Volume 25 Issue 9
Originally issued as G3

Global Journal of Human-Social Science: G
Linguistics & Education
Volume 25 Issue 3 Version 1.0 Year 2025
Type: Double Blind Peer Reviewed International Research Journal
Publisher: Global Journals
Online ISSN: 2249-460X & Print ISSN: 0975-587X

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GJHSS-G Classification: *LCC: KF272*



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Legal Education and COVID-19: Current and Post-Pandemic Changes

Roberta Araujo de Souza [α] & Audic Cavalcante Mota Dias [σ]

Summary- This paper aims to analyze legal education in times of COVID-19. It is indisputable that Law Schools must prepare students for a world in constant transformation. The ways of learning have undergone notable changes with the COVID-19 pandemic and technology is increasingly present in schools. Access to knowledge is more available to social actors and distance learning has become a reality for Law Courses. This is a descriptive literature review study, of a qualitative nature, on legal education in times of COVID-19 with relevant guidelines for teachers and students in light of the recommendations of the Ministry of Education.

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I. Introduction

COVID-19 is caused by the etiological agent called SARS-CoV-2. This disease initially emerged in China in December 2019 and quickly spread throughout the country and the world. On March 11, 2020, the World Health Organization (WHO, 2020) declared COVID-19 a pandemic.

Because of its recent discover, its epidemiological aspects were not yet fully known, such as the exact incubation period, the possibility of transmission from asymptomatic carriers, the formation of antibodies and the transmissibility rate. In Brazil, there were many confirmed cases, according to data from the Ministry of Health, including occurrences in several states in the country.

In this global scenario, including in Brazil, social isolation measures were taken to prevent and mitigate the spread of COVID-19. Among these measures, it is worth highlighting the decision to close educational institutions, which had to suspend their in-person classes and activities.

In this perspective, the Ministry of Education, in view of its prerogatives, on March 13, 2020, through the response to Presidential Letter No. 008/2020, dated March 12, 2020, responded to the Brazilian Association of Higher Education Institutions, that, in consultation with the National Education Council, regarding the applicability of the guidelines set out in NEC Opinion No. 19/2009, due to the COVID-19 pandemic and its implications, on decision-making and measures related to compliance with the academic calendar by private Higher Education Institutions (ME, 2020).

In this sense, considering its full validity and its adherence to the current moment, in the perception of the National Education Council there is no impediment to its use as a guiding parameter for higher education institutions accredited to the federal education system (ME, 2020), bringing alternatives to supply the teaching and learning process in contexts characterized by the absence of contact between students and teachers in the same physical environment.

Still regarding the prerogatives of the Ministry of Education, it issued Ordinance No. 343, of March 17, 2020, which provides for the replacement of face-to-face classes with classes in digital media while the pandemic situation of the New Coronavirus - COVID-19 lasts, in which it clarifies, in article 1, that the authorization period was up to thirty days, extendable, depending on guidance from the Ministry of Health and state, municipal and district health agencies. Furthermore, article 2 highlights that it is the responsibility of the institutions to define the subjects that may be replaced, to make tools available to students that allow them to monitor the content offered, as well as to carry out assessments during the authorization period (ME, 2020).

In recent decades, numerous works have been published addressing the challenges of Legal Education in Brazil. The topic has grown each year through the creation of working groups in different Forums and Congresses. In general, the texts produced on the subject indicate that there is an indisputable need for Law Schools to prepare academics for a world that is constantly changing.

Preparing students for the challenges of the world involves redefining the way Law Schools conduct the educational process. It is necessary to understand that the way of providing learning in the 21st century has changed radically. It is necessary to recognize that the student profile is not the same as it was ten or five years ago. The ways of learning have also undergone notable

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changes, since technology is increasingly present in schools.

Access to information and knowledge has never been so available to people. The number of technological devices is progressively increasing among human beings and teaching through technology brings to light the reflection on new ways of educating and learning.

In this context, it is important to mention that distance learning has become a reality not only for Law courses, but for all levels and areas of knowledge around the world. In Brazil, the provision of distance learning courses was provided for in article 80 of the Law of Basic Guidelines for Education (LDB) of 1996, and was updated by Decree No. 5,622/2005. Since then, the provision of distance learning courses has expanded significantly due to the possibilities presented by the regulatory framework in the educational area and the goals established by the National Education Plan.

Although this topic is widely debated in the education system, it is impossible to ignore the importance of evaluating this educational modality and its effects within Law Schools. Although the topic divides opinions in the academic environment, it is necessary to note that this is a trend not only in Brazil, but worldwide. Thus, given the current scenario, this article aims to analyze legal education in times of COVID-19.

The study is justified by the teacher's role who plans and proposes teaching situations to students around knowledge to be appropriated and discussed by them, establishing a relationship around the content of this knowledge. The virtual learning environment allows the teacher to develop a teaching situation mediated by technological devices. This new way of teaching with computer teaching resources requires preparation and planning of the activity that provides moments of meaningful active learning for both student and teacher (CAMACHO et al, 2020).

II. Legal Courses and Information Society

We live in times when information is accessed at an astonishing speed. According to Moran, Masetto and Behrens (2010, p. 74), it is necessary to recognize the "digital age" as a new way of categorizing knowledge. This does not imply discarding the entire path taken by oral and written languages, nor mystifying the indiscriminate use of computers in teaching, but, above all, it requires that electronic resources be approached with criteria as tools for building more significant methodological processes for learning.

In a context in which there's increasingly broad access to information and knowledge, the technological evolution that has occurred in recent decades has raised reflections on pedagogical practices in higher education.

According to Fiorillo and Linhares (2013, p. 132), Law, in the face of new technologies and new sources of society, cannot remain on the sidelines of these transformations. Thus, law courses, when developing their curricula, cannot ignore this important dimension of meaning: the new environments in which current technologies develop.

According to Kensky (2012, p. 29-30), access to technology changes the way learning traditionally occurred. Since knowledge was based solely on face-to-face learning, the space and time for teaching were determined (the school). Based on technological transformations, new rhythms and dimensions are imposed on the way of teaching and learning. Thus, a profound change in the conception of space and time of student and teacher performance can be seen.

For the author (2012, p. 38), digital technology breaks with the continuous and sequenced narrative of written texts to present itself as a discontinuous phenomenon. In this sense, its temporality and spatiality, expressed in images and texts on screens, are directly related to the moment of its presentation.

Law classes are traditionally taught in an expository format. The main feature of a master class is that few resources are used for its delivery, focusing on the professor's speech, who uses a board and chalk.

Among so many technological advances in recent decades, it is increasingly common to identify teachers and students who use technological tools in the classroom environment. As a result of these new times, free access to *wireless networks*, the use of *tablets, notebooks* and classes built with the use of *projectors* and interactive whiteboards are increasingly common.

A few years ago, some students brought computers into the classroom, but this is becoming increasingly common. The number of students using computers or *smartphones* in class has become so high that there are often insufficient power outlets in university facilities.

Since access to higher education occurs, on average, around the age of 17 or 18, it is necessary to understand that teachers are dealing with a generation of digital natives[1]. Many have grown up using technology for reading and studying. In this case, it is up to the teacher or institution to establish the rules for its use.

Among those who support distance learning, the main argument used concerns the possibility of education without borders, that is, access to knowledge is much easier through the network. On the other hand, this same source that provides easier access to

[1] Digital natives are a generation of young people who were born with ample access to fast and accessible information on the vast computer network – the *web*. The concept was developed by Marc Prensky (2001), researcher and educator, in 2001.

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knowledge is also responsible for a generation that replaces research and libraries with searching for specific content on the "Google oracle", where anyone can post any information without any commitment to the source.

Regarding the benefits of virtual experience, Maturana reports research that demonstrates how children, adolescents and elderly people, in the virtual space, develop "behaviors of autonomy, collaboration, self-disturbance, invention of paths and construction of meaning" (PELLANDA, 2009, p. 63). In systemic terms, Pellanda and Schlunzen (2005) state that we can speak of a technological coupling.

On this subject, Leão (1999) links the use of the network to an autopoietic conception. For her:

> The construction of the world wide web involves the work of many minds, distributed across many pages. Its growth and vitality are not located in a specific, central point. On the contrary, it is in the nature of self-generation and *autopoiesis.* that the Internet develops. Without a doubt, what makes the Web a web, a network in which a complex mesh of information is interconnected, is the hypertextual technology itself that allows links between the different points. (LEÃO, 1999, p. 24).

Prejudices about distance learning courses are due to the fact that many institutions have offered these types of courses without any commitment to quality. Despite this, it is believed that this is a trend in higher education and should not be disregarded.

When talking about the use of technological resources to promote learning, it is worth remembering that:

> [...] what happens in the digital environment is a greater autonomy of paths and self-challenges, because at all times, subjects need to reorganize themselves to respond to situations that arise along the way. (PELLANDA, 2009, p. 66)

Dussel and Caruso (2003, p. 30-1) present an important reflection on the most representative space in a school: the classroom. According to them, classrooms have had the same format for centuries. In this space, the teacher, located at a central table in front of the students, is responsible for transmitting his or her knowledge to the students, who are usually seated in rows of chairs.

It should be noted that the architecture of the school environment reveals a lot about the conception of education in each era. This organization of furniture represents an educational process centered on the role of the teacher, the subject of the educational process considered the center of the pedagogical process.

Ghirardi (2009) deals with teaching methods in Law, as a social form and object of science, which goes beyond the limits of the academic, given the intense impact on everyday life. And that the transformation of Law as an object determines its transformation as an object of research and teaching and invites a new dynamic for the construction of knowledge within the university space. It follows that such requests redesign the expectations in relation to the legal professional, whose performance today requires proficiency in a wide range of knowledge not immediately linked to more traditional notions of legal training. This confluence between the reconstruction of Law as an object and the new dimensions that it articulates in the scope of practice requires a rethinking of the ways of preparing the future legal professional within the university space.

Although the educational scenario has changed significantly in recent decades, it is possible to observe that law courses classrooms, as well as teaching and learning methodologies, in most institutions in the country, remain the same. Although the concepts of education and methodological options have been improved in recent decades, law courses, to a large extent, still conduct pedagogical processes based on models adopted centuries ago. It remains to be seen whether this model is sufficient to meet the demands of the world.

Whether we like it or not, the fact is that the use of technology as a learning resource is increasingly common in Brazil and around the world. The number of distance learning courses in Brazil has increased significantly; however, as for Law courses offered entirely at a distance, Brazilian Lawyers Council is clearly acting in this scenario, since it clearly opposes the provision of Law courses entirely at a distance. This is because the Council understands that the lack of social need or relevance for the creation of new courses should prevent the creation of any type of offering, whether in person or at a distance. This position is based on a perceived national crisis of low-quality education in Brazilian law courses.

Furthermore, as provided for in article 23, II, of Decree No. 5,622/2005, and the provisions of article 83 of the Statute of the Bar Association, the authorization of distance learning undergraduate courses must be submitted to the council, noting in the sole paragraph of said article 23 that "the specificities of the distance learning modality will be considered", adopting a procedure analogous to that used for in-person courses, in accordance with current legislation. Therefore, although provided for in current educational legislation, the offering of legal courses entirely via distance learning is not a reality in the country.

In this context, it is important to mention that society is experiencing profound changes in its economic, cultural, political and educational practices. Part of this transformation requires reflection on new ways of experiencing both time and space dimensions. Offering (legal) subjects or courses in virtual form challenges the traditional way of thinking about education. In this sense, it is up to law schools to observe that a new dimension of place is being created,

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implying the creation of a new space for the construction and sharing of knowledge.

In this perspective, growth of distance education in Brazil and around the world has become a reality, especially with the COVID-19 pandemic. This fact requires the process of redefining a new way of thinking about the teaching profession, learning spaces, teacher-student relationships, the emergence of new actors in the school space, new teaching and learning methodologies employed, among other factors.

III. Interactivity as a Pedagogical Proposal in Legal Education and Covid-19

Initially, it's relevant to mention Ordinance No. 2,117, of December 6, 2019, by which the Ministry of Education provides for the possibility of higher education institutions using the EAD modality in the pedagogical and curricular organization of their in-person undergraduate courses, making up the limit of 40% of the total workload required by the National Curricular Guidelines of the respective course (ME, 2019).

Mendonça et al (2020) argue that public policies aimed at democratizing access to distance higher education should consider much more than expanding the number of courses and places in the country. It is necessary to consider the formulation, implementation, and evaluation of public educational policies, variables that impact access, permanence, and completion of higher education, considering the regional characteristics and differences in the country, such as: family *background*, family resources, student's class of origin, level of student's cultural capital, inequalities in educational opportunities, inequalities in educational results, type of school, region of origin (rural or urban), gender, and race. Both the democratization of education and social inequalities are complex issues that cannot be treated in a reductionist manner.

From this perspective, through interactivity, distance learning has already overcome many barriers, democratizing knowledge with a view to expanding the democratization of public policies aimed at education. The emergence of large *e- learning platforms, online* courses and *online* subjects in undergraduate courses taught by large institutions allows the consolidation of pedagogical teaching proposals that aim at interactivity in times of pandemics such as COVID-19.

Carmo & Franco (2019) emphasize that the online teacher/tutor is the one who accompanies, guides, motivates and evaluates students in their academic activities developed in the Virtual Learning Environment. Thus, the space-time dynamics of this classroom began to require teachers to have teaching knowledge that would allow them to develop educational practices mediated by digital resources, which added elements specific to *online teaching to university teaching*, such as non-face-to-face contact between teachers and students, shared teaching with a multidisciplinary team or space-time flexibility to study and teach.

Through these tools, interactivity between teachers/tutors and students can build rich relationships for the exchange of knowledge. From this perspective, multimedia content developed by teachers/content creators and posted by teachers/tutors through texts, videos and attachments allows tasks to be created on the spot or programmed, making it perfect for both short and long-term courses. Students are then invited to answer the tasks, which are evaluated by the teacher through the virtual learning environment itself.

Ghirardi (2009, p. VII) seeks, with his work, to contribute to the increase in Brazilian reflection on the teaching of Law, offering a synthetic presentation of some of the main methods of legal teaching currently in use. The improvement of legal teaching will not be possible if it is not a collective endeavor. To this end, the author points out some common methods of participatory methodology, namely, Law Clinics, Problem-Based Teaching and Law-Based Teaching, Role-Play, Seminar as a teaching technique, Case Study, Classroom Debate and Socratic Dialogue.

For each method, the author (2009, p. XII) states that it is possible to think about strategy and tactics. It is said that participatory teaching is, in principle, more practical, situated and focused on the student's potential and conditions. The correspondence between the logic of each method and the logic of performance assessment is established. In different ways, the chapters can be read as proposals for the interaction between content systematization and didactic decisions.

As an example, we can mention what the author (2009, p. XIII) says about the "Classroom Debate", which is presented, in its various forms, as a means of allowing greater student participation in expository classes, thus contributing to a better understanding of the subject matter. He questions, however, its character as an "autonomous teaching technique". And he continues, "perhaps it would be more appropriate to say that debate is a pedagogical resource that aims at student participation, capable of being used jointly, to a greater or lesser degree, with the most varied methodologies, such as role-play, simulation, case method, Socratic method and even the expository class itself".

In this aspect, the willingness to give new directions to the already established teaching experience, especially in legal education, in which students have great expectations, towards *online teaching*, holds within itself the transformation, recreation, reformulation or resignification of what these teachers commonly do or have done in the face-to-face

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classroom, in order to develop an educational practice for the cyberspace classroom (CARMO & FRANCO, 2019).

This context shows that flexibility and accessibility are essential in distance learning courses and classes, and offer the possibility of posting content, carrying out group or individual work, assessments and *feedback* from students, sharing work and creating homework. The vast majority of virtual learning environments have platforms accessible on *mobile* or *web*, making teaching barrier-free in times of COVID-19.

IV. The Competencies of the Legal Education Tutor with a View to Cooperative Learning in Distance Learning in Times of Covid-19

To teach in distance learning, the experience of face-to-face teaching must be considered in the construction of knowledge for non-face-to-face teaching. In turn, the pedagogical use of digital information and communication technologies (DCT), developed in distance learning, can help in the more effective insertion of these resources in face-to-face teaching. Thus, face-to-face teaching and *online teaching*, in the distance modality, should not be seen as antagonistic, but as ways of teaching with their own characteristics and that, in their differences, can contribute to the improvement of each other (CARMO & FRANCO, 2019).

Another relevant aspect to be considered refers to the guidance of Ordinance No. 2,117, of December 6, 2019, which establishes that the Course's Political Pedagogical Project must clearly present, in the curricular matrix, the percentage of distance learning workload and indicate the methodologies to be used, at the time of the protocol of requests for authorization, recognition and renewal of course recognition. In addition, the introduction of distance learning workload in face-to-face courses is subject to compliance with the National Curricular Guidelines for Higher Education Courses, defined by the National Education Council, when applicable (MEC, 2019).

Campos et al (2007) emphasize that the teacher/tutor must develop skills such as the use of interaction tools, the availability of the Internet and a Learning Environment that can handle the proposed activities; have a critical and reflective sense about their performance, that is, make self-assessments and constantly update themselves; organization, not only to manage discussions and help in the construction of students' knowledge, but also to guide and make the activities viable.

Online Tutoring:

a) *Didactic-pedagogical:* Mastery of both the subject taught and the possibilities of how to teach it to adult students through the mobilization of content and teaching materials, in order to promote learning;
b) *Technological:* Ability to apply new technologies in the development of educational practices for dialogue, interaction and collaboration between tutor and students. Knowledge of the educational platform used in the course to guide the student on how to best take advantage of it and to anticipate possible difficulties in using the technologies involved;
c) *Linguistics:* Ability to write and understand written texts in order to preserve interpersonal relationships in the group and guide the student in the process of constructing learning. Preparation to explore reading and writing from hypertext.
d) *Social:* Ability to establish and maintain a teaching and learning environment favorable to communication and interaction among its participants.
e) *Learning:* Knowledge of how learning occurs, the different learning styles and their possibilities in the *online environment*. Sensitivity to capture behaviors that hinder learning and to intervene to preserve the student's interest.
f) *Intercultural:* Ability to deal with the cultural diversity of students.
g) *Tutorial:* Openness to receive suggestions and guidance to adapt to new situations. Ability to manage student participation in the course and the flow of teaching and administrative activities. Ability to organize and maintain a tutorial work routine. Ability to plan, organize and evaluate academic activities.

Camacho et al (2016) argue that, given these skills, it is important for the teacher/tutor to recognize themselves as mediators of the knowledge that is being developed. In order to execute and understand the learning objectives, knowledge of the activities and assessments must be established.

In the current scenario of social isolation due to COVID-19, these skills take on a range of new meanings, values and habits in which, despite the information and communication technology available in distance learning, singularity must be taken into account. It is a look at a necessary learning of remote work ("*Home Office* ") for the teacher/tutor and students.

According to Habowski et al (2020), the teacher/tutor must be aware that in the open universe of distance education there are contrasts in the face of different realities, as well as discrepancies regarding the Virtual Learning Environment (some perpetuate functional characteristics of the tools), considered unattractive by students, in addition to difficulties in addressing communicative ambiguities in these spaces

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by participants, the slow internet connection, factors that reveal a strong movement of cultural standardization, capable of disqualifying the effects of distance education.

It is necessary to reflect on the possible paths for learning in light of the new work reality of university professors who later began as *online tutors* in distance higher education courses. Finding paths for the (re) construction of the professional identity of these educators can make them more flexible to change in an education modality in which their experience and knowledge acquired in face-to-face teaching may prove insufficient or inadequate for the development of online teaching. In this sense, renewed teaching knowledge should prove useful in organizing a tutorial work routine in undergraduate courses whose teaching and learning spaces integrate their participants in different times and spaces through digital technologies of interaction and communication (CARMO & FRANCO, 2019).

Everything indicates that the creation of groups or culture circles to learn in distance learning generates research communities, whether in sharing doubts, strengthening collective agendas, in short, it allows the collaborative construction of knowledge, which seems valid to us to problematize, with a view to the contextualized and mobilizing acquisition of formative, professional and social benefits (HABOWSKI et al, 2020).

However, it is worth making some relevant points: educational institutions and their students must have preparation, pedagogical, human and techno logical conditions. According to Ordinance No. 2,117, of December 6, 2019, limits are imposed on the presentation of the offer of this teaching modality, such as: it must be provided for in the Courses' Pedagogical Political Projects, to be conditioned to the national curricular guidelines and be limited to 40% of the course workload.

Therefore, in order to operationalize and contribute positively to the academic success of law students, the provision of distance learning courses requires planning, organization, technological availability to meet demands, and teacher training. Of course, the student's needs in terms of preparation to deal with information and communication technologies must also be visible, and, above all, attention must be paid to students in situations of social vulnerability who do not have all the resources to access the content taught in the distance learning modality.

Making distance learning courses available without restrictions without these considerations puts the proposal for responsible teaching at risk in the current scenario of the COVID-19 pandemic.

Thus, "Law cannot survive locked in a classroom, just like human beings. People must leave the classroom and explore the facts to learn what Law is for and how to apply it, evolving with the progress of society." (BERNARDES; ROVER, 2009, p. 34). And interactivity and the construction of knowledge, through the development of collective intelligence, where the teacher is part and not the center of this system, means that law courses are experiencing a new appearance, more open to the aspirations of students and more suited to the life project of graduates.

V. Final Considerations

In the current way of education, students adopt an overly passive stance, without many possibilities of discovering their potential. Contemporary education is homogenizing, and does not care about meeting the peculiarities of each student who, although heterogeneous, needs to fit into a pre-determined scheme and must necessarily adapt. And how can we compete in an increasingly technological world, with information at our fingertips?

Education needs to change. We need to worry less about transmitting ready-made knowledge and much more about making students do what they enjoy. The idea of education is (or should be) to educate students so that they become happy human beings, and not simply to insert them into the job market, which would be a perverse logic.

In this path of innovations and possibilities arising from the COVID-19 Pandemic, we are faced with the information and/or knowledge society. Being part of this informational society presupposes being connected to a network and, consequently, to a Virtual Learning Environment (VLE). These environments offer effective tools for building knowledge based on the participation and co-responsibility of academics. The VLE shortens distances, motivates and engages teachers, students and institutions. It adds interactivity and dynamism to the teaching-learning process, distance learning provides the possibility of continuous study and research even during periods of social isolation and avoids crowds.

Dogmatic and rhetorical teaching is giving way to dynamic, pluralistic teaching, with the participation and cooperation of students. The traditional model of pedagogical practice called "banking education" is being overcome, and over time, the construction of a "collective intelligence" is becoming increasingly evident. The *Internet* has brought back into vogue the discussion about the use of media that was previously not well accepted by teachers, such as the use of television and videos in the classroom, a natural result of the convergence of new technologies and their wide acceptance by students.

In the meantime, the view that knowledge must be shared in order to be produced also stands out, since isolating oneself will only lead to its weakness and not to the accumulation of knowledge, as some think. The current moment is one of interaction and

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interactivity and, since Law is an area of human knowledge that permeates the entire society and at various times enters into symbiosis with it, it cannot be forgotten that this science must be one of the precursors in the use of new technologies.

Furthermore, it is essential to mention that the teacher is indispensable for the successful implementation of a new teaching-learning model and must be open to using new tools. On the other hand, institutions cannot fail to promote the updating of their teachers, so that they can motivate student participation and their shared responsibility in the construction of knowledge.

In fact, it is assessed that the path is being very well followed, both by teachers and institutions and, no less importantly, by academics, who are the fruit of all this concern, because for a society that lives in the Age of technology, it cannot be dispensed with, incoherently, in the education system. Law is, today, also the fruit of this digital society and its future professionals, members of said society, cannot be digitally illiterate or even mere operators without developing and interacting with new technologies, leaving behind repetitive ostracism.

Given this reality regarding the COVID-19 Pandemic, it is recommended that teachers/tutors bring significant interventions that promote the assimilation of information, so that each individual, using the resources available in distance learning, can compose scenarios in tune with the elements specific to their context and can transform their intellectual universe with positive learning experiences.

Insecurity due to the so-called "new normal" and new forms of education is inevitable. The education of the future will reflect the effective exercise of autonomy, and will require that those involved in the educational process reinvent themselves and be especially proactive. Regarding the ban on being in the classroom during mandatory isolation due to the pandemic, it is important to remember the stance of some great thinkers in the History of Philosophy, such as Socrates, who taught during meals, and Aristotle, who walked with his students. The classroom as we know it today is a more modern concept that demands revisiting and redefining, since the classroom is an undeniably privileged space, but it is not the only educational space.

Since Plato, philosophy has had only one great purpose, which is to help us be happy. It is not about a utopian, metaphysical happiness, because life is not like that. Nietzsche said that life is also made up of tragedies, but even so, we must find reasons to be alive, and being happy or having happy moments is the idea that a given moment can be immortalized. Schools/universities need to help students find their potential. In this context, it is necessary to break paradigms and constantly reposition the student as the protagonist in this process.

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