

Legal Education – Between Critical Cognition and Professional Pragmatism (a View from the Standpoint of Legal Theory)

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1. Legal education – between tradition and modernity

The main legal subjects and their corresponding disciplines in contemporary legal education in continental Europe (first in Germany and France) were established at the end of the 19th century. In general, they correspond to the main branches of law – civil, criminal, administrative, etc. We should bracket the study of Roman private law and questions of law in general (this is most evident where disciplines such as general legal theory or jurisprudence are introduced, in the sense of the study of basic views of law). Ideally, the historical part of a continental jurist's study should begin with ancient Roman law, proceed through the foundations of Byzantine and canon (Orthodox and Catholic) law, through late medieval law, and arrive at modern law. Classical legal education is thus placed on a solid foundation. It has been enriched by generations of jurists through historical epochs to reach the present day.

The desire of lawyers to achieve, if not a common concept of law, then at least a common understanding of it, on the one hand, and the process of globalization, which also affects education, on the other hand, suggest that

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we should strive to create a common basis for legal education. This is not a normative obligation on a national or European level but an academic opportunity. This does not mean ignoring the differences that exist, such as between the two main legal families, that of continental law and that of common law. The legal education in most universities is designed to prepare lawyers to work in the national legal system. Therefore, there is no contradiction between a common, global view of law and an acceptance of the existing differences between legal systems, which enriches knowledge.

Described tradition has continued for about a century. It produces Master of Law – students, who, after graduation, can work in any field of law. Already at the end of the last and especially at the beginning of this century, significant changes took place in legal education. These were mainly due to three groups of factors:

- the expansion of the scope of law due to the emergence of new problems (humanitarian, environmental, mental, integrationist, etc.);
- the modification of the operation of law in the digital environment in the transition from the industrial to the information society and the creation of artificial intelligence;
- increasing the role of the courts in influencing not only the application of the law but also its development.

The first two factors are, broadly speaking, social in nature and the third is legal and political.

The impact of each of these factors more or less changes legal education. A striking example is the study of European Union law. A new legal system is forming around it, which complicates the legal order with norms included in different hierarchical orders. The increasing role of the courts, in turn, makes it necessary for students to pay increasing attention to case law in addition to legislation. This leads to the establishment of new paradigms that challenge some of the classical conceptions of law.

2. The synergy between legal education and legal research

It is a tradition in academic education that the professor not only disseminates already established knowledge but also develops legal theory himself. This continuous interaction between creativity (learned and own) and the teaching of background knowledge ensures continuity in the teaching and practice of law.

However, the previous synergy between legal education and legal research has recently been put to the test by the already noted change in the nature of legal education. The relative share of legal theory, or what we might call ‘pure’ or conceptual legal knowledge, has been declining at the expense of the study of legal and especially case law. This places additional demands on professors – to be not only legal theorists but also practitioners almost as much as those who practice one of the main legal professions – that of judge, advocate and so on.

The lecturer finds himself divided between setting out the basic legal categories in a course and systematizing commentaries on issues of jurisprudence. In the latter case, legal theory itself, figuratively speaking, ‘goes down a floor’, because it thus tends not so much to create concepts with a high degree of abstraction as to summarise judicial decisions in a particular matter. Thus, whereas in the classical period of law teaching the combination between theory and methodology was strongly present, nowadays the combination between theory and applied knowledge prevails. Thus, the study of law is faced with a dilemma – whether to provide primarily foundational knowledge or that directly related to the practice of the legal professions. The answer to this question must precede the regulation of legal education and curriculum design.

3. The preparation of future lawyers for the legal profession

The question cannot be answered satisfactorily without answering the question about the priority tasks of legal education. I am afraid that in recent decades, education, including legal education, in the countries of the European Union and not only there has been oriented mainly towards preparing people

who should be almost ready to practise one or other profession as soon as they graduate from university. It follows that lawyers must have a good knowledge of case law, be guided by it and follow it in their work. Thus, training in law is not fundamentally different from training any professional who must provide certain services. The subtext of such an approach is the ‘production’ of professionals with an underdeveloped critical thinking and an insufficient ability to develop their qualities in the course of practising law.

The growing role of the courts in the development of law is, of course, a challenge to the classical or rigid separation of powers. For this reason, legal education must pay special attention to this change. This involves, however, not just the study of case law, but a critical study of this problem. It also includes a study of nature and the functions of legal principles. Some of these, such as the principle of proportionality, may not be explicitly expressed in legislation, but are manifestations of the basic principle of equality. Lawyers and above all judges must be able to use constitutional and other principles to decide legally difficult cases, so-called hard cases. At the same time, this partly creative role of the courts must not make justice unpredictable, but even arbitrary.

The training of future lawyers in Bulgaria is general, not for one or another legal profession. This is an argument that students should get basic knowledge that is necessary for further specialisation. Law training in our country goes through two stages. The first, academic stage ends with state examinations. The second stage includes a compulsory legal internship and an examination for the acquisition of legal capacity.

The separation of the two stages makes it possible to give priority to theoretical knowledge during the academic period and to practical training during the second. From the outset of their training, and increasingly as their training progresses, law students prepare for their future work. It is a matter of measure how much time to devote to get theoretical knowledge and knowledge of the application of law. However, if the first part of the preparation is underestimated, it is unlikely that knowledge gaps will be filled later in the course of legal practice.

The practical orientation of legal education at university has two aspects – an academic one and an applied one. The first includes relevant examples that illustrate theoretical propositions and discussing of typical cases. The second

aspect involves solving cases and drafting model legal acts – normative and individual. Often students express a critical attitude towards legal education because it has not given them enough practical skills: for example, how to write a claim, a court judgment, etc. There is no doubt that even while studying the relevant subjects during seminar classes, students need to see and analyse different types of legal acts. However, many do not realise that other deficits are more difficult to overcome – that of learning basic legal categories and views of law. Some of the deficits are also due to weaknesses in secondary education and inadequate content of subjects studied by law students, such as economic theory, political science, etc.

Upon successful completion of the two stages of training graduated lawyers with legal capacity who have become magistrates through competition continue their training to practise one of the legal professions. All junior judges, prosecutors and investigators pass a training course at the National Institute of Justice before they start working solely in the judiciary.

Another problem is that legal education and training pay almost no attention to the role of moral and wilful qualities, which are necessary for lawyers and especially for judges. I do not discuss here on another important and topical issue – that of the changes in the law operating in the digital environment, and particularly the role of artificial intelligence in the application of law.

In conclusion

We need to rethink the aims, focus and content of law education. It should give lawyers solid knowledge and critical thinking. This implies the acquisition of a basic theoretical and initial practical training for the professional and honest practice of law. Thus, legal education can strengthen its role in finding a balance between knowledge and usefulness of learning.