10-Minute Presentation of Ranchordás Ph.D.

Dissertation in Layman’s Terms

Good afternoon ladies and gentlemen,

Thank you for being here today.

I especially welcome my front row guests, in particular my mother, and my sister who managed to convince her boss that it is possible do a PhD in Law, and two young guests that even had to ask permission to skip classes today:

Hallo Tim en Indy, fijn dat jullie er zijn en dat jullie vrij van school konden krijgen.

(Last week one of my students asked me why I had written yet another book to obtain a PhD degree. My straightforward answer was: because no one else has even written about it and the world needs to know more about sunset clauses, experimental legislation and innovation. My student wasn’t totally convinced by my answer, but at the end of these 10/9 minutes I hope you will be.

**Experimental legislation, sunset clauses, innovation:** three enigmatic words, 3 Pandora boxes to lawmakers, 3 years and 3 months to write one book. [And as you can see, it is a thick one, but not thick enough to ask all the questions that should have been asked or to provide all the answers]. This book tells the story of two legislative instruments which have been overlooked by legislators. Two instruments that seem to have much to offer to that one reality we all seek these days: innovation.'

1. ‘Sunset clauses’ are dispositions that impose the termination of a law after a determined period, which means that a law or some of its dispositions might only last for 5 years.

2. ‘Experimental legislation’ submits new rules to a test, trying them out in the real world, testing their effectiveness. The new rules are tried in a part of the territory, while the ‘old ones’ remain applicable to the other. At the end of a certain period, results are compared and, in principle, the legislator ‘should allow the best law to win. However, in the lawmaking process the legislative winner does always not take it all. Politics very often does.

3. ‘Innovation’ is a broad concept that cannot be reduced to a brilliant idea: it is more and less than this common perception of the innovative wheel, a light bulb or a pair of Google glasses. Innovation is instead the first successful commercialization of a new idea, brilliant or not, that can improve the existing state of technology of society.
4. Innovation is ‘a kind of magic’: it is our hope in difficult times, the promise for long-term sustainable growth. Innovation is also ‘a crazy little thing’: it is all around us, but it is impossible to grasp and to generate through a simple formula. Instead, it is a very complex process that can be stimulated or impeded by a number of elements, including outdated regulation.

5. It is a difficult mission to regulate innovation but I know two perfect candidates for the job: sunset clauses and experimental legislation. They provide the flexibility and adaptability that regulators need to regulate under uncertain conditions, allow legislators to revise rules as more information about innovative products becomes available, and terminate obsolete dispositions.

6. However, as always, friends get the best jobs, strangers do not. And that is the case of sunset clauses and experimental legislation: they are total strangers to most lawyers and lawmakers. Before I started doing my research, how many of you had ever heard about sunset clauses and experimental regulations? And even now how many would be able to recognize you?

7. In my research, I looked into the reasons why sunset clauses and experimental legislation have not been more often used to regulate innovative fields and there are legal and non-legal reasons underlying this general resistance to these instruments. An apparently simple research question, you might say. However, as life often teaches us, appearances are misleading and this question allowed me to rethink the meaning of different principles of law in a changing world, the meeting of minds between innovators and regulators and the non-legal elements influencing the lawmaking process.

8. There appears to be a widespread belief that these instruments ‘are bad’ because they violate a number of principles of law we hold dear. That is the case of the principle of legal certainty that is often connected with the idea of predictability, stability and continuity of law. However, some laws cannot live forever because they regulate phenomena that evolve rapidly or problems that might be temporary. Sunset clauses and experimental legislation can provide in these cases more temporary certainty, because they do not expose laws to the erosion of time. In my dissertation, I also argue that experimental laws do not endanger the principle of equal treatment. While it is true that not all citizens will be equal before the law, this differentiation will be temporary, objectively justified and it is intrinsic to the main objective of experimental legislation: gather more information about the effects of a new law.

10. The scarce use of sunset clauses and experimental legislation can be attributed to a number of non-legal elements, such as lack of information or expertise, a certain intellectual reluctance towards termination of laws or the experimental method, high costs, fear of being confronted with unpleasant facts,
or political rationality. While law is for a great deal about politics, there must be a way to ensure that some legislative decisions are rendered more transparent.

11. The real Achilles heel of experimental legislation and sunset clauses is the lack of a clear legal and methodological framework. Legislators do not know when they should choose temporary laws in detriment of lasting ones, how to enact them and for how long. The main contribution of my dissertation lies in the design of a framework, where guidelines are provided to lawmakers: go for sunset clauses when you expect a technology to evolve rapidly, experiment with new rules when you do not know enough about their effectiveness; make sure experiments are meaningful and truly convert the lawmaking process into a learning one, set transparent evaluation criteria and ask regulators to justify their decisions to follow or reject the results of an experiment. Educate lawmakers and citizens with the truth of the facts and not the power of opinions.

12. Are sunset clauses and experimental legislation a blessing or a curse to innovation? I leave you, ladies and gentlemen, with this question. It results from my research that they are not a curse for a law that keeps up with reality, for a law that lives along the paths of innovation. Instead, they bless the courageous legislators that try new laws to see if they work, allow laws to expire when they are no longer necessary, removing unnecessary burdens from the shoulders and pockets of innovators. However, sunset clauses and experimental legislation will only be blessings for innovation, if they are drafted along the lines of law. However, and excuse me for citing a lawyer in a speech supposed to be to laymen: as Felix Frankfurter affirmed: ‘science and technology cannot reshape society while law maintains its Blackstonian essence’, i.e., in layman’s terms this means: while lawyers try to confer their own interpretation to every single phenomenon, lagging behind reality.