

DEL ESPÍRITU DE LA LEY A LA MATERIA DEL DECRETO

(FILOSOFÍA PSICOPEDAGÓGICA DE MÍNIMOS)

FROM THE SPIRIT OF THE LAW TO THE SUBJECT-MATTER OF THE DECREE

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Resumen

Las leyes de la educación son las primeras que recibimos, decía Montesquieu. Y son las que nos preparan para ser ciudadanos. Sin embargo, según Romanones, el reglamento jurídico hace posible que la ley funcione o se quede en una mera declaración de intenciones. Los reglamentos, en España, tienen como vehículo los reales decretos. Estos son normativa

básica que, no obstante, no se sitúa jerárquicamente por encima de la normativa del mismo rango emanada de los parlamentos de las comunidades autónomas. Desde el punto de vista de la concreción curricular, se trata del nivel situado a mitad de camino entre lo general y la práctica didáctica en el aula, donde el concepto fundamental es el de competencia. No obstante, el concepto de competencia es, como tantos otros, un concepto discutido y discutible en el plano teórico y genealógico y en el práctico. Una vez expuestos los términos de la discusión acerca de dicho concepto, cabe aproximarse a la noción de descriptor competencial operativo, que viene a sustituir al estándar de aprendizaje en la nueva legislación educativa española.

Palabras clave: Espíritu de la ley, normativa básica, descriptores competenciales, Chomsky, Skinner, Scriven, Brújula del aprendizaje de la OCDE 2030.

Abstract

The laws of education are the first laws we receive, said Montesquieu. And they are the ones that prepare us to be citizens. However, according to Romanones, the legal regulation makes it possible for the law to work or remain a mere declaration of intentions. In Spain, the vehicle for regulations is the royal decree. These are basic regulations which, however, are not hierarchically placed above the regulations of the same rank issued by the parliaments of the autonomous communities. From the point of view of curricular specification, this is the level situated halfway between the general and the didactic practice in the classroom, where the fundamental concept is that of competence. However, the concept of competence is, like so many others, a disputed and debatable concept on the theoretical, genealogical, and practical levels. Once the terms of the discussion about this concept have been set out, it is worth approaching the notion of the

operational competence descriptor, which replaces the learning standard in the new Spanish educational legislation.

Keywords: Spirit of the law, basic regulation, competency descriptors, Chomsky, Skinner, Scriven, OECD Learning Compass 2030.

1. ON THE SPIRIT OF A LAW AND THE NATURE OF THE REGULATION

At the end of 2021, the Minister of Education of the Principality of Asturias explained in a digital newspaper of that autonomous community that "the spirit" of the LOE, once remodified by the LOMLOE, consists of "responding to the new society of the 21st century", something that "cannot be faced exclusively with master classes and chalk in hand but with innovative and competent methodologies, in which one learns by doing, in a real environment" (Espina, 2021). When the "spirit" is lied about when referring to a law, whatever it may be, the shadow of Montesquieu, the defender, in turn, of the division of powers, always hangs in the air. Indeed, Montesquieu, in Book IV of his famous work —entitled *That the laws of education must be adapted to the principles of government*— wrote: "The laws of education are the first we receive. And since they prepare us to be citizens, each particular family must be governed according to the plan of the great family that comprises them all" (Montesquieu, 1906 [1748], p. 50). Rosa González-Calero, referring to the strategic lines of the Spanish education law currently in force, delves into the explanatory memorandum to try to capture this spirit, whose final cause would be to achieve an increase in educational and training opportunities, improving student outcomes, and offering quality education for all (Asegurado and Marrodán, 2021, p. 29).

It is attributed to Alvaro de Figueroa y Torres (1863-1950), Count of Romanones, the expression by which it is understood that it is in the work of cutting and sewing, known as the development of the regulation, where it is possible to see how the design inspiring the law is (and what it gives of itself). In Spain, the vehicle for the regulations is the Royal Decree. With the exception of the autonomous cities of Ceuta and Melilla -and, obviously, the Educational Action Abroad- the competences in Education are transferred to the autonomous communities. Consequently, the royal decrees on the curriculum are minimum royal decrees. And, therefore, they are basic

regulations which, nevertheless, are not hierarchically placed above regulations of the same rank emanating from the parliaments of the autonomous communities. Indeed, it is sufficient that they do not contradict each other or the organic law from which they emanate.

The articles that make up the monograph in this issue of the journal are a useful tool to help teachers understand this level of concreteness, located halfway between the general and the didactic practice in the classroom. This is what López Rupérez calls the "meso level", that is, "a sub-national level that, depending on the countries and their respective distribution of competencies, may correspond to different jurisdictions: municipalities or region, state, province or autonomous community (in federal or similar systems). At this level, the quality of governance is a decisive factor of impact" (2020, p. 113).

2. COMPETENCE, THIS DISPUTED AND DEBATABLE CONCEPT

At this "meso level", the fundamental concept is that of competence. Competencies mobilize knowledge (Levin, 2008, p. 11) in the same way as troops are mobilized in strategic deployments. The effects of such deployment can only be seen in the medium and long term. However, the concept of competence is, like so many others, a contested and debatable concept in theory, genealogy, and practice.

From a theoretical and historical point of view, it is debatable because of its enormous ambiguity or lack of definition, since its origin lies in linguistics and has more to do with something that cannot be acquired. Competence (supposedly innate) is developed with external stimuli that make it unfold its potential through observable behaviors. But it is not acquired by learning. The pseudo-debate that Chomsky (Munger, 2003 [1959]) tried to open in relation to Skinner's (supposed) theses (1957) on this matter is famous. Now that the "learning standards" (whose determination corresponded

exclusively to the Government, by article 6 bis introduced in the LOE by the LOMCE) have disappeared, it is the task of the educational administrations (through the decrees of curriculum development) and of the educational centers (which have been given greater autonomy in this respect) to determine how the degree to which the "virtual" competence can be interpreted as "manifested" through publicly observable behavior (both in the classroom and in the other spaces where the teaching-learning process takes place). This would happen in the same way in which the linguistic competence provided by the language acquisition device (LAD), proposed by Chomsky, is evidenced for anyone in the early mastery of the mother tongue. After all, learning standards were nothing more than a translation into behaviorist language (behavioralist, almost in a radical, Skinnerian sense) of an ethereal, subtle and almost Byzantine scholastic concept such as "competence". As the repealed Royal Decree 1105/2014 read, in its article 2, "they specify what the student must know, understand and know how to do in each subject; they must be observable, measurable and evaluable and allow graduating the performance or achievement reached. Their design should contribute to and facilitate the design of standardized and comparable tests". The learning standard, although rigid and annoying for the teacher, was perfectly embedded in the accountability paradigm (RtoC), based on standardized tests: "In general terms, RtoC refers to the processes, mechanisms and/or instruments that make organizations (but also the individuals that make up the organizations) fulfil their obligations and become more responsive to their specific audiences" (Parcerisa and Verger, 2016, p. 21). And this paradigm requires a customer-oriented evaluation, inspired by Scriven, where "customer" should be understood in the broadest possible sense and not only in the commercial one: the "clientele" is the student body in its formative potential, not understood as a container of capricious desires. Indeed, for Scriven, from an ethical point of view, and increasingly from a political point of view, the consumer's perspective must

be considered paramount (Scriven, 2007, p. 8). The new reform, however, returns to the spirit of the 2006 Law, which is also intended to be paidocentric, but focused on competencies understood in a more open sense and, therefore, more interpretable for the teacher. However, despite this openness, the clear intention is that this time the competency approach should be taken seriously and not be reduced to a mere section (drafted by legal imperative) in a corner of the annual program of each subject. Be that as it may, competencies, as they have been conceived since 2006 in our educational laws, have more to do with skills within the framework of agency theory than with Chomskyan linguistic competence. Indeed, according to the OECD's Learning Compass 2030 (OECD, 2018), the concept of student agency is fundamental. Nonetheless, assuming such a paradigm, even if it is a healthy paedocentric one, also entails its risks in education. These risks are similar to those in behavioral economics, since "the uncertainty factor, i.e., the incompleteness of information, is a problem that is not addressed by the Agency Theory, which would assume a prejudice of classical economics, the complete rationality of the agent, as if he possessed all the information consciously (...). It would ignore the capacity of individuals to assume prejudices unconsciously; prejudices formed by signals that float in the environment and that, if brought to consciousness, the individual could come to reject" (Caballero, 2009, pp. 347-348).

But there is a second reason, this time of a practical nature, why the competency paradigm is discussed and debatable for teachers: the fact that competencies are not only required of students but also, and especially, of teachers. The latter has been evidenced in the special treatment that is necessarily being given to the acquisition of digital competence (*DigCompEdu*): "Broadly speaking, teachers have an intermediate level, with some areas where their competencies are higher (...) especially those of a more basic nature (...). They are more skilled in essential instrumental competencies (...) with greater difficulties in content creation (...), security and

problem solving (...) or creativity and innovation" (Gabarda et al., 2022, p. 14). If before we were faced with another problematic question (is the agential approach too optimistic in relation to the students' capacity for metacognition?), now, on the other hand, we are faced with the transmission of habitus by veteran teachers to novice teachers. Habitus is understood here in the precise sociological sense expounded by the French sociologist Pierre Bourdieu (1979): "Domination is based on very subtle mechanisms of control. Peers will not impose their way of understanding the center, but will send seductive messages, which imply that there will be fulfilled (Barba and González, 2013, p. 139). Therefore, it is advisable that new teachers try to "familiarize themselves with success stories that are inspiring for their daily work" (López, 2020, p. 162).

In conclusion, it could be said that the notion of competence might be better understood and managed from its opposite. It is easier to determine which teacher or which student is partially incompetent than to objectively grade the level of competence.

3. THE NEW MATERIALITY OF THE LAW. FROM THE EVALUABLE LEARNING STANDARD TO THE OPERATIVE COMPETENCE DESCRIPTOR.

Having taken the necessary precautions —and having also made the necessary clarifications—, it is now time to approach the way in which the royal decrees of minimum standards for Secondary and Baccalaureate convert the spirit of the new LOE into minimum curricula for the subjects. This has been achieved by replacing learning standards with operational descriptors. Such descriptors are linked to the specific competencies of each subject. This denomination ("operational descriptor") alludes directly to the manifest features that must be present in "spontaneous" (unconditioned) and publicly observable behavior. It therefore has a family resemblance to "operants" in the Skinnerian sense. However, a quick glance at the definition

of each of these descriptors is more reminiscent of the LOGSE's enumeration of objectives, which still evoked Bloom's taxonomy (1956).

A decisive example, due to its commitment to the spirit of the law, is descriptor CCL3. According to this descriptor, upon successful completion of basic education (Annex I of Royal Decree 217/2022), students locate, select and contrast information from different sources in a progressively autonomous manner, evaluating its reliability and relevance according to the reading objectives and avoiding the risks of manipulation and misinformation, and integrate and transform it into knowledge in order to communicate it, adopting a creative, critical and personal point of view while respecting intellectual property. Such a descriptor can be compared with the learning standard 1.5 for Spanish Language and Literature of the last year of Secondary School in the previous version of the LOE (that of the LOMCE, repealed): students distinguish between information and opinion in messages coming from the media and between information and persuasion in oral advertising messages, identifying the strategies of emphasis and expansion (Royal Decree 1105/2014, now repealed). Let us now compare the CCL3 descriptor for the last year of compulsory Secondary with its corresponding one in the Baccalaureate: CCL3: Autonomously locates, selects and contrasts information from different sources evaluating its reliability and relevance according to the reading objectives and avoiding the risks of manipulation and misinformation, and integrates and transforms it into knowledge to communicate it in a clear and rigorous way adopting a creative and critical point of view while respecting intellectual property. What is the difference? In the expression "in a clear and rigorous manner" referring to the mode of communication of information. This would be, then, the task of the professionals whose task is the acquisition of this competence in relation to this descriptor: their job is to ensure that what used to be done at the secondary level is done clearly and rigorously. Thus, it is up to the teaching departments involved and to the pedagogical

coordination commissions to establish precise ways of determining the conditions that make this "operant" publicly observable. And, therefore, how it would be effectively evaluable and measurable in its degree of execution, by means of rubrics, classroom observation records, self-evaluation forms, etc.

In view of the above, it is up to the teachers' judgment as to whether they have lost concreteness and rigor to enter the realm of vagueness, or whether they have gained autonomy for the didactic departments. Logically, it will depend, as always, on the good will of the professionals. In particular, on the goodwill of the dean teachers towards the novices and of the novices towards their students. This will be the case, at least, until a State Pact for Education is reached. In the meantime, let us rely on the real specialists.

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