realities of different times; a man full of new ideas; a center of union for those who have different conceptions within the legal community. He represents a sun in the equinox, in its zenith, which lights the paths of all of us, who have decided to follow his footsteps, wherever they take us. So mote it be!

Acknowledgments**

AGUSTÍN GORDILLO***

Good afternoon, Ladies and Gentlemen.

I really did not expect to be given the floor, but I cannot miss the opportunity to join all of you in the remembrance of our dear friend LUIS ORTEGA ÁLVAREZ. Further, I would like to also join you in the homage to MASSIMO SEVERO GIANNINI, to whom I sent a book in 1969 and who replied with a warm, yet very critical, letter. I later visited him both at his office and his house and will always remember him as one of the great masters of Administrative Law, together with JEAN RIVERO, whose kind memory binds many of us, as Professor FLOGAITIS has warmly recounted. I would be remiss in not mentioning Professor H.W.R. WADE, who had received me at Caius College in Cambridge, yet there are so many great masters in the history of this European Group of Public Law, that it would be almost impossible to render justice to them all.

Please allow me to go back to the starting point of this wonderful story which is my relationship with the European Group of Public Law. It was in the beginning of the 1980's when I met Professor Flogaitis, today Director of the European Public Law Organization, at a conference in Louvain-La-Neuve. This acquaintance evolved into an exchange of ideas on European Administrative Science and later to a close friendship.

JEAN RIVERO, whom I mentioned at the beginning of my speech, became —after my first acquaintance with Professor FLOGAITIS— the link that motivated the continuation of our relationship based on our mutual interest in Public Law. This is where the origins of my bonds with the European Group of Public Law are found, which were strengthened even more by my participation in the workings of the Group and culminated to my membership of the EGPL and of the EPLO Board

** ERPL/REDP, vol. 28, n° 1, spring/printemps 2016.

*** Professor Emeritus at the University of Buenos Aires.

of Directors, the EPLO Honorary Board of the Academy of European Public Law and the EPLO Board of Trustees of the European Law and Governance School.

I value this participation and membership since it gave me the opportunity to enrich my knowledge of European Administrative Law, a field I was always very interested in. In fact, all those who know my itinerary up to here know that I always focused on the study of Administrative Law, having taught law from 1958 to the present in Argentina and throughout Latin America and Europe and having published more than 20 legal works and textbooks, numerous contributions to Latin American and European Law journals and having served since 1982 as the Founding President of the Administrative Law Foundation in Argentina. I also served Administrative Law from the position of a Judge in several international tribunals (Administrative Tribunal of the Organization of American States; of the International Monetary Fund; of the International Labor Organization; of the United Nations and others).

My interest in Law has exceeded the boundaries of Latin America and found its best expression in my involvement in the activities of the European Public Law Organization.

I am proud to be one of its members and I am glad that today I am having the opportunity to thank you for this through this short speech.

Dear friends,

I would like to thank all of you who have enriched my mind throughout the many years that I have been able to attend these meetings, but I most specially thank these three friends that have joined in generously pouring so much warmth into my heart today: Director SPYRIDON FLOGAITIS, Professor JOSÉ ESTEVE PARDO and Professor ISAAC DAMSKY.

A British Diplomat once told his audience, on a similar occasion, that he had prepared three different speeches from which to choose the one to deliver, according to the circumstances. I have done the same, and just as he showed us, now I have also decided to deliver all three of them:

Thank you, thank you very much, thank you very much indeed.

