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REEXAMINING GOALS, ORGANIZATION AND METHODS FOR A CHANGING WORLD

Daniela Ikawa, Leah Wortham (eds.)

Wydawnictwo Uniwersytetu Jagiellońskiego

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Reviewer *Prof. Barbara Schatz*

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Preface

Although there have been a number of initiatives to reform legal education in Central and Eastern Europe over the past two decades, there is a dearth of literature on the subject coming from the region itself. This publication attempts to help fill that void.

The book is the product of a conference on "The Need for a New Law School," which was organized by the Public Interest Law Institute (PILI) and the Center for Foreign Law Programs of the Jagiellonian University Faculty of Law, in Cracow, Poland, June 19–21, 2008.

There have been many dozens of conferences held in Central and Eastern Europe on particular aspects of legal education, on topics such as interactive teaching methods or innovative curricular additions like university-based legal aid clinics. There has been precious little attention paid, however, to the underlying constraints preventing law faculties in the region from transforming the educational experience for their students to the same degree as the legal systems that the law faculties profess to study and elucidate have, themselves, been transformed.

The push and pull of change and constraint have been experienced in Central and Eastern Europe at the same time that Europe as a whole has been engaged in an effort – dubbed the "Bologna process" after a declaration of intent signed in 1999 by twenty-nine European countries in Bologna, Italy – to transform European higher education. In contrast with the reform efforts in Central and Eastern Europe stemming from the region's own unique trajectory, the Bologna Process has been driven primarily by concerns with mobility and competitiveness as the European Union has expanded both geographically and economically.

Still, as Europe continues to integrate, these two paths converge, and reform ideas coming from the Bologna Process – such as the need to produce students with competencies relevant to the modern job market – found their place in the conference alongside institutional problems deriving from the economic transformation from state socialism. Participation of law faculties from Central and Eastern Europe in both debates is critically important lest an opportunity be lost to consider both the entrenched problems and recent advances of the region within broader European reform efforts.

Among the problems confronting many law faculties in the region are: (i) low professorial salaries; (ii) obscure criteria for academic advancement; (iii) excessively large student bodies; (iv) insufficient financial and human resources; (v) out-of-date curricula; (vi) lack of academic freedom; and (vii) educational outcomes which fall short in areas such as fostering critical thinking, developing problem-solving skills,

integrating values with knowledge, and applying theoretical understanding to changing social realities.

The articles collected in this book go well beyond the recitation of a laundry list of current problems, providing important analysis of the theoretical bases for needed reforms. Moreover, they describe a long list of reform examples from Central European countries like Poland and Croatia; EU neighbors to the East such as Georgia, Moldova, Ukraine, and Kyrgyzstan; as well as Western European countries such as Spain and the Netherlands. The reforms have focused on fostering academic freedom, critical debate, and value-oriented education; they have encompassed changes in course content, teaching methodology, and academic career paths. The contexts for these efforts differ greatly, yet the commonality of themes is remarkable.

For more than ten years, the Public Interest Law Institute (PILI) has implemented projects on legal education aimed at helping law faculties to better contribute to the attainment of a just society. These projects have been based on the premise that rights will not be effective unless legal professionals and legal institutions reach their full potential to think critically about the law and how it relates to social reality. Law faculties are "culture factories" producing not just knowledge, but also understanding for how the law is to be applied. It is our fervent hope that these factories of legal culture can improve their capacity to produce social actors who apply the law in ways that aid the smooth functioning, and indeed the betterment, of society.

This book comes out of one of PILI's legal education projects, and we believe that it will help foster debate and further insight into how best to improve legal education in Central and Eastern Europe. We also hope that the specific experiences and perspectives recounted here will inform debates for change not just in the countries discussed in the book, but everywhere that committed legal educators experience the impulse to make their contribution to society more significant.

March 2009

Edwin Rekosh
Executive Director
Public Interest Law Institute

Acknowledgments

This publication comes out of a collaborative effort by the Jagiellonian University and the Public Interest Law Institute (PILI) to organize a conference, bringing together professors from Armenia, Croatia, Georgia, Kyrgyzstan, Moldova, Poland, Russia, Scotland, Spain, the Netherlands, and the United States. We are particularly thankful to Professor Fryderyk Zoll for conceiving the conference. We are grateful to Iwona Karwala, Lusine Hovhannisian, and Daniela Ikawa for their work in organizing the conference.

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This publication was conceived by Professor Leah Wortham of The Catholic University of America in Washington, DC, and brought to fruition by Professor Wortham in close collaboration with PILI Legal Officer Daniela Ikawa. Other PILI staff who contributed significantly to the editorial process include Edwin Rekosh, Richard Harrill, Christine Schmidt, Lusine Hovhannisian, and PILI interns Nicoletta Bumbac, Sarah Mewes, Alice Reichman, Amy Durrence, and Shoshana Iliaich. We would also like to thank three professional editors for their work on this publication: Barbara Spilka, Andrew Reid, and Kate Neuman.

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Leah Wortham

Introduction

This introduction focuses on two important contributions that this book, arising from "The Need for a New Law School" conference, makes to the dialogue on legal education reform. First, the authors engage the fundamental question of goals for legal education. Too often legal education reform discussions focus on teaching methods and institutional structure without relating these means to the ends sought to be served. Second, this book provides data and case studies on existing law school conditions in several countries from which readers can assess the similarities and differences in the difficulties faced. Implemented and proposed reform initiatives also are described. Implemented initiatives are evaluated in terms of their successes, challenges, and some unintended consequences. Some initiatives described were responses to the principles promoted by the Bologna process,[1] while others resulted from national legislative or administrative requirements, a school's own reforms, or an individual professor's innovations. These case studies enable readers to reflect upon effective levers for and significant obstacles to change in legal education.

The book opens with a chapter by Diego Blázquez Martín focusing on the central question of legal education goals. While all the chapters engage legal education goals as a point of departure for their discussions of existing conditions, existing reform initiatives, and proposals for change, the rest of the chapters are ordered around three topics that were identified in "The Need for a New Law School" conference call for papers. The first topic, *law school governance*, is addressed in Part Two by Michiel van de Kasteelen. The second topic, *optimal academic curricula and teaching methods*, is the subject of the chapters in Part Three by Daniyil E. Fedorchuk, Elida Nogoibaeva and Kamila Mateeva, Susana Borràs (along with her Universitat Rovira i Virgili, Tarragona colleagues Lucía Casado, Aitana De la Varga, Ángeles Galiana, Jordi Jaria, Maria Marquès, Anna Pallarès, and Antoni Pigrau), and Marta Janina Skrodzka. Part Four, with chapters by Fryderyk Zoll; Dubravka Akšamović; Mihaela Vidaicu, Nadejda Hriptievschi, and Maria Mutu-Strulea; and Irma Gelashvili and Nino Rukhadze, considers the third topic, *models for academic careers in law.*

[1] For further information on the process of higher education reform initiated by the Magna Carta of European Universities, signed in Bologna on September 18, 1988, by the rectors of (European) universities, the "Bologna process," see Michiel van de Kasteelen, "Faculty Management: a Matter of Balance," which appears in this volume.

1. Goals for legal education

"We only lose our way when we lose our aim."
François Fénelon, *Spiritual Letters (1651–1715)*

Conference presentations addressed fundamental questions relevant to the goals of legal education, including the following:

- Is preparing graduates for jobs in law – as private practitioners, government officials, prosecutors, and judges – a primary role of law schools?
- Do we assume that other institutions in the society in which the law school functions – such as bar apprenticeship programs and judicial training programs – will provide training for legal professions? How well, in fact, do those institutions provide such training?
- What would law school preparation for jobs in law entail beyond providing graduates grounding in the substantive structure and specifics of law in designated subject matter? What subject matter is important beyond national codes? What additional competencies and ways of thinking are necessary for twenty-first-century lawyers?
- Should the law school take responsibility for influencing the values to which law graduates aspire in their practice? If so, what values should be imparted, and how?
- Should fostering independent, critical thinking be a primary goal of legal education? Are we assuming that a particular subspecies of critical thinking is specific to lawyers? Or, rather, should we pursue a general approach to critical thinking that should be a goal of all liberal education?
- In addition to practice competence of graduates, what kinds of goals should law schools achieve regarding research and service to society?

Some academics in the civil law world might say that the preparation of graduates for jobs in law is the function of the legal apprenticeships supervised by the profession. Or they might respond that they teach theory – which is a form of preparation for practice, but which is distinct from practice – and that practice should be taught elsewhere. However, the conference call for papers, the goal statement of the project supporting the conference, and many conference participants embraced the notion that law schools should have significant responsibility for preparing graduates for the practice of law. Conference participants also challenged the usefulness of the theory/practice distinction.

Authors in this book explore the meaning of lawyer competence and the ways of thinking necessary to prepare graduates for law practice, but some authors also argue that law schools should be concerned with the values and objectives toward which graduates put their competence to work. Diego Blázquez Martín, for example, builds his thoughtful chapter around a seventeenth century Castilian proverb stating that a lawyer must have both "science" and "conscience."

Just as the conference discussion did not settle on a statement of objectives for legal education, so the chapters of this book do not reflect a single view. Rather, the pages that follow surface assumptions about desired goals that should contribute to future debate about the shape a "new law school" should take.

The conference call for papers identified the conference theme as "examining the changes that must be made in our systems of legal education to make our law schools

centers of academic excellence, which can prepare students to be socially responsible lawyers, devoted to the rule of law, and able to meet the challenges of our time." The stated goal of the project supporting the conference is "to promote reform of legal education in order to produce competent and ethical lawyers with the knowledge, understanding, skills, abilities, and motivation to help build just societies that respect human rights."[2]

The goals established by the conference call for papers allude to building lawyer competency among law graduates and suggest that a major factor in that competency is the ability "to meet the challenges of our time." The project goal describes competency as including "knowledge, understanding, skills, abilities, and motivation." Both goal statements link competency with concerns about how graduates use their law degrees: the conference call refers to preparing students to be "socially responsible lawyers, devoted to the rule of law," and the project goal says that the lawyer's competence and motivation should be used to "build just societies that respect human rights."

Diego Blázquez Martín confronts the sometimes-heard assertion that legal education reform initiatives, like legal clinics, are incompatible with the civil law tradition, and that the traditional lecture format status quo is inextricably linked to the legal system. While agreeing that the concept of law should serve as a parameter upon which to restructure legal education, he challenges the concept of law traditionally assumed for civil law countries. Blázquez Martín finds many such countries to be in the "decoding era," in which new, specific laws replace subject matter previously covered by codes, constitutions become sources for the most basic norms, and code provisions stay on the books but are no longer applied. He argues that many countries no longer hold a vision of law as "a *ratio scripta* with clear, precise, concise, and unequivocal rules" applied to all, but rather that law often takes the form of "social welfare legislation that may be directed to achieving certain ends with certain groups." He describes this new type of law as being a "more flexible and soft instrument" than traditional codes and notes that such an approach to law directs administrative agencies to solve problems through promulgation of regulations rather than by codifying details statutorily. As he describes the deductive formal logic of nineteenth-century codes as grounded in assumptions about individualism, contractualism, and meritocracy that give primacy to individual will, Blázquez Martín asserts that the traditional primary goal of law schools in the civil law tradition – to provide students deep knowledge of code structure and content, and to teach the ability to make arguments and find answers within that formal structure – masks a political rationale of sustaining the liberal economic and political systems codified in such laws.

Mihaela Vidaicu, Nadejda Hriptievschi, and Maria Mutu-Strulea give examples from the Moldovan perspective of ways that the concept of law assumed by their chapter demands a different type of legal education. They argue that a twenty-first-century Moldovan lawyer must be equipped to "deal with human rights, European matters, complex legal issues related to international trade, competition, intellectual property,

[2] The conference was organized by the Public Interest Law Institute (PILI) in cooperation with the Center for Foreign Law Programs of the Jagiellonian University Faculty of Law with funding from the Higher Education Support Program of the Open Society Institute for a project on Promoting Sustainable Reform of Legal Education. Partner schools in this project are Donetsk National University of Law and Economics, Kiev-Mohyla National Academy, Ivane Javakhishvili Tbilisi State University, Yerevan State University, American University of Central Asia, and Moldova State University.

and other subjects that were missing or not very popular before the 1990s." For example, the Moldovan government not only has ratified the European Convention on Human Rights, but also its Protocol 11, which establishes a stronger monitoring system for the protection of human rights. The new Moldovan lawyer needs to understand what these provisions offer and how they can be used to afford greater protection to the people of Moldova.

Daniyil Fedorchuk's study on the state of legal education in Ukraine reflects the tensions over a departure from the traditional civil law system teaching methods that Blázquez Martín discusses. The primary question addressed by Fedorchuk's survey was whether the training methods currently practiced in Ukrainian law schools had been effective in meeting the demands of preparation for the practice of law. Survey responses from university lecturers showed that many of them still defined the legal education goal in preparation for practice as the provision of a "profound knowledge of law" (37 percent). A nearly equal group (34 percent), however, broadened the goal statement to include "the ability to practice law." A smaller but substantial group (18 percent) further broadened the goal of legal education to include "building personalities who have to think critically and stick to certain ethical standards."

Dubravka Akšamović contrasts three differing conceptions for goals of legal education that are under debate in Croatia. The first rejects the idea that legal education's focus should be the competence and orientation of practicing lawyers, and instead deems the proper goal to be to "educate capable and brilliant academics" who can understand the purpose of massive EU legislative activity and court decisions and thereby influence national legislative procedures. The second view is that the primary goal of legal education is to educate lawyers to "interpret new codes and court judgments with a deeper understanding of the core problem." The third view, held by "market-oriented members of the academic community," maintains that legal education should focus on serving economic development.

Finally, Akšamović offers her own conception of the outcome of a successful legal education:

> a creative and socially responsible lawyer, who is able to recognize legal problems, find and apply law in specific cases, and understand and be able to settle cases without trial. She should be able to prevent disputes or legal difficulties in the future by legal counseling and the shaping of transactions; and she should represent clients according to her highest professional ability.

The American University of Central Asia (AUCA), the home institution of Elida Nogoibaeva and Kamila Mateeva, has codified its goals in a mission statement that explicitly links equipping lawyer graduates with analytic and practical skills to the normative goals of graduating lawyers who are independent thinkers committed to advancing civil society in the region.[3] Nogoibaeva and Mateeva recount the obstacles to implementing such goals within the constraints of the Kyrgyz Republic's prescriptive standards for law schools, which retain much of the structure of the traditional Soviet

[3] The full AUCA mission statement is: "To educate future lawyers through a program emphasizing the acquisition of independent, analytical learning skills and practical skills within a liberal arts framework in order to prepare them to practice law in the countries of Central Asia and internationally and to be active citizens committed to the construction of a civil society in Central Asia."

curriculum. These national standards require a number of courses in history and theory of law, assume a lecture and seminar course structure, and do not provide for skills courses. The number of required courses makes it difficult to add new ones when so much student and professor time is engaged in mandatory courses.

Marta Janina Skrodzka describes the curriculum and method of the University of Białystok's Judicial Practice Center (JPC) as an innovation directed explicitly toward a particular defined goal of preparation for practice; that is, preparing "students to be creative, professional, and socially responsible lawyers in the future; lawyers who can easily work in a modern world." The JPC moves beyond the clerical work that the court practicum in Poland often entailed to an active and critical review of cases appearing on various subject matter in the courts, which culminates in students' presentation of their own case in a moot court, with feedback and critique from sitting judges, practicing lawyers, and their teachers.

Susanna Borràs and her co-authors from the Universitat Rovira i Virgili in Tarragona, Spain, move from abstract goals for law school to ten particular goals for student learning in their Environmental Law Clinic. Their thoughtful paper presents a careful evaluation by clinic teachers of how well the structure of their clinic served those student-learning goals, as well as the obstacles encountered.

Michiel van de Kasteelen reminds readers of the broad, long-term goals that the Bologna process sets for higher education, including legal education: preparing individuals for roles in society; providing a highly qualified workforce; and contributing to development of science, technology, and professional practice. He moves beyond a focus on the mechanics of the Bologna process – such as the European Credit Transfer System, consistent standards for academic titles, and a common system for degree levels – where discussions of Bologna process implementation sometimes seems to stall, because such features are only a means toward the Bologna process's broader goals for education reform, not ends in themselves. He describes how the important traditional concern for academic freedom may be invoked improperly to resist reasonable accountability measures that are emerging from the Bologna process, as well as from national regulation and university management.

Irma Gelashvili and Nino Rukhadze describe 2004 reforms to the Georgian system of higher education that are directed toward enhanced academic freedom as well as more competitive and rigorous scholarly requirements for academic position appointments. They note some perhaps unintended consequences of these reforms that may frustrate other goals: the exclusive contract requirement, for example, may frustrate the desire for legal education that better prepares students for law practice.

Fryderyk Zoll acknowledges the broad access to higher education that the mass university model common throughout Europe and much of the civil law world has helped achieve. The mass university's free or very low cost education has allowed countries like Poland to open doors to higher education generally, and law school specifically, thus increasing the number of university graduates who can provide the societal benefits identified by van de Kasteelen as central long-term goals of the Bologna process. While recognizing these benefits, Zoll focuses on difficulties in sustaining clinical legal programs' goals of more practice-based education within Poland's existing university structure. Zoll acknowledges how limited university resources frustrate educational

innovation with low salaries that drive academics to devote much of their time to more lucrative law practice or teaching in more highly paid private schools. He emphasizes that the Polish promotion and appointment system concentrates only on publication, while ignoring evaluation of teaching. That system provides for automatic appointment of successful habilitation candidates without regard to the curricular needs of law schools. Finally, while recognizing difficulties created by limited resources, the author suggests how existing human and financial resources could be better deployed through the reform of the Polish system for appointment and promotion in order to build incentives to good teachers and to distribute talented professors throughout the country's law schools.

To close this discussion of goals for legal education, let us focus for a moment on the goal of enhanced preparation for the practice of law. First, this goal assumes that law schools accept the notion that responsibility for preparation for practice lies with them. For many critics of traditional legal education who believe it does, this means expanding law school education beyond a foundation in the structure and substance of particular doctrinal areas of law and an orientation to the overall system and theory of law. Preparation for practice would entail the ability to integrate that legal knowledge with an understanding of the consequences to real people in the real world, and an awareness of how to put this knowledge to work in legal practice. Such preparation would allow students to use critical thinking to assess the policy and practice reflected in the legal structure. They would be able to recognize what interests are served, judge those interests in terms of concepts of fairness, and consider how existing conditions compare to a desirable vision of civil society and a just society.

Many academics would reject at least some of the previously stated goals for legal education, but it is more useful to engage the argument in that realm than to obscure disagreement about goals in a skirmish about methods. If the goal of enhanced preparation for the practice of law is accepted, one can then focus on what levers are available to bring about necessary changes, and where the obstacles to such changes lie.

2. Levers for and obstacles to change

A number of chapters describe specific experiences with attempts at change. Authors describe successes, but often allude to difficulties encountered and unintended consequences.

While Fryderyk Zoll cites benefits to Polish law schools from innovative teaching, legal clinics, and cooperation with foreign law schools in such ventures as schools of foreign law, he acknowledges that much of this activity has happened outside the mainstream of the university structure. He contrasts the benefits of these developments to the negative effects of the "bubble system," the Polish national scheme of automatic appointment to faculties for candidates receiving habilitation degrees from a university. This addition of professors without respect to the law school's curricular needs and resources distorts university assessment of what should be taught by pushing the school to offer courses based on teacher availability rather than student need. Recognizing the key benefit of the mass university in providing education at low cost, he considers postgraduate options being developed in Poland as a viable solution for providing practical training that cannot be made available in law schools within current resource constraints.

Michiel van de Kasteelen describes efforts to assure more communal effort and greater accountability from university faculties. His thoughtful historical analysis reminds us of the values underpinning academic freedom and university community decision-making, but also points out that a balance with public accountability is necessary if law schools are to change and move forward toward common goals.

Daniyil Fedorchuk's survey assesses reactions of university lecturers, students, and employers to alternative teaching methods attempted by some teachers in Ukraine, as well as the perceived effectiveness of these methods in preparing graduates for legal careers.

Dubravka Akšamović recounts the experience of changes initiated in Croatia to comply with the Bologna process. She reports on the debate in Croatia on whether those changes have resulted in improvements or proved to be detriments. She reminds readers of the serious constraints for a country like Croatia, which has not yet followed the path of some countries in the region to establish private law schools, and has only four public law schools to accommodate the many students who want to study law. The country lacks qualified teachers and adequate facilities and has no resources to provide them. At the conference in Kraków, Akšamović challenged a discussion of alternatives in law school decision-making structure as irrelevant to meeting the basic needs in Croatia.

Elida Nogoibaeva and Kamila Mateeva explain a number of changes AUCA has initiated: mandatory legal skills courses, a mandatory legal clinic, teacher training to assist in preparing mandatory syllabi that include new teaching methods and integrate legal skills in substantive courses, developing new textbooks appropriate for using new teaching methods, and instituting peer and student evaluation of teachers. They report excellent buy-in from their faculty in working collectively toward these objectives, but describe the obstacles presented by national standards for legal education. They note that because of these obstacles, they have looked for ways that courses they might not otherwise choose to teach could become vehicles for reaching the objectives of their mission statement: to teach critical thinking.

Irma Gelashvili and Nino Rukhadze describe the major overhaul of Georgian higher education that requires all academics to apply for positions in a revamped system, provides increased freedom for individual professors to apply for research funding, increases emphasis on scholarship in academic careers, and increases salaries for those willing to become employed exclusively by the university. Gelashvili and Rukhadze point out that while enhanced and competitive appointments to academic positions based on merit are laudable goals, the implementation of such reforms has had some unintended consequences. In particular, they question whether the exclusive contract that is designed to increase the devotion of academics to teaching and research in fact may frustrate the goal of better preparation of graduates for practice, because academics, thereby, may not acquire requisite knowledge nor develop their own proficiency in the skills entailed by the practice of law. They also discuss the effect of the Department of Law at Tbilisi State University's implementation of an annex to the standard employment agreement quantifying hours spent on various activities, which, they argue, makes the functioning of legal clinics difficult.

Susanna Borràs and her co-authors explain the structure and functioning of an Environmental Law Clinic at the Universitat Rovira i Virgili, Tarragona, Spain. Their stated objectives for the ELC explicitly add new dimensions to those typically provided

by legal education in civil law countries (or indeed the world over): to encourage a cross-functional approach to learning law, to integrate theory and practice, to develop teamwork skills and practices and conflict resolution skills, to establish the principle of accountability in professional practice, to enhance students' ability to deal with sources, to raise awareness of nonlegal issues such as environmental issues and their implications, to teach skills in reporting on investigations and law drafting, and to foster students' ability to see the bigger picture. Their thoughtful review of the successes and challenges in achieving each objective identifies such points as the difficulty of requiring skills in the clinic for which students have had little preparation, the conflicts between the demands of real cases with educational objectives, and the realities of the academic calendar. Their careful statement of goals and self-reflective assessments offer a model for those seeking to navigate change successfully.

Marta Janina Skrodzka describes the design for a different type of clinical innovation, the Judicial Practice Center (JPC) at the University of Białystok. While other chapters of the book sometimes refer to innovations that have met with resistance from teaching staff and students, Skordzka reports strong support for the JPC from judges, practitioners, teachers, and students. Through her rich description of the JPC, one can contemplate the factors that may have led to this strong backing for change. The program had strong support from the dean, who has served the law school for a considerable number of years and has consistently supported clinical education. The initiative originated with judges who themselves had the idea for improving the traditional practicum. Clinical students who already have demonstrated the commitment to undertake more challenging course work are given priority. In addition, the program did not displace anything in the existing curriculum, but rather offered an alternative for satisfying the practicum requirement, which is often a source of frustration in law schools.

In closing remarks at the conference, I inventoried a non-exhaustive list of possible levers for change in legal education: (1) standards, which might be set by the government directly, an accrediting agency given official authority, a nongovernmental membership accrediting body, a governing board of an institution, or by other means; (2) responses of current students, although perceptions of the importance of their reaction will vary widely; (3) market forces regarding applicants if potential students have the option to choose among law schools and there are financial or other benefits to students who come to the school; (4) demand from employers, which may be quite indirect; (5) ranking instruments; (6) investigative journalism; (7) desire to be part of the Bologna process; (8) greater interaction with foreign universities and academics; (9) teaching and learning centers at a university, consortium, or national level; (10) school level incentives for the professor, which might be bonus or salary rewards, or rules set by faculty consensus or school administration; and (11) job descriptions and measures of staff productivity.

Case studies presented in this book and during the conference offer examples of how many of these potential "levers" can also be obstacles. National requirements are a seemingly direct way to effect change, but, as has happened in the Kyrgyz Republic, national standards can also ossify an outdated model and greatly frustrate a law school's ability to change. Likewise, uniform national standards for all academic disciplines can fail to take into account the special needs of a school that is preparing students to enter a profession.

Free or very low tuition can starve a law school when resources are needed for educational change. At the same time, law school dependence on tuition can fuel a "race to the bottom" for students and render law schools reluctant to impose demanding educational standards. Alternatively, the investment that students make in tuition can make them more discerning about the quality of education they are purchasing. It is possible that the answer is not either/or. For example, some student financial contribution to education may be desirable and necessary to provide adequate resources, but the society should have some alternative mechanisms to assure access, such as loans, which can be paid back after graduation, and grants. The race to the bottom for students may need to be curbed by external standard setting that functions in the manner of the American Bar Association law school accreditation standards for the United States.

Student enthusiasm for and interest in more practice-oriented education has sustained many initiatives for change in the former Soviet sphere and elsewhere. In 1996, I worked with Polish legal educators, including Professor Zoll, on the establishment of the first Polish clinics. Polish clinics have flourished: they currently exist in all public schools and some private schools as well. While they are somewhat institutionalized now and receive a degree of law school funding, Polish clinics and others in the region were and are sustained by the enthusiasm and dedication of students who relish the opportunity to learn and serve others. At the same time, student resistance to innovations that are out of the norm of their experience and require extra effort is identified as an obstacle by some of the chapters in this book and by presenters at the conference. Important factors accounting for the difference in student responses may include: whether a course is mandatory or elective; if membership in a selective clinic is deemed an honor and a privilege; limited enrollment in clinics that permits significant faculty engagement with students; and the enthusiasm, dedication, and demanding standards of the faculty members involved. In addition, several conference presenters addressed the challenges raised by working with law students coming straight from secondary school, the prevailing model in the world. For example, Nogoibaeva and Mateeva noted the issues of age and lack of preparation for critical thinking and active learning in pre-law-school education.

Case studies in this volume offer readers many opportunities to speculate on factors likely to make change successful and why obstacles impede change in some circumstances but not in others. I will close with a final point on why I consider the issues raised in this book to merit much more exploration, if efforts toward educational change are to be successful.

In my own law school, I sometimes think about the expenditure of time and energy necessary to effect some collective policy change or reallocation of resources, and I fall back to: "I would rather concentrate on what I can do myself in my own class, research, and service activities than invest the time to try to convince others to change." Change, indeed, often comes about through the commitment of individuals to do what they can within their own spheres. But Professor Zoll's opening remarks in the conference on the trajectory of innovation in Poland reminds us of the exhaustion factor in educational pioneers. Without structures that make the time, money, advancement, and other incentives for educational change available, the persistent and broad commitment of individual professors will be difficult to sustain, and change at a comprehensive level will be difficult to achieve.

PART ONE:
GOALS OF LEGAL EDUCATION

Diego Blázquez Martín[1]

Chapter 1: The Relative Significance of Legal Tradition and Legal Education Reform

"Abogado sin ciencia o sin conciencia merece gran sentencia i penitencia."[2]

Introduction

When I attended the third worldwide Global Alliance for Justice Education (GAJE) meeting in Kraków, I was surprised to be one of the few representatives from a Western European university. At first, I wondered whether what I had heard about legal education reform was incompatible with the civil law legal tradition. Then I learned about the legal education reform initiatives emerging in Eastern European law schools, and I saw the huge interest in clinical education at the GAJE conference from representatives of Poland, Russia, and former Soviet republics, as well as the Baltics, the Balkans, and even Latin America. All of these countries have statutory-law-based legal systems, but they had developed, or were developing, legal clinics in their law schools and were considering other types of legal education reform as well.

In the four years since that GAJE meeting I have been promoting and developing a legal clinic at Carlos III University in Madrid. Simultaneously, I have worked with others to start a clinical network in Spain. But, in this process, I have been nagged by the question of whether the civil law system is incompatible with this new direction in legal education – this worry being like a sword of Damocles threatening the future of my clinical work.

For this reason I started to study the origins of the global movement on legal education reform. In December 1996, Jagiellonian University hosted another conference on this topic: the Legal Clinics Initiative Conference. At this meeting Roger Burridge, a clinical teacher in the United Kingdom, presented a paper titled "Legal Clinics Initiative: Lessons

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[2] "A lawyer without science or without conscience deserves a severe sentence and penance" – popular Castilian proverb, gathered first by Gonzalo Correas in his *Vocabulario de refranes* (1627). I would like to thank Prof. Wortham for her support and help in writing this paper and her overall valuable comments and ideas, as well as Daniela Ikawa for her input and ideas.

from the British Experience." Although Professor Burridge gave a number of good reasons why the British experience was relevant to Poland (quite contrary to my initial thoughts), he did not address the difference in legal tradition between the two countries. As a panelist at this conference on "The Need for a New School of Law," I would like to concentrate on this unaddressed question – the importance of legal tradition to legal education reform.

The Castilian proverb that served as the inspiration for the title of this chapter says, "A lawyer without science or without conscience deserves a severe sentence and penance." This proverb emphasizes that the goal of legal education should be not only to provide grounding in legal knowledge, but also the personal capacity to use that knowledge with integrity. Everyone would agree that both dimensions are critical components of a paradigm of legal education. From a teleological point of view, the importance of teaching future lawyers not only the content of the law, but also about using the law effectively and responsibly in society, explains why the historical legal tradition is not determinative of the legal education model that currently should be employed. This chapter will emphasize that the concept of law and how it is to be used should be the determining factors of the model of legal education. It follows that, as law and its use change in a society, legal education should change as well to maintain and achieve excellence in the legal profession.

To give the above hypothesis some currency, I will define legal tradition, model of legal education, and concept of law. However, these three concepts are not isolated ideas. This chapter explores the interactions among these concepts in contemporary society. My analysis shows how a model of legal education is appropriately linked to a concept of law, meaning how law will and should be used in the socioeconomic circumstances existing at the time. That is distinct from saying that a legal education model is and should be determined by a legal tradition.

1. Legal traditions, models of legal education, and concepts of law

In order to clarify the discussion about legal education reform, three ideas will be analyzed here: (i) legal traditions, (ii) models of legal education, and (iii) concepts of law. I use legal tradition in J.H. Merryman's sense, as "a set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in the society and the polity, about the proper organization and operation of a legal system, and about the way law is or should be made, applied, studied, perfected and taught."[3] In this sense, Merryman identified three legal traditions in the Western world (in his period): the civil law tradition, the common law tradition, and the Soviet law tradition.

I use model of legal education as the contents, process, and means established in a given society in order to provide "the basic attitudes about the law: what law is, what lawyers do, how the system operates or how it should operate to transfer legal culture from generation to generation."[4] We could talk, for instance, about a more academic

[3] John H. Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* (Stanford, CA: Stanford University Press, 1969), in Spanish, *La Tradición Jurídica Romano-Canónica* (Mexico City: FCE, 1971), 15.

[4] John H. Merryman, *Legal Education There and Here: A Comparison*, 27 Stanford L. Rev. 859 (1975).

model of legal education (such as the ones in continental Europe), or about a more professional model of legal education (such as the Anglo-Saxon ones).

For concept of law, I will use H.L.A. Hart's idea that concept of law is not "a rule by reference to which the correctness of the use of the word can be tested."[5] This is the meaning adopted in more traditional legal thought. Instead, I will use concept of law to mean a normative construct about law that provides alternative theoretical and ideological answers to some recurrent issues, such as the role of coercion in law, the relationship between law and morals, and the kind of rules that legal rules are.[6] I will contrast, for instance, the individualistic concept of law of the nineteenth-century liberal regimes, in which the codes provided the foundation of the legal system, with the social concept of law reflected in welfare-state policies of the twentieth century. In these twentieth-century legal systems, constitutions replaced codes as the source of basic norms, and a new liberal concept of law has emerged in the late twentieth- and early twenty-first centuries, with administrative agencies promulgating regulations to implement broader legal objectives.

2. Resisting legal education reform: The confusion between models and theories

Often, legal traditions are believed to dictate particular models of legal education. This belief, however, leads to resistance against change in legal education, as I will explain later in this chapter (sections 5 and 6). Here, I seek to show how this belief originated; I seek to show that the misconception that legal tradition dictates a particular model of legal education originates in changing both terms from "models" into "theories."

In Weber's methodology of social sciences, to achieve the highest level of objectivity, it is necessary to distinguish between descriptive language and normative language. Descriptive language seeks to explain how things are, or how they work, while normative language aims to express how things should be, or should work. The intrinsic problem of social sciences is that there is not a given empirical reality, and, to different degrees, most descriptions imply a normative dimension. In this sense, when we speak about "model" or "ideal-type" (in Weber's sense), we are using descriptive language (with a normative dimension) to represent a global reality, or specific object of study, in order to facilitate analytical manipulations.[7] Models and ideal-types are simply descriptive tools to delineate reality. For example, the Renaissance is a descriptive construct. It describes a period in European history in which particular changes took place: the first steps of capitalism, the rise of the bourgeoisie, the adoption of states as the main political organizations, and the beginning of secularization and individualism. The Renaissance portrays some complex historical facts that are closely related to rational, economic, social, and political criteria. In this sense, however, the term is still used descriptively in the Weberian sense. One starts to use normative language when the Renaissance is cited as an advance, or a retrocession, for humankind.

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[5] H.L.A. Hart, *A Concept of Law*, 2nd ed. (Oxford: Oxford University Press, 1994), 16–17.

[6] *Ibidem*.

[7] Max Weber, *The Methodology of the Social Sciences*, ed. Henry A. Finch, trans. Edward A. Shils (New York: Free Press, 1949).

In this sense, model of legal education and legal tradition are descriptions; that is, they are concepts used to describe legal reality. Sometimes, however, both concepts become part of a normative discourse; they pretend to become theories, as they are used to justify or explain how the legal system should work or should be, despite how law actually works, or how law actually is. When legal education models and legal traditions are used in normative discourse, they lose their original purpose of describing reality and adopt another purpose of justifying reality. At the same time, concept of law can become a theory, a normative approach to justify and explain reality. This is the meaning adopted in this chapter.

3. The possibility of legal education reform: Concept of law as the basis for models of legal education

This change of purpose that turns models of legal education and legal traditions into theories often causes confusion and misunderstanding, because it pretends to give those models and traditions the normative role that only a concept of law should have. Systems of legal education are based on particular concepts of law that change over time. Therefore, systems of legal education should change as much as the concepts of law on which they are based. In other words, when we take a model of legal education as normative, we will base our analysis on the model itself, rather than on the concept of law behind it. Detaching the consideration of desirable legal education models from the concept of law, which is linked to political and economic changes in a particular society, will result in unchanging systems of legal education. With time, the gap between such systems and reality will be so considerable that legal education will no longer be able to provide the needed expertise to address current social issues.

A final observation should be made when applying this analytical distinction between concept of law, on one hand, and models and legal traditions, on the other, to the problem in question. Before reaching further conclusions, we need to determine why and how the concept of law that one holds should determine the way one will approach legal education. In this sense, the concept of law that is assumed should determine a particular legal education method because the concept of law leads to the definition of law to be studied. When the concept of law is defined, a methodological approach for its study should follow. The access to this legal method, the effective way to know and use the concept of law, should be the goal of the system of legal education.

4. Resisting legal education reform: The confusion between legal tradition and concept of law

While I agree that legal education should be based on a concept of law, I reject the idea that legal education also depends on legal tradition, a point that I raised at the beginning of this chapter. Asserting that the form and method of legal education is determined by the legal tradition is a political statement. This uses legal tradition not as a descriptive model of the state of affairs at a given time, but rather as a theory of law (normative approach), which assumes a particular status quo should be maintained, even in the face of changing circumstances.

The legal systems of Western European countries are claimed to expound in logical, deductive fashion on the first principles of revolutionary constitutions and bills of rights.

The French 1789 *Declaration of the Rights of Man and of the Citizen* purported to rest on "simple and incontestable principles," the legal system, and legal education supporting it looked at legal knowledge as a science in which more specific legal answers should flow from first principles in a deductive, logical sequence.[8]

Western liberal states continue to rely on the idea of "simple and incontestable principles," and on the deductive, logical rationale surrounding them. In assessment of the premises of the liberal state, Michael Sandel points out that the moral, legal, and political theory of hiring and contracting freedom between individuals was widely accepted in Western political systems not only because of the intrinsic morality of the contractarian arguments, but also its intrinsic rational and abstract nature. Sandel's work uses moral and epistemological reasoning to charge that such a priori findings were (and are) not neutral, but rather carry highly relevant political, economic, and social meanings. According to Sandel, liberalism argues that:

> we must be creatures of a certain kind, related to human circumstance in a certain way. In particular, we must stand to our circumstance always at a certain distance, conditioned to be sure, but part of us always antecedent to any conditions. Deontological liberalism supposes that we can, indeed must, understand ourselves as independent in this sense. I shall argue that we cannot, and that in the partiality of this self image, the limits of justice can be found.[9]

In order to preserve the basis of these findings, the law was portrayed by countries with laws in this liberal tradition as an essential component for maintaining political, social, and economic stability. A legal method based in deductive operations from first principles was considered essential to the preservation of the whole system. Thus, a method of legal analysis, and the concomitant method of legal education, was transformed from a descriptive model into a (normative) theory of law.[10]

The conceptual issue behind this supposed dependence of model of legal education on legal tradition is that concept of law is often confused with legal tradition, which allows legal tradition to be turned into a theory. Saying the legal education model is inextricably linked to a legal tradition transforms the concepts into a theory, to be used as an ideological defense of an existing concept of law. Here, legal education has a central role, closing a kind of vicious circle to preserve and guarantee the survival of the legal and political *status quo*.

In fact, we can find in Merryman's writings the explanation of this problem, as well as the reasons for the confusion between concept of law and legal tradition. Merryman agrees with the part of Hart's Social Fact Legal Theory that claims that the existing law in a community is based on being "effectively accepted as common public standards of official behavior."[11] If we agree from a complex socio-legal perspective with Hart's thesis that an effective law is one that is applied by officials because they deem it has been recognized by society, there remains the question of whether officials, in practice, will know what laws to

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[8] Bartolomé Clavero Salvador, *Historia del Derecho: Derecho Comun* (Salamanca, Spain: Universidad de Salamanca, 1994).

[9] Michael Sandel, *Liberalism and the Limits of Justice*, 2nd ed. (Cambridge: Cambridge University Press), 10–11.

[10] Manlio Bellomo, *L'Europa del Diritto Comune* (Rome: Il Cigno Galileo Galilei, 1991).

[11] H.L.A. Hart, *A Concept of Law*, 2nd ed. (Oxford: Oxford University Press, 1994).

apply. Officials and jurists need to be trained in what is socially considered to be the law. Therefore, legal training will be based on preserving a specific legal system.

In Merryman's words:

> Those who will man the legal system and will fill those positions of leadership in government and the private sector that seem to fall more frequently to lawyers, at least in Western societies, come out of the law schools. What they are taught and how it is taught to them profoundly affect their objectives and attitudes and the ways in which they will fill these social roles.[12]

But Merryman distinguishes between legal systems and legal traditions. While a legal tradition is the intellectual effort to create groups or families of legal systems (a "model," or "type" in Weberian terms), legal systems are "an operating set of legal institutions, procedures and rules. [There are] as many legal systems as there are such states and organization of states."[13] However, he does not use this same distinction in the case of legal education. In other words, we do not know if he addressed legal education as a "system," that is, as an "operating set of legal training institutions and means," or as a "model" or "type." The final result is that, although Merryman understood that legal traditions were "models," he assumed that each system of legal education was based on a model of legal education, and this model of legal education was based in legal tradition. By doing this, Merryman implied it is impossible to introduce new methodologies in legal education systems of any legal tradition. This is, of course, a false conclusion. Legal clinics are an example. Although such clinics were initially created within common law systems, a number of civil law countries have incorporated clinics within their systems of legal education, among them Canada,[14] Spain, Poland, Brazil, and Argentina.

5. The possibility of legal education reform: Back to the concept of law

From this analytical perspective, the role of law in a society at a given time and the use to which law will be put should be more significant than legal tradition in shaping a model of legal education. From an affirmative perspective, we could say that the plan for the usage of law (that is, a concept of law) should shape the model of education. When the destiny of law is to transform a society, the society needs a model of legal education supportive of that end, not a model aimed at conserving or preserving existing social structures.

As a consequence, each conception of law should develop its own model of legal education. One should not confuse legal tradition with concept of law, and descriptions of the legal standards and practices of a legal community at one historical moment should not be turned into a normative theory of what should exist for all times. A country's model of legal education should not so much be based on the legal tradition, but on the use of law at that time and what is desirable for the country's future. This issue arises starkly in countries facing political and economic transformation like that arising in Spain in the 1980s and more recently in former Soviet countries. In the case of Spain, the move from an authoritarian regime to democracy resulted in the need to implement acute

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[12] John H. Merryman, *Legal Education There and Here: A Comparison*, 27 Stanford L. Rev. 859 (1975).

[13] John H. Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America* (Stanford: Stanford University Press, 2007), 1.

[14] Rosalind Brooke, *Legal Services in Canada*, 40 Modern L. Rev. 533 (1977).

changes in the law. For example in criminal law, during the Franco regime it was a crime to hold meetings without the authorization of the government. Meetings were considered within the domain of administrative or criminal law. Post-Franco governments have recognized the act of holding meetings to be a right; a crime has been turned into a civil liberty protected by law. As for economic changes, Spanish law has also been deeply restructured to orient itself to a market economy. For example, a few years ago, basic services, such as telephones, were directly provided by the state. The market economy has allowed private providers into the system, but this then requires the state to adopt laws and regulatory agencies to control services provided by others.

6. Change from legal education rooted in legal tradition to one reflecting concept of law

The civil law tradition, as will be shown next, has developed a model of legal education aimed at training technical experts to operate a predefined problem-solving system. In 2000 the American Association of Law Schools organized a conference similar to the one that generated this book. A speaker on German legal education began his presentation by talking about the Holy Roman Empire. Perhaps this was an extreme example, but it would be fairly accurate to say that a prime characteristic of legal education in Europe is its antiquity. Each medieval reign or nation in Europe developed its own law and its own lawyers. Given that the only possible law to study and to practice was Roman law, the task of the jurist was to learn Roman law texts and how to interpret them.[15] The judicial aim was to practice "justice," which for some centuries was different from "law," an instrument with which to organize and legitimate royal or imperial power. In general, the mission of the judge was to seek a fair solution to a specific problem. Sometimes the answer was found in the scarce legal provisions enacted by the Prince, or Civil Magistrate, but in most cases the solutions were found in the Customs, in the Natural Law, or in the arbitrary decisions taken by a feudal master (feudal power survived to some degree until the French Revolution).

With the enactment of the Civil Code, administration of justice was conducted in accordance to the law. "Justice" and "law" were assumed to be the same, in an attempt to guarantee certainty in the new legal system. It was the beginning of law's empire, to use Dworkin's expression. The most important consequence of this change was the complete submission of legal professionals to the legal texts. As Montesquieu noted, the judge would be merely the mouth that pronounced the word of the law. If this was the destiny of judges, what about lawyers and other legal professionals? Because of this historical and political evolution respecting the role and the concept of law, old law faculties did little to change. They shifted their prior method of memorizing Roman law or Royal Acts to the "new method" of memorizing new national codes and substantive law. Legal education retained the same uncritical approach to law.

It is worth remembering illustrative statements from two nineteenth-century French jurists: Bugnet, who said "I do not know of any civil law; I just and only know French

[15] Joerg M. Mössner, "Legal Education in Germany," paper presented at the Conference of International Legal Educators, Florence, Italy, May 24–27, 2000.

Civil Code," and Demolombe, who said "the text over the rest."[16] We can affirm that this has been, and still is, the mainstream legal methodology in schools of law throughout countries following the civil code tradition.

Although the content of law changed with the enactment of the Code, the ideology and the legal tradition did not change. Once the national revolutions were political successes, the social role or function of law continued to be the preservation and the sustainability of the political and economic order. Legal education followed this pattern by changing its content but maintaining the same teaching methods. In fact, throughout continental Europe, content reform in legal education took place in different moments of the eighteenth century and was promoted by enlightened monarchs. For instance, in Spain, the renewal of the curricula in the main *Facultades de Leyes* of the country took place throughout the 1770s and 1780s, in order to support and expand the royal laws. (The enactment of royal laws was the first step in the transition from common law and Roman law toward the adoption of civil law.) Other curriculum reforms were then implemented to support the transition from royal laws to the Civil Code. However, teaching methodologies remained the same. More specifically, there were consecutive reforms in curricula, replacing National Legal Institutions (a class that used to be given in the third and fourth years of Spanish law schools) for Civil and Criminal Law in 1836.[17] As for teaching, learning, and evaluation methodologies, however, we can find very few changes, even in new courses or subjects. The old teaching methodologies were applied, for instance, to the new class on the 1812 Constitution. The new class was also based on the same gloss methods,[18] and on the recitation of certain books previously selected by educational authorities.[19]

7. Changes and evolution in the concept of law

Continuing reform of legal education in both the civil and common law traditions is necessary, not only for the reasons detailed above, but also because some of the distinguishing characteristics of these systems, including the concept of law, have changed a great deal during the last fifty years. As Merryman argues, only those who believe "that law is immutable will resist the suggestion that the objectives and methods of legal education need periodic re-examination."[20] The rational and abstract *concept of law* that

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[16] Julien Bonnecase, *L'Ecole de l'exegese en droit civil: les traits distinctifs de su doctrine et de ses methodes d'apres profession de foi de ses plus illustres representants* (Paris: E. de Boccard, 1924).

[17] Cf. Carlos Tormo Camalloga, *Implantación de los estudios de jurisprudencia en el Arreglo provisional de 1836: el caso de la Universidad de Valencia* (Madrid: Cuadernos Antonio de Lebrija, 2003), 221–222, with María Pilar Hernando Serra, *La universidad de Valencia: del plan ilustrado de Blasco al plan de 1807* (Madrid: Cuadernos Antonio de Lebrija, 2002), 307, and with the origin of the reform promoted for royal jurists in the case in Valencia of Berní y Catalá, in Carlos Tormo Camallonga, *El derecho común y las universidades* (Madrid: Cuadernos Antonio de Nebrija, 2000).

[18] Alfredo Gallego Anabitarte, "La enseńanza del derecho público en Espańa: un ensayo crítico," in *Manuales y textos de enseńanza en la Universidad liberal*, ed. M.A. Bermejo Castrillo (Madrid: Proceedings of the VIIth International Congress on Hispanic Universities History, 2004), 49.

[19] Manuel Martínez Neira, "Los libros útiles o la utilidad de los libros," in *Manuales y textos de enseńanza en la Universidad liberal*, ed. M.A. Bermejo Castrillo (Madrid: Proceedings of the VIIth International Congress on Hispanic Universities History, 2004), 588–589.

[20] John H. Merryman, *Legal Education There and Here: A Comparison*, 27 Stanford L. Rev. 865, n. 8 (1975).

originated from the civil law tradition justifies this assertion in the case of civil law model of legal education.

Indeed, in the case of the civil law tradition, the origins of both the legal method and legal education are based on the works of a generation that developed their own legal theory or concept of law[21] based on the political and socioeconomic groundings of liberal economic and political systems. As explained above at the citation to Michael Sandel, individualism, contractualism, and meritocracy sustained a concept of law and a legal practice based on the almost absolute power of individual will, grounded in a formal equality.

As previously asserted, it is not valid to say that the civil law legal tradition should determine the model of legal education, because this does not correspond with the political reality of welfare states, which have more state intervention and administrative regulation.

More specifically, political changes encompass, for instance, a new focus on the role of the administrator and the legislator that came with the development of welfare states in the second half of the twentieth century. Such political changes fostered a great number of changes in law. First of all, law is no longer primarily used to establish limits, but rather as an instrument to achieve social goals. Law has been transformed into a softer and more flexible instrument to allow administrative agencies to solve problems as fast as possible. This instrumental concept of law needs a new drafting system based on principles, objectives, and general commands or briefs rather than detailed all-or-nothing rules.

Not only has the content of law changed, but the concept of law, the way the legal system works, has changed greatly in the twentieth century. A preeminent executive branch has created a massive body of regulations. The notion of a constitution as fundamental law has spread to the continental or civil code tradition, limiting parliamentary jurisdiction. Because of welfare state policies, precise legal language and drafting techniques have been subjected to new kinds of juridical rules, as "principles rules,"[22] "soft law,"[23] and "standardization rules."[24]

This new concept of law, known in Italy as Ductile Law, refers to the malleable nature of this more recent law, able to adapt to very different goals, attitudes, or means of legal professionals.[25] This new concept suggests a need to create legal professionals capable of facing legal realities imaginatively, with an open mind and the will to achieve the goals established by legislation. From a more general perspective,[26] this envisions

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[21] Manuel García Calvo, *Los Fundamentos del Metodo Jurídico: Un Revisión Critica* (Madrid: Tecnos, 1994).

[22] Principles can be defined as standards for deciding which rule applies for specific cases. Ronald Dworkin, *Taking Rights Seriously* (London: Duckworth, 1978). In the case of civil law tradition, probably the most important author is Robert Alexy.

[23] Launched by Lord McNair to distinguish directly executive rules and a more general set of rules based on values that need to be applied by judges, the concept refers nowadays to a gradation in the binding force of rules as codes of conduct, plans of action, protocols, etc. It is especially important in the field of International Public Law. See Daniel Thürer, "Soft Law," in *Encyclopedia of Public International Law* (2000).

[24] Since the foundation in 1947 of the International Standardization Organization, (ISO), almost all states have founded national private agencies to establish and promote standards with a commercial aim. In the case of the EU, it is especially relevant to guarantee European freedom of commerce.

[25] Gustavo Zagrebelsky, *Il Diritto mitte Logge dirriti giustizia* (Torino: Giulio Einaudi editore, 1992). A good example could be communitarian directives, binding in the aims, but not the means.

[26] Jesús Alfonso Ruiz Miguel, "Del Dúctil derecho y la virtuosa necesidad," in *Anuario de Filosofía del Derecho* (Valencia: Universidad de Valencia, 1996), 157.

law no longer as a ratio scripta with clear, precise, concise, and unequivocal rules, as an overall rule system that applies to everyone, but rather as social welfare legislation that may be directed to achieving certain ends with certain groups.

Some comparative law scholars have called the present process the "decoding era," characterized by the following developments:[27]

- Siege of the codes. New specific laws have regulated areas that had initially been covered by codes.
- Replacement of the codes. Codes were replaced by constitutions as the main sources for the most basic norms.
- Code freeze. Code provisions are not formally abrogated or repealed but rather simply no longer applied.

"Law in action," using Oliver Wendell Holmes' classical distinction, is more important and relevant than ever. Speaking strictly from a theoretical point of view, that is why legal education reform is necessary.[28]

Due to all this, it has now become imperative to join the Roman law concepts of *scientia* and *prudentia*. We must no longer select one and separate the two.[29] As Friedman asserts: "Never has it been so important that lawyers, legislators, judges or professors of law would be something more than skillful crafters."[30]

Because of this change in the civil law model, law schools that want to achieve optimal curricular outcomes will need to adapt their teaching and research activities to these new patterns of law. In common law systems, legal education institutions have included more statutory law subjects in legal education. In countries in the civil law tradition, the nineteenth-century concept of law has changed and thus the way of educating lawyers to operate in this new legal system must change. Furthermore, we need a new kind of jurist, one who is able to give new kinds of answers to more complex and varied social and economic realities in a world where sources of law multiply on a daily basis.[31] This is not a question of legal tradition; it is a question of being open to adapting legal education to the new needs of global and local societies.

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[27] Manlio Bellomo, *L'Europa del Diritto Comune* (Rome: Il Cigno Galileo Galilei, 1991), 32.

[28] "The life of the law has not been logic; it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics." Oliver Wendell Holmes, "Lecture I: Early Forms of Liability," in: *idem*, *The Common Law* (Boston: Little, Brown, 1881), 1.

[29] Riccardo Guastini, "Derecho dúctil, Derecho incierto," in *Anuario de Filosofía del Derecho* (Valencia: Universidad de Valencia, 1996), 111.

[30] Wolfgang Friedman, *Law in a Changing Society*, 2nd ed. (New York: Columbia University Press, 1972).

[31] Manlio Bellomo, *L'Europa del Diritto Comune* (Rome: Il Cigno Galileo Galilei, 1991), 35.

PART TWO:
LAW SCHOOL GOVERNANCE

Michiel van de Kasteelen[1]

Chapter 2: Faculty Management: A Matter of Balance

Introduction

This chapter analyzes tensions surrounding three core dimensions of faculty organization and management: external academic freedom, internal academic freedom, and who participates in decision-making. The chapter considers some common assumptions about these concepts that are dominant in the Dutch academic community, and Western universities more generally, and addresses competing considerations that the author believes must be balanced against the traditional assumptions.

External academic freedom refers to the relationship of the university and the faculty to their surrounding environment. Here the core notion is "independence" or "external academic freedom." But is external academic freedom absolute? What about accountability? What about social responsibility? What about "the market"?

The second set of assumptions looks at the relationship between the content of education and research on one side and university and faculty organization and management on the other side. The core notion here is "internal academic freedom."

The third set of assumptions is about the day-to-day functioning of universities and faculties, and the way in which decisions are made, especially the involvement and participation of the stakeholders in those processes.[2]

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[1] Michiel van de Kasteleen is Head of the International Office of the Faculty of Law, Economics and Governance of Utrecht University.

[2] I primarily discuss common assumptions in the Dutch context, but the analysis is valuable for the international academic community more generally. Does a Dutch university or law school aim only to be the best in Holland, or does it aspire to work (and compete) in an international context? To be in the top fifty of the Jiao Tong Ranking? In other words, what is our point of reference?

The academic community is by definition an international community. In fact, it has been so for centuries. Even in times when traveling took long and was more of a burden than today, and when long-distance communication did not exist, academia did not recognize formal boundaries. Perhaps for some time there has been a larger focus on a national context of education and research, but today it is again undeniable: higher education and research can only flourish in an international setting. This is why this chapter about the management of universities and faculties should also be viewed from an international perspective.

1. External academic freedom

In the Magna Carta of European Universities, signed in Bologna on September 18, 1988, by the rectors of (European) universities, four fundamental principles are formulated:[3]

A. The university is an autonomous institution at the heart of societies differently organized because of geography and historical heritage; it produces, examines, appraises, and hands down culture by research and teaching. To meet the needs of the world around it, its research and teaching must be morally and intellectually independent of all political authority and economic power.

B. Teaching and research in universities must be inseparable if their intent is not to lag behind changing needs, the demands of society, and advances in scientific knowledge.

C. Freedom in research and training is the fundamental principle of university life, and governments and universities, each as far as they are capable, must ensure respect for this fundamental requirement. Rejecting intolerance, and always open to dialogue, the university is an ideal meeting ground for teachers capable of imparting their knowledge (and well equipped to develop it by research and innovation), and students entitled, able, and willing to enrich their minds with that knowledge.

D. A university is the trustee of the European humanist tradition; its constant care is to attain universal knowledge; to fulfill its vocation, it transcends geographical and political frontiers and affirms the vital need for different cultures to know and influence each other.[4] The ideas behind these fundamental principles date back to the times of Wilhelm von Humboldt, who formulated two principles that have strongly influenced academic life in both Europe and the United States.[5] The first principle is *Lehrfreiheit*, the academic freedom of the teacher, paired with *Lernfreiheit*, freedom of choice for the student. It is remarkable that in 1809 von Humboldt paired these two concepts. The professor's academic freedom became far more well known and popular with academics than the notion of student freedom of choice. Humboldt's second principle was the interdependence between teaching and research.

Von Humboldt's principles created the basis of the academic culture in liberal societies. In this culture, the individual scientist is at the center, and there are almost no boundaries as to where scientific research might lead. The days in which external forces like the Church set a context of self-evident truths that could not be challenged were over. Governments in these liberal societies accepted that their role was limited to creating the conditions in which academically free research could take place.

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[3] The Magna Carta of European Universities is based on a proposal by the University of Bologna in 1986. The idea was further developed in 1987. The final draft was signed in January 1988 by the rectors attending the 900th anniversary of the University of Bologna.

[4] European University Association *et al*. *Magna Carta of European Universities* (Bologna: European University Association, 1986).

[5] Friedrich W. von Humboldt, "Der Königsberger und der litauische Schulplan, 1809" in *Wilhelm von Humboldt und die Reform des Bildungswesens,* ed. Eduard Spranger (Berlin: Reuther u. Reichard, 1910). Friedrich Wilhelm Freiherr von Humboldt, born in Potsdam in 1767, was a German linguist, philosopher, and statesman, and founder of the Humboldt University in Berlin.

In contrast, in societies that are in one way or another under dictatorial rule, whether from the left or the right, academic freedom is considered dangerous and therefore unacceptable.

> Nazi Germany effectively obliterated academic freedom, despite its German origins. The Third Reich directly restricted the teaching content at German universities, and fired Jewish, non-conformist, and politically dissident tenured professors. Few German voices protested against these developments."[6]

Socialist countries followed a similar pattern. In the words of Altbach:

> over four decades of Communist rule, completely eroded academic freedom. Universities became arms of the state, which expected ideological loyalty. Severe sanctions for violating political or academic orthodoxy included removal from academic posts and prosecution. Communist governments considered academic freedom an inappropriate "bourgeois" concept, since all elements in a socialist society, including the universities, were subject to the needs of the state for economic development and social reconstruction.[7]

But, of course, the pressure on academic freedom does not always take such drastic forms. Modern (Western) democratic society has subtle ways of influencing the content of academic research and teaching. This pressure can take the form of financial pressures and incentives, of surrounding regulations, of managerial hassle, of "peer group political correctness." It can come from the public and the private side; it can even come from within the academy itself.

In the Bologna Declaration of 1999, the signatory states echo to a certain extent the Magna Carta of European Universities by stating:

> European higher education institutions, for their part, have accepted the challenge and taken up a main role in constructing the European area of higher education, also in the wake of the fundamental principles laid down in the Bologna Magna Carta Universitatum of 1988. This is of the highest importance, given that Universities' independence and autonomy ensure that higher education and research systems continuously adapt to changing needs, society's demands and advances in scientific knowledge.[8]

2. Independence versus accountability and market orientation

The notion of academic freedom refers first and foremost to the idea that academic teaching and research should not in any way be decided or even influenced by governments or authorities. However, it is also used against the influence of "the market," or other sources of finance. Pure science should not be driven by anything else than itself. How does this notion relate to other notions like social responsibility, accountability, quality assurance, accessibility, etc.?

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[6] Philip G. Altbach, "Academic Freedom in a Global Context: 21st Century Challenges," in the *NEA 2007 Almanac of Higher Education* (Washington, DC: National Education Association, 2007).

[7] *Ibidem*.

[8] The Bologna Declaration was signed on June 19, 1999 by twenty-nine European Ministers of Education, following the Sorbonne Declaration, signed a year earlier by the Education Ministers of France, Germany, Italy, and the United Kingdom.

The Bologna Declaration stresses university independence and autonomy, but it also sets an enormous agenda regarding higher education's responsibility to the societies in which it resides:[9] "The importance of education and educational co-operation in the development and strengthening of stable, peaceful and democratic societies is universally acknowledged as paramount."[10] That is not science for the sake of science; that is science with a goal of assisting the creation of stable, peaceful, and democratic societies. The Declaration goes on to say, "We must in particular look at the objective of increasing the international competitiveness of the European system of higher education."[11] The academy should not only be of benefit to society in a moral sense, but also in an economic sense.

Governments also formulate tasks for higher education in the national context. The Netherlands Ministry of Education issues from time to time Policy Papers on Higher Education that set out what universities and polytechnics are supposed to accomplish as part of the larger society. In the Policy Paper *Hoger Onderwijs: Autonomie en Kwaliteit* (Higher Education: Autonomy and Quality) the Dutch Ministry states:

> The demands of society toward Higher Education are changing […] General goals: to prepare individuals for their role in society, as well as providing society with a highly qualified workforce; the individual development of students; to contribute to the development of science, technology, and professional practice; in keeping with the first three goals, to play a critical role within society.[12]

The autonomy that is used in the title of the policy paper may be an autonomy from the government, but not from the developments in society at large. Where institutions have a larger self-responsibility in their relations with public authorities, they should be more flexibly connected to social demands. This is a movement away from the traditional Humboldtian principles.[13]

Not only do governments and public authorities have demands regarding the tasks that higher education should fulfill, but they also prescribe the way in which these functions should be fulfilled. The so-called Bologna process encompasses matters such as quality assurance and accreditation. Such processes already existed in one form or another in many countries, but they are now part of the international agenda. Between the Berlin and Bergen Summits in the framework of the Bologna process, a report was presented by the European Association for Quality Assurance in Higher Education (ENQA), leading to the following statement in Bergen:[14]

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[9] *Ibidem*.

[10] The European Higher Education Area, preamble to the *Bologna Declaration* (Bologna: European Higher Education Area, 1999).

[11] *Ibidem*.

[12] Netherlands. Staten-Generaal. Tweede Kamer, *Hoger Onderwijs: Autonomie en Kwaliteit* (Zoetermeer: Ministerie van Onderwijs en Wetenschappen, 1985), 85–86. My translation.

[13] R.L. van de Bos and T. Vis, *Taken en Functies van het Hoger Onderwijs* (Tasks and Functions of Higher Education: Report of the Scientific Council for Governmental Policy), (The Hague: Wetenschappelijke Raad voor het Regeringsbeleid, 1995), 83.

[14] The European Association for Quality Assurance in Higher Education was established in 2000 to promote European cooperation in this field, and has full members in nineteen European countries.

> We adopt the standards and guidelines for quality assurance in the EHEA, as proposed by ENQA. We commit ourselves to introducing the proposed model for peer review of quality assurance agencies on a national basis, while respecting the commonly accepted guidelines and criteria.[15]

3. Beyond the orthodoxy of external academic freedom

In my opinion, the university is and should be connected with its surrounding environment in three ways, which do not contradict academic freedom, but which put it in perspective.

The first connection is that of the university's academic community with the agenda of the society at large. The university is an essential element in solving the problems and addressing issues that confront or threaten society, vulnerable groups within society, and individual human beings. Society should be able to count on the academy for research and information when it tries to cope with pollution and climate change, with disease, with famine and food crises, etc. Society should be able to count on law schools for analysis and social critique when it addresses questions of social cohesion, of crime and security, of war and peace, of transparency and governance. Big words, maybe, but words that should be up front when the academic course is set out. In that sense, the governments signing the Bologna Declaration are completely right: universities and faculties have a role to play, and they should be accountable for the way in which they fulfill that role; so, academic freedom is not a pretext for a noncommittal attitude.

The second connection is that the university is not a place that should be immune from quality control. There are and should be mechanisms by which the quality of teaching and research is measured. The quality of teaching should be assessed in part by the satisfaction of those for whom the teaching is meant to benefit. Student surveys are an integral part of quality assurance at most Dutch universities, and students are asked to assess the teacher in different ways: looking at methodology and pedagogy, but also personal teaching skills. The quality of teaching also covers the "output reached": did the students reach the level (in terms of knowledge and competences) that is necessary for the next step in their learning process, for the exam, for the labor market?

Assessing the quality of research entails a review of research output in both quantitative and qualitative terms. The number of books, chapters, articles, etc., produced are reviewed, as well as the way in which this output is received in the outside world (numbers of quotations and references, etc.). In fact, this is a nonacademic assessment of research, because an academic assessment would take the form of scientific agreement or disagreement with the content of a book or an article. In any case, academic freedom is not a refuge from external control on the quality delivered.

The third connection is the funding of universities and faculties. *Wie betaalt, bepaalt* is a Dutch saying. Translated, the rhyme is lost, but the idea is "the one who pays is the one who decides." There are generally four sources of income for universities and faculties: government funding (the money set aside by governments for their educational systems, decided by parliaments or other representative bodies); the student (the fee that is paid, either directly or indirectly, to the university); grants and contracts from a public or private entity for specific teaching or sponsored research; and charitable gifts

[15] The European Higher Education Area, *Communiqué of the Conference of Ministers Responsible for Higher Education* (Bergen: European Higher Education Area, 2005).

from individuals or companies. Charitable giving is a significant source of income for at least some universities in the United States, but not (yet) in Europe. Government funding remains strongly debated in most European countries, some of which have a long tradition of "free education." Free education does not exist, of course, so a more accurate term might be "fully government-funded education." Some countries, like the Netherlands, are moving toward not only higher fees, but also more diversified fees. The major controversy about university funding is whether the academic agenda (especially for research) should be (partly) driven by available sources of nongovernmental funding. Today, many governments promote increasing the amount of such external funding, probably in part from self-interest in relieving their burden of funding universities. With such outside funding, the major question is whether the funders' individual or specific economic interests determine the course and content of academic research. And, if so, how does this affect academic freedom, and academic integrity?

4. Internal academic freedom

Academics invoke academic freedom not only in defense against influence on teaching or research from external sources, but also in resistance to regulatory forces from within the university or the faculty: "the bureaucracy." At Utrecht University, academics tend to refer to "the *Uithof*" (the area of Utrecht where the central campus is located) when talking about the university central staff, and to "the *Janskerkhof*" (the address of the faculty office) when talking about the faculty office. In both cases, there is a certain dismay in their tone. Academics are in most cases very independent people, and any form of interference with their work is not much appreciated. However, with this independence, how does one build a "community" or a "corporate identity"? How can processes within the faculty be managed without provoking the eternal anger of the academic staff?

One example was the series of discussions we had at the Board of Research at the Utrecht School of Law Faculty on "University Preferred Partners." The idea came from the *Uithof*, where the central authorities had decided that it would be in the interest of all to concentrate resources for international work on a limited number of partner institutions around the world, which then would be given the name "Preferred Partners." Faculty would still be free to cooperate with whatever academics or institutions they wished, but university financial support in these ventures would be limited to Preferred Partners. Perhaps apart from the name, the proposal made sense from an organizational point of view, in that it would have allowed the university to make better use of scarce resources. However, the academics on the research board saw the limitation of international partnerships for which support would be available as interference in their academic freedom. They saw freedom to choose a partner for common research, common publications, and common teaching, based on their individual valid judgment regarding the best counterpart on a particular topic, to be integral to academic freedom. If that counterpart was a colleague at Warwick, when the Utrecht Preferred Partner was Sheffield, they should have the right to choose the one from Warwick. They believed the university should make funds available to support their best choice of partner without any limitation to particular institutions.

I also recall trying to explain the notion of the European Credit Transfer System (ECTS) in a meeting of one of our Erasmus networks in the mid-1990s. I had explained

that the number of credits in no way is a judgment on the quality of the teacher or the relative importance of a subject area, but just a tool to measure student workload for a particular course. A German professor rose up in anger. How did I think that it would be possible at all to quantify in terms of credits the wealth and richness of his course on Civil Procedure, the years of experience he brought to that course, the way in which he interacted with his students? He was quite angry, and I must admit that I could see the beauty of his reasoning as well.[16]

Finally, I remember from my own practice as Head of the International Office of the Law School, that we received complaints from our teaching staff that the foreign students were changing classes after only two or three weeks into the semester. How were they to maintain the quality of their lecturing if the students continued to move in and out of courses? We understood the message and created a rule: foreign students were not allowed to change class after the first week. To support that rule, we tried to improve the quality of course descriptions, and we organized introductory sessions for each course at the start of the semester. We reasoned that, with more information at the beginning, students could make an informed choice and then they should stick with it. Then teachers began to sabotage the rule by allowing students to change class after the deadline, after all. They claimed it to be their academic freedom to allow a student in class, if they wanted, asserting that it was "bureaucratic" to enforce the rule we made on their behalf.

These are just a few rather random examples of the way in which academics invoke academic freedom in resistance to management measures of the organization around them. However, the time is long gone that academics could dream of a surrounding that was free of rules and structure and management (and demanding students). Both the educational processes, as well as the research, have to be organized and managed properly in order to provide the best results.

5. Internal academic freedom versus a faculty as a community

First, building a curriculum that is logical for the student, in which the pieces fit together, in which the academic staff in one course is completely aware of the context as a whole and of the content of neighboring courses, is essential. Secondly, course content has to be connected to a time frame in terms of years and semesters, but also in terms of hours. Third, the curriculum has to be connected to staff availability, as well as to material conditions, such as classrooms and teaching tools. Fourth, the curriculum has to be manageable for the student. For all that, cooperation is needed and that brings with it the need for organization and management; there is no escaping that. This internal logic and cohesion of a curriculum comes on top of the external functions in terms of learning outcomes, skills, and competences.

The same goes for research; one also needs to establish a total picture, in which the different research elements fit together. One researcher and one line of research should be linked to another, whether you call them research programs or research institutes.

[16] I think that at a certain level we all want the things we do to speak for themselves; we all want the things we do to be measured by the value they have as such, and not by an outside standard.

The research(er) also has to be linked to available time, to resources, to material circumstances; and, as we have seen, to external demands.

However, it is more than material necessity that leads to cooperation and a "corporate structure." In my opinion, it is also in the essence of science to be part of interactive surroundings, to be constantly confronted with questions and reactions of others, students and colleagues. It is the task of the manager to create an environment in which this interaction can flourish without creating a burden that takes the place of the interaction.

6. Participation in university decision-making

The occupation by students of the *Maagdenhuis* in 1969 was for the Netherlands the starting point of a movement for a more democratic, more participatory university. On Monday, May 12, 1969, a small group of students occupied the room of the Rector Magnificus of the University of Amsterdam, Professor A. Belinfante. He had irritated the students by saying that "the right to participate in decision-making" was an empty statement. The group of students, calling itself "Action Group: The Empty Statement" became larger and larger, and by the next Friday the whole administrative center of the University of Amsterdam, located in the *Maagdenhuis*, was occupied by hundreds of students. They renamed the university the "Ferdinand Domela Nieuwenhuis University" (after a famous socialist leader of the nineteenth century) and they created a permanent structure for meeting and discussion. A week later, the Amsterdam police ended the occupation in a rather violent way.

The *Maagdenhuis* became the symbol for the struggle of students to participate in the decision-making processes in their universities. Only three years later (in 1972), the Netherlands Parliament passed a law that created a democratic structure for universities and polytechnics.[17] It implied a radical change in the way in which universities and (within them) faculties were governed. The university and faculty boards had to deal with university and faculty councils, which were composed of students, academic staff, and nonacademic staff, equally. These councils had relatively far-reaching rights, among which in certain cases, the right of co-decision. Throughout the years, the law has been adapted, mainly to the advantage of the governing boards, who complained that the structure was too complicated, inefficient, and too slow.

The final change came in 1997 when a new law was passed, the *Wet Modernisering Universitaire Bestuursstructuur* (Law on the Modernization of the Governing Structure of Universities), now incorporated into the *Wet op het Hoger Onderwijs en Wetenschappelijk Onderwijs* (Law on Higher Education and Scientific Research). On the one hand, this movement away from participatory democracy led to strong reactions among groups of students (and staff), but at the same time one had to acknowledge that a majority of students (and staff) no longer cared about these formal structures of participation. Times had changed since 1969 and so had the student body.

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[17] Netherlands. Tweede Kamer der Staten-Generaal, *Wet op het Universitair Bestuur* (The Hague: Staatsdrukkerij, 1972).

7. Democracy versus leadership

An old phenomenon has returned to the academic scene, maybe in a new jacket: leadership. If I look at the way in which Dutch universities and faculties are organized today, the emphasis is again on the person of the president (or chancellor or rector) of the university or the dean of the faculty. She (or he) is appointed on the basis of a number of qualities that have only partly to do with academic content. The choice is made for a person (from within or from outside the ranks of the university or faculty) who can be a leader inside and a capable representative outside the institution. For the Netherlands, that way of looking at an organization is not only unfamiliar, but also uncomfortable; there is a long tradition of distrust against leaders and leadership in general. But gradually, the idea of leadership has gained momentum, even here.

Nevertheless, it remains important to organize a university or a faculty around the participation of all involved. From my perspective, that should be done on the basis of three elements. First, faculty management should know the range of opinion on an issue – what do people feel and think, what are the informal circles of debate, what is the underlying tendency? Second, there should be ways of consultation and debate on issues of content and organization outside the scope of the regular and formal structures. Third, formal decision-making procedures should be visible and clear.

Finally, when the combination of leadership, and informal and formal participation leads to decisions, ranks close behind them. There is nothing worse than an organization that considers a decision only to be a starting point for continuing the discussion.

8. Balance (as usual)

The conclusion in all these discussions and dilemmas is balance. It is of course the most obvious and dull conclusion in any debate. In a scientific debate, it would be a deadly conclusion. In a discussion on management, it is inescapable. When asked what he thought to be the task of a mayor, Amsterdam Mayor Job Cohen answered: "to keep the thing together." He was much criticized for this "unambitious" answer, but I agree with him. In the end, the main task of the manager of any complex organization, be it the City of Amsterdam or Utrecht University School of Law, is to keep the thing together, and in doing that allowing it to move forward.

Academic freedom is the point of departure. It is without doubt the basic prerequisite for scientific progress. Especially in the field of law, the disagreement, the continuous debate, including the controversial aspects, is the very heart of legal science. Academic freedom, the freedom within the academic discourse to go where "genuine science leads you," should be defended against all those who want to set the outcomes of the scientific process before it has even started, in order to serve a specific interest of a dictatorial regime, a religion, an economic stakeholder, or a peer-group consensus.

But academic freedom can only flourish when it is balanced with the overall moral task of science: serving society at large; when it is balanced with accountability toward its surrounding environment: those who pay for it, and those who benefit from it directly. Transparency and accountability have to take the form of regulations, no doubt about that,

but this regulatory framework should never become an end in itself (as is sometimes the case).

Within a university or a faculty, academic freedom also has to be protected against forms of organization that kill initiative and debate, that are cold and rigid. At the same time, academics have to fit themselves into organizations, in which they benefit from "organized interaction," and that are properly managed, internally coherent, and economically viable in the long term. Although, indeed, a major part of scientific pride is linked to the individual scientist, there is pride and identity too in her or his surrounding organization.

When governing a university or a faculty, participation of all is essential, but balanced with leadership. The other side of the same coin is that leadership can only exist in a context of participation: knowing what is going on, informal participation of all in matters related to their daily work, and, finally, formal participation in the structures of a faculty.

PART THREE:
OPTIMAL ACADEMIC CURRICULA AND TEACHING METHODS

Daniyil E. Fedorchuk[1]

Chapter 3: Interactive Teaching Methodologies in Ukrainian Legal Education: Balancing between State of the Art and a Newfangled Whim

Introduction

As a 2007 survey on the state of legal education in Ukraine indicated, students, faculty members, and potential employers are generally dissatisfied with the current methods of teaching in law schools. In particular, interviewees in the 2007 survey invariably condemned so-called traditional methods of teaching such as lecturing, seminar questioning, and writing of abstracts as ineffective and unfit for the purpose of preparing critically minded and socially responsible lawyers. At the same time, both students and faculty members generally remain skeptical about the introduction of computer-based interactive teaching techniques, which have recently been launched in many law schools in Ukraine. Such new teaching methods are often criticized for being "faceless," depersonalized, and too mechanical. Many students and teachers view any innovative approach aimed at interactive learning as unnecessary and as "new fashion whims" that distract students from focusing on "black-letter law."

This chapter will focus on the problem of finding a balance between involving every student in rather large classes (up to 30 students) in learning "how to think like a lawyer" on the one hand, and ensuring that students are instructed in particular areas of law, on the other.

This chapter will explore how the introduction of interactive teaching techniques has been received at the Economics and Law Faculty of Donetsk National University. In particular, we will examine the main challenges faced by teachers and difficulties in tailoring such methods to the students' needs, as well as the author's personal experience in developing a course almost completely based on interactive approaches. The research will present the results of a poll conducted in 2007 with respect to forms and methods of training lawyers in Ukraine.

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1. Legal education in Ukraine

It was once said about the reform of legal education in the post-Soviet countries that:

> the question is whether post-Soviet lawyers, historically subject to outside control and external standards, can establish and maintain their own standards of behavior and professionalism. […] Ultimately, the greatest challenge facing post-Soviet society is the creation of a new, or perhaps a legal consciousness on the part of the entire population, lawyers and laypersons, citizens and leaders. Lawyers and law students now stand at a critical, historic juncture where they have the chance to generate and cultivate a new legal and political culture – one with Russian (or Ukrainian), not alien, roots.[2]

Indeed, the main challenge faced by Ukrainian law faculties is bridging the gap between the old Soviet-rooted tradition of teaching law, and new realities that call for professionalism as well as ethical consciousness in the legal profession. A reform of legal education involves rethinking teaching methods and introducing new approaches to teaching how to – as Professor Kingsfield in the famous *Paper Chase* said – "think like a lawyer."

The bottom line of this approach is sometimes expressed in the phrase: "We need more interaction." However, the issue of interactivity in Ukrainian legal education remains controversial. Overall, one can detect two schools of thought. The first one, often backed up by long-standing traditions and old-generation faculty, tends to adhere to a once-dominant format of teaching – fundamentally based upon lectures and seminars. The second school has sought to more extensively adopt teaching methods widely utilized abroad (e.g., in U.S. law schools): the "Socratic method" and clinical education being the main paradigms.

Methodologies of training lawyers used in post-Soviet countries' law schools are known to be mainly focused on preparing an average-level law specialist with a minimum, almost "get-by" command of legal knowledge.[3] Traditionally, Ukrainian universities primarily relied on in-class training, with students also being assigned homework. Students have about fifteen to eighteen classes per week with about seven to eight mandatory courses per semester; attendance of classes is normally compulsory.

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[2] Lisa A. Granik, *Legal Education in Post-Soviet Russia and Ukraine,* 72 Or. L. Rev. 963, 974 (1993).

[3] This rather narrowly technical, practice-oriented approach appears to be a hallmark of any immature legal education and always precedes a value-based training aiming at development of a comprehensive understanding of the concepts of justice and fairness, as well as critical thinking. A good example is of Bangladesh experiencing similar problems with legal education reforms, which can be found in: Mohammad Monirul, *Reforming Legal Education in Bangladesh*, 55 J. Legal Educ. 560, 561 (2006) (footnotes omitted):

> Legal education has a number of theoretical and practical aims, not all of which are pursued simultaneously. If you ask any law student in Bangladesh about the objectives of legal education, they will simply answer that legal education should make the students conversant with substantive and procedural law. Should we be confined to so narrow a space, or should we look at the issue from a broader point of view?
>
> Until recently, legal education in Bangladesh was not perceived as an educational and intellectual pursuit, but only as a means of imparting certain principles and provisions of law to enable students upon graduation to become juniors to "senior lawyers." But law is much more than principles and provisions – it deals with justice, equity, and fairness as well as the values about which societies organize themselves through orderly institutions. Law is also interwined with economy, development, business, and the emerging global order. We must see the objectives of legal education from a broader perspective.

However, in 1998, a U.S. observer noted with respect to the efficacy of in-class learning, "this is a heavy concentration of time, but it is not time particularly well spent."[4] Unfortunately, not much has changed since then.

The "one-way" lecture method is usually regarded as the most efficient way to convey as much information as possible to as many students as possible within a limited time frame.[5] The academic process of such an approach is based on taking notes and memorizing the information given during lectures. Seminars that follow lectures are usually spent on students' reproducing memorized information and trying to apply it to hypothetical situations. Final exams that conclude the course are traditionally taken in the form of an oral interview.[6] The so-called Socratic method of instruction, common in U.S. law schools,[7] has mainly been unknown and unexplored in Ukraine.

Lectures are the cornerstone of the Ukrainian education system, during which a professor instructs students, focusing mainly on theory of law.[8] The role of students in the process of learning during the lecture has usually been fairly passive and is, at best, limited to the occasional asking of a question. Usually, professors readily take questions from the audience; however, some discourage any such attempts from students.

Lectures are followed by seminars (comparable to tutorials commonly used in British universities[9]), during which an instructor asks questions, and students answer them by referring to the information given during the lecture. Typically, students are confronted with hypothetical problems, which they try and solve by looking at statutory law (usually codes and some supplementary legal texts). The main materials for studying a course have always been handwritten lecture notes (*konspekt*), the quality of which depend heavily on the speed and the legibility of a student's handwriting. These notes are often compiled by only a few students, who simply allow others to copy them afterwards.

The best students under such a system always have been considered to be those who remember the maximum amount of formalized information, regardless of whether they can practically apply the information or not. With this approach, the teacher's main

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[4] Jeremy T. Harrison, *Legal Education in an Eastern European Law School*, 7 Int'l L. & Prac. 263, 265 (1998).

[5] Takahiro Saito, *The Tragedy of Japanese Legal Education: Japanese "American" Law Schools*, 24 Wis. Int'l L.J. 197, 199–200 (2006).

[6] For analysis of the efficiency of an oral examination as used in Russian law faculties, generally, see John M. Burman, *Oral Examinations as a Method of Evaluating Law Students*, 51 J. Legal Educ. 130 (2001).

[7] James R.P. Ogloff, David R. Lyon, Kevin S. Douglas and V. Gordon Rose, *More Than "Learning to Think Like a Lawyer": The Empirical Research on Legal Education*, 34 Creighton L. Rev. 73, 106–107 (2000).

[8] Joan MacLeod Heminway, *Caught in (or on) the Web: a Review of Course Management Systems for Legal Education*, 16 Alb. L.J. Sci. & Tech. 265, 271–272 (2006) (footnotes omitted).

Lecturing seems to have universally been a primary teaching technique of the past. As Heminway suggests about the development of U.S. legal education:

> [i]nitially, classroom teaching of the law was accomplished by lecturing the students about existing law. This teaching technique remains part of the law school teaching and learning environment today. Later, various interactive verbal techniques (through which the professor and student engage in a dialogue about the law using established legal reasoning elements and techniques), including principally Socratic questioning and other techniques centering around the case method, were added to (and, in some cases, supplanted) the lecture method, enabling students to develop oral advocacy and communication skills and engage in real-time legal reasoning and analysis in the classroom.

[9] Although with a notable difference: usually British university tutorials involve a group of up to seven students, while in Ukraine, seminar groups often reach as many as thirty students.

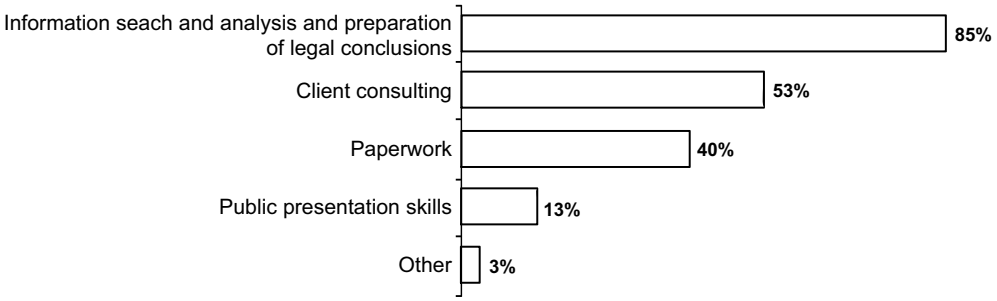

Diagram 1. Practical skills that should primarily be developed during studies at a law school (employers' opinions)
Source: own investigation.

responsibility is preparing an outline of the core materials (essentially, the main rules of relevant law statutes) and condensing it to the extent that it can be taught in one lecture. However, as laws grow more complex and controversial, lecturers cannot cover the necessary material during the lecture, and students are therefore expected to find more and more of the material on their own.

Legal education remains heavily focused on studying "black-letter law" primarily as it is reflected in codes, law statutes, regulations, rules, and procedural instructions. This approach confronts students with a copious amount of technical information, much of which is hard to take in. Very rarely would an instructor make reference to foreign laws as a comparison. Usually no attention is paid to the analysis of real cases adjudicated by courts (with the exception of EC Law and Human Rights Law courses, which are still not taught in every university). But even if case law is mentioned, only a short overview is provided, without any recourse to the facts and factors that influenced the judgment, or comparison to other judgments involving similar circumstances.[10]

2. The current situation: Preparing law specialists in Ukraine

In 2007, the European Law Students Association – Ukraine (ELSA),[11] together with the Ipsos-Ukraine agency,[12] were given a grant by the American Bar Association to conduct a national poll to determine the quality of legal education in Ukraine. The poll covered 700 students from 59 law schools and universities all over Ukraine, as well as 68 law faculty members and 67 potential employers (law firm partners, HR directors and managers, heads of in-house legal departments of companies, etc.). Every respondent had to fill out detailed questionnaires answering questions about the quality of legal education in Ukraine. In particular, every questionnaire included questions on the most and the least appropriate teaching methodologies used in Ukrainian law schools.

[10] For the reflections on the unfortunate experience of a U.S. visiting lecturer to urge Russian law students to study judicial practice of national courts, see Harrison, *supra*, note 4 at 270–271.

[11] http://www.elsa.org.ua

[12] http://www.ipsos.com.ua

As the poll indicates, most lecturers believe that the mission of legal education is to prepare professionals with a profound knowledge of law (37 percent) or with the ability to practice law (34 percent). Only 18 percent believe that legal education should build personalities who have to think critically and stick to certain ethical standards. In employers' opinions, however, higher education should develop analytical skills, i.e., the ability to search for and find information, analyze it, and come to legal conclusions (see **Diagram 1**).

However, the main question that interested ELSA experts was if the training methods currently practiced in Ukrainian law schools meet the demands of practicing law and whether those methods are effective. To put it differently, what needed to be discussed was whether it makes sense to abandon the traditional training methodologies (lectures, seminars, writing essays (*referats*), and term papers) and look for alternative teaching methods such as those used by law schools abroad.

The students taking part in the poll almost unanimously chose "writing and presenting essays" as the least effective method – only 31 percent of them recognized the effectiveness of this training method. Surprisingly, more interactive training methodologies, such as role playing proved unpopular among students too, as less than half of them regarded it as an effective training technique. However, 71 percent of students believe that the most effective training method is the analysis of real court disputes – the so-called case study method; 71 percent felt informal discussions of legal issues were most effective; 60 percent chose question-and-answer seminar sessions; and 58 percent chose working at legal clinics (see **Diagram 2**).

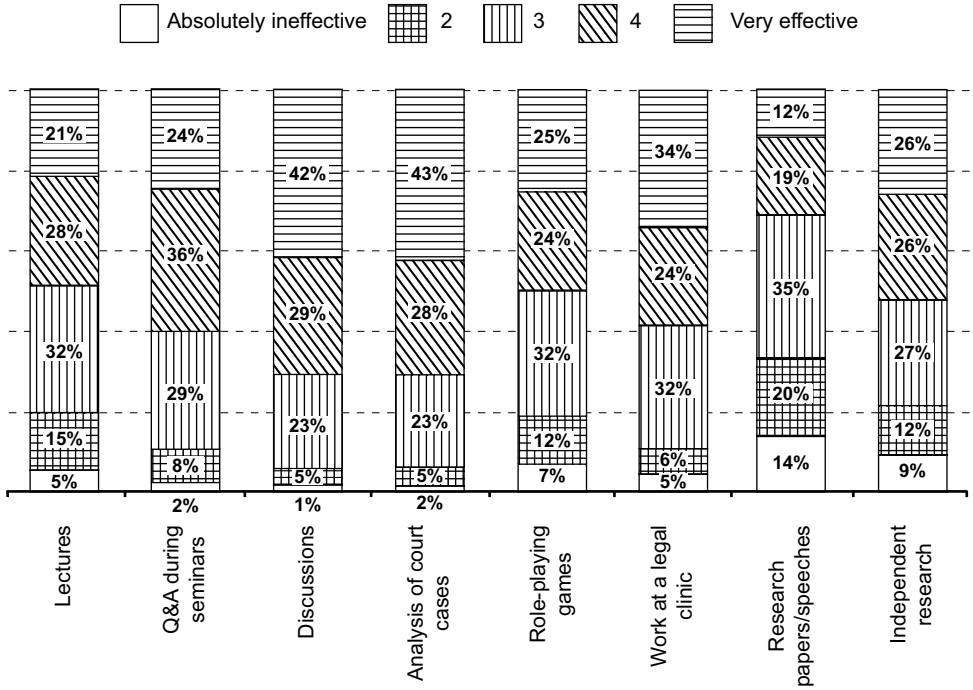

Diagram 2. Efficiency of teaching methodologies currently in use in Ukrainian law schools (students' opinions)

Source: own investigation.

Ninety-seven percent of employers picked the analysis of specific court cases, or case studies, as the most effective form of legal training; 95 percent chose seminar discussions – almost as effective as case studies; and 92 percent chose working at legal clinics. The least effective forms, in practitioners' opinions, are traditional lectures (34 percent) and essay presentations and research papers (16 percent) (see **Diagram 3**).

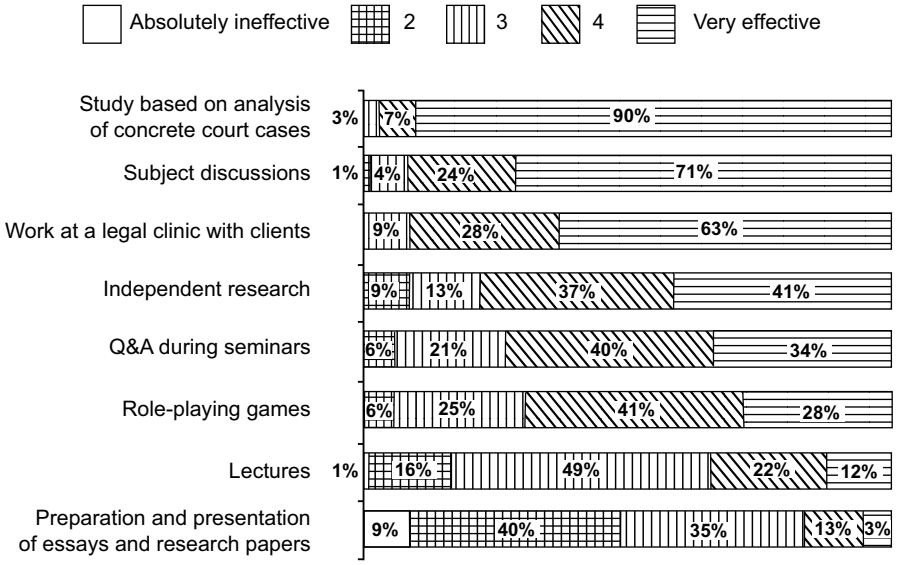

Diagram 3. Efficiency of teaching methodologies currently in use in Ukrainian law schools (employers' opinions)
Source: own investigation.

Very similar to the answers given by the students and practitioners were the answers to those same questions offered by lecturers, 73 percent of whom named the study of specific court cases to be the most effective form of training and 70 percent of whom named subject discussions and work at legal clinics as the most effective forms. The lecturers share the opinions of students that the least effective training method is the preparation of research papers and speeches: only 32 percent of the respondents voted for this category (see **Diagram 4**).

The answers of the university lecturers, when asked about the efficiency of the training methodologies, proved to be, on average, more conservative. The majority of teaching staff regard the traditional training methodologies (lectures and seminars) as more effective since they are either time-efficient (40 percent), or the only possible techniques (21 percent). At the same time, 21 percent admitted that these forms of training are actually ineffective, while another 16 percent stated that they are now obsolete (see **Diagram 5**).

In answering the question on possible alternatives to traditional lectures, 28 percent of respondents in this category said there was no alternative at all, while 33 percent believed that the best alternative training format would be the publication of lectures in textbooks, and the assignment of such textbooks as reading homework, apt for fostering further discussions during class.

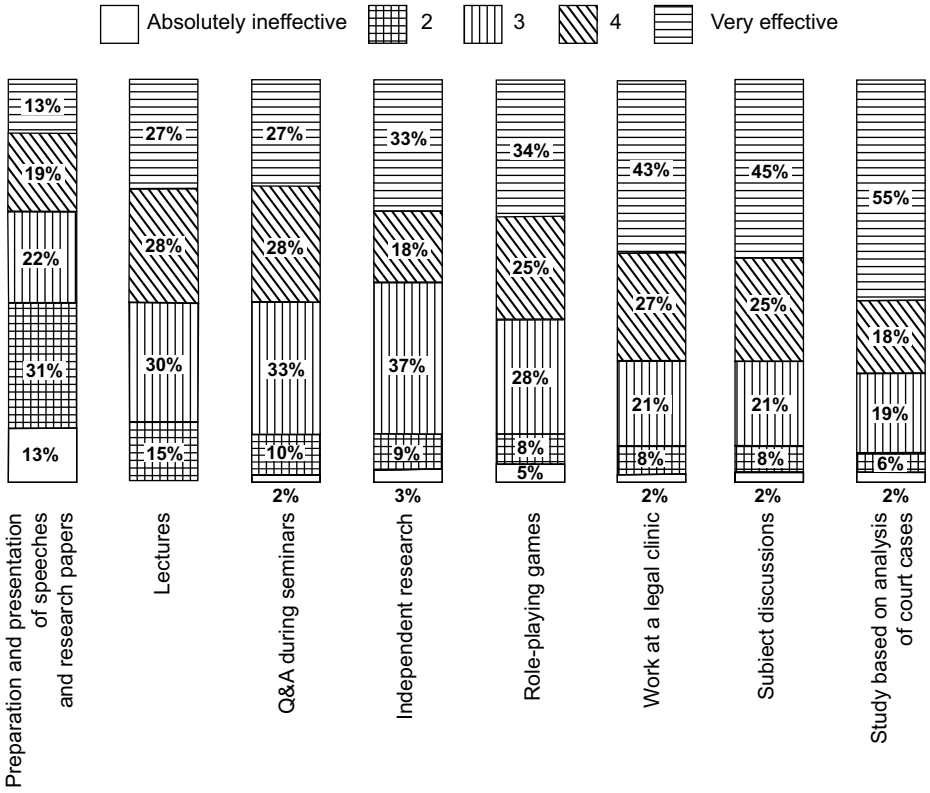

Diagram 4. Efficiency of teaching methodologies currently in use in Ukrainian law schools (faculty members' opinions)
Source: own investigation.

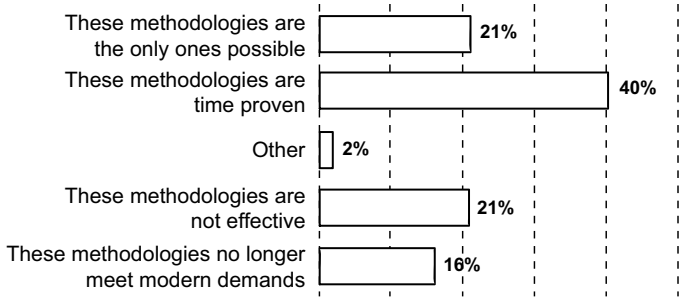

Diagram 5. Attitude toward traditional teaching methodologies (faculty members' opinions)
Source: own investigation.

As to which alternative forms of training should be introduced in the academic process, 75 percent of lecturers chose training based on studying real disputes adjudicated by courts, or case studies; 59 percent chose moot court competition; and 55 percent chose role playing. However, lecturers remain skeptical as to the effectiveness of computer-based interactive training, which was supported by only 44 percent, and

only 43 percent agreed that the preparation of individual research projects was a good alternative to traditional methods (see **Diagram 6**).

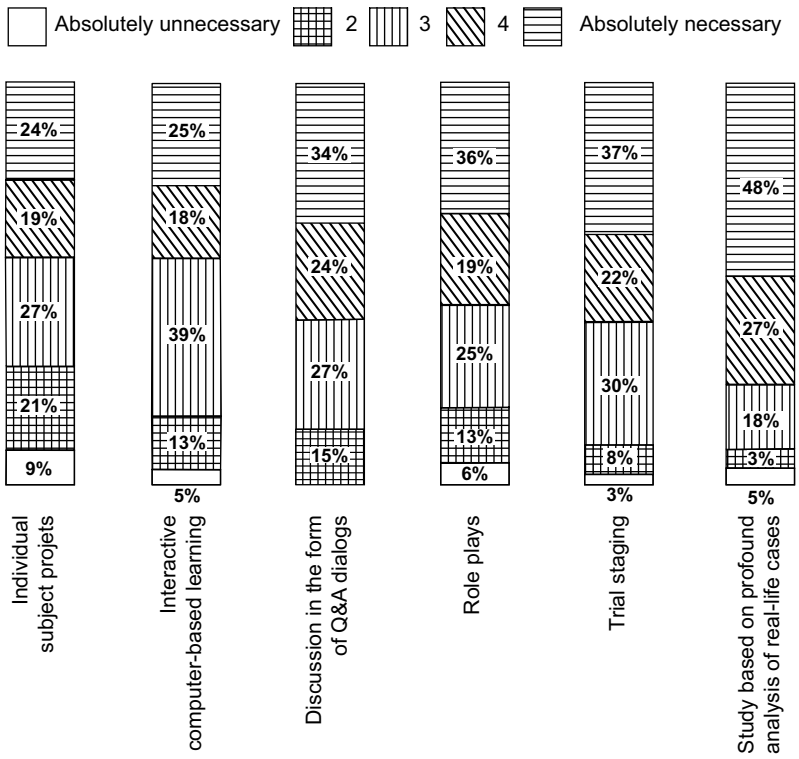

Diagram 6. Alternative teaching methodologies that should be introduced into the academic process (faculty members' opinions)
Source: own investigation.

Therefore, the poll showed that all respondents no longer support traditional methodologies of teaching and generally believe that they are not sufficiently effective. Among the most effective methods are case studies, free discussions on legal issues (comparable to the "Socratic method"), simulated court hearings, and role playing. Although not often fostered in Ukrainian law schools, legal analysis skills and preparation of legal memoranda are very important, and play a critical role in assuring successful legal careers. The most effective teaching methodologies generally tend to develop those skills through closer involvement of students in the learning process and by making this learning process a personal experience. In contrast, those methodologies that have a lesser degree of personal engagement (lectures, writing essays, and presenting them during the class) tend to be generally regarded as ineffective.

3. Interactive teaching: Where do we go from here?

Introducing interactivity into an academic process is not always a smooth and carefree adventure, however. Sometimes it attracts criticism for being too distracting and overly "entertaining" with little or no focus on studying the "black-letter law" essential to

professional careers. Some might refer to a recent Japanese experience in reshaping its legal education system under an "American model." As commentators note, in spite of law school and governmental reformers' beliefs in purely practice-based training, discarding all traditional methods in favor of the "Socratic method" sometimes results in students knowing too little about statutory law[13] and statutes are a central pillar of virtually all civil law systems.

Donetsk National University first meant to promote interactive learning methods about five to six years ago, at a time when the number of students in each class had reached its highest (up to 30 students in an academic group; up to 120 students attending a lecture), and non-interactive lectures seemed to be the only feasible method to teach law in the Ukrainian context. One of the first decisions taken by the university was to use computer technologies more actively, so as to let teaching staff focus more on personal interaction with students. For example, the Economics and Law Faculty at Donetsk National University has been offering computer-based multiple-choice tests to students instead of traditional paper-based questions. The advantage of computers is that the technology allows for quick and unbiased marking of tests. Moreover, the faculty inaugurated a new website that is aimed at improving online interaction between faculty and students. The whole ELF building now has a wireless Internet network.

State-of-the-art gadgets and devices should, however, be used with caution, as they are often blamed for hindering the interaction between professors and students, and fostering the use of non-interactive lectures.[14] Moreover, students often complain that they are not comfortable with computer-based exercises and tests since they are too impersonal, "soulless," and turn the whole learning process into a mere technical task. This is possibly why both students and faculty members are skeptical about introducing more technology into the academic process.

4. Conclusion

The new era of legal education calls for new teaching methodologies. It is clear that the role of interactive learning will be growing as law schools focus more on developing personal skills and critical thinking rather than the mechanical learning of "black-letter law." There is no universal answer to the question of whether law schools should involve more technologies in order to foster interactivity in the academic process. However, what is obvious is that interactive learning should primarily mean an interpersonal and emotional relationship between a student and a professor that cannot be completely replaced by computers and other "heartless" technologies. So, the future of teaching methodologies will basically lie in finding a fine balance between hi-tech opportunities and immediate interaction, with more emphasis on individualizing the process of learning.

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[13] Saito, *supra*, note 5 at 200.

[14] Douglas L. Leslie, *How Not to Teach Contracts, and Any Other Course Powerpoint, Laptops, and the CaseFile Method*, 44 St. Louis U. L.J. 1289, 1304 (2000).

> Leslie offers an interesting observation on using a PowerPoint® slide presentation in class:
> The room will be partially darkened and the professor will be talking. The students will not be talking. If you stand there for ten minutes, you are not likely to see a single student speak. In the unusual class where the professor tries to encourage student comments while Powerpoint slides are used, you will see that students appear to be focused not on what their classmate may be saying, and not much on what the professor is saying. Their attention will be glued on the Powerpoint slide like a first-grader focuses on Barney.

Elida Nogoibaeva[1]*, Kamila Mateeva*[2]

Chapter 4: The Challenges of Higher Legal Education in the Kyrgyz Republic and the Peculiarities of Educational Process at the AUCA Law Department

Introduction

In 1991, as Central Asian countries became independent, the region joined the fast-changing world of free markets and democracy. Leadership from a new generation provided a fresh perspective on how economic resources, information, and personal freedom could be nurtured in an open society. This wave of change spurred new ideas in the educational system, which resulted in the establishment of the Kyrgyz-American School (KAS) within the Kyrgyz State National University (KSNU) in Bishkek in 1993.

KAS experienced dramatic growth over the next four years. As a consequence, it could no longer remain a school within KSNU, and was poised to become an independent institution. In 1997, by decree of the President of Kyrgyzstan, KAS became the American University in Kyrgyzstan (AUK), and an independent, international Board of Trustees was established as the governing body.

AUK quickly gained an international reputation for being a university based on the American liberal arts tradition of free and critical inquiry. Soon after the university was set up, young scholars from all over the world arrived to help establish this new approach to education in Central Asia. In 2002, because the university planned to expand, the Board of Trustees changed the name in order to reflect the university's regional significance. From here on, it was called the American University of Central Asia (AUCA).

Since its establishment, the university has acquired a reputation for democratic values, individual freedom, and the spirit of innovation. Moreover, it has played a central role in the educational system of this fast-changing region. Within a few years, the university has become one of the leading academic institutions in Central Asia.

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[2] Kamila Mateeva, LLM, is an instructor at the Law Department and in the Legal Clinic program, AUCA.

1. Present state standards and why we need reform

AUCA always has been an independent university in the Kyrgyz Republic with the mission of promoting liberal arts and analytical and critical thinking, but AUCA's design for achieving that mission presents problems in meeting the state-imposed requirements for law school curricula. In response, AUCA negotiated for several years with the Ministry of Education about how to reconcile AUCA's educational vision and method with the Ministry's highly prescriptive standards regarding such matters as required courses. In this frustrating process, AUCA concluded that administrative change in the country's education regulations were needed, but the university realized this would be a long-term project requiring considerable effort. AUCA also realized, however, that the learning process, course content, and teaching methodology were largely under in its own control. For example, required courses that AUCA might not otherwise have taught could be directed toward the objective of teaching critical thinking. The following describes ways in which progress has been made toward that end.

In addition, AUCA is seeking accreditation in the U.S. university system. As described below, this entails another set of educational standards, which also presents some problems for AUCA.

The State Educational Standard of basic Legal Higher Education on Jurisprudence has established:

- State Educational Standards for each major;
- general curricula, which follow state standards;
- fixed course load and semester structure of the curriculum;
- fixed terms of studies;
- strict sequence of delivering courses;
- teaching methodology based on the separation of lecture and seminar classes;
- limiting the choice of different courses (most courses are mandatory);
- a roster of required courses lacking focus on legal skills.[3]

When educating lawyers in the Kyrgyz Republic, the institution has to follow state standards that include all the key elements set out above. If the curriculum is not in compliance with state standards, the law schools will not be permitted to educate students in law in the Kyrgyz Republic. AUCA professors strongly believe that the standards need to be changed for both internal and external reasons. The external reasons include: the Kyrgyz Republic taking part in the Bologna process (ECTS), involving Kyrgyz universities in international higher education cooperatives, recognizing credits within student exchange programs, and recognizing degrees and diplomas within migration processes.[4] The internal reasons include: enhancing the quality of education in the Kyrgyz Republic through the development of innovative forms of the educational process by using modern educational techniques, and restructuring and renewing the content of education, etc. Existing state standards are based on a Soviet approach to higher legal education. Since the collapse of the Soviet Union, economic, political, and social systems have changed considerably, creating the need for specialists with a new set of skills. To

[3] Ministry of Education of the Kyrgyz Republic, *State Standards on High Legal Education*, n. 434/1 (2004).

[4] Aron Brudnyi, "Education: Problem's Strategy," *Kyrgyzstan: Society and Values* 1 (2000): 22.

cope with this need, the educational process should teach students to think analytically, to develop practical skills, etc. Furthermore, the budgeting system of the universities also needs to be changed. In the past, the state would provide universities with full financial support in exchange for absolute compliance with state standards. As universities have been able to establish their own budgets, some academic autonomy should also be granted to them. Although the state should still monitor educational quality, responsibility for setting standards should be shared between the state and the universities.

2. Special features of the Law Department

Both the Kyrgyz Ministry of Education and the universities in the country are trying to reform education; however, the process is lengthy. The reasons for this are a bureaucratic system and a lack of professional staff. AUCA, and in particular the Law Department, wants to change higher legal education in the Kyrgyz Republic. At present, the following features are being established to reform higher legal education.

The first thing the department established is the mission statement of the program, which reads:

> To educate future lawyers through a program emphasizing the acquisition of independent, analytical learning skills and practical skills within a liberal arts framework in order to prepare them to practice law in the countries of Central Asia and internationally and to be active citizens committed to the construction of a civil society in Central Asia.[5]

The Law Department wanted its mission statement to reflect the interests of the society in the region. Moreover, the mission statement contains ideas of reforms in education. In particular, law professors want to change the curriculum, the learning process, and the teaching methodology. Toward this end, the Law Department has developed a unique curriculum, which is outlined below:

A. **Our curriculum is based on a credit system, which is rooted in the American credit system**. This system is based on a separation of all courses into mandatory and elective courses. The number of credits in the subject depends on students' workload in class and at home. For example, three-credit courses are understood to require one hour of work in class and two hours of work outside class. However, this does not mean that instructors have less work to do. On the contrary, instructors have to work even more in that they have to prepare for classes and to prepare assignments for students to do outside class.
B. **Mandatory law courses encompass courses on substantive matters and on legal skills**. The purposes of this system are both to prepare the student more thoroughly for practice and to provide extensive communication skills that will be professionally useful whether or not the student decides ultimately to practice law.
C. **There are also separate courses on legal skills in the curriculum**. Students must take at least one mandatory course on *legal skills* each semester. The list of skills courses is as follows: legal writing, legal research methods, moot court, international moot court, legal skills, advocacy, legal ethics, and alternative dispute resolution.

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[5] AUCA, *Curriculum of the Law Department*, approved by the Academic Senate, May 14, 2004.

D. Establishment of a Legal Clinic program. The Legal Clinic program pursues two main tasks. The first is to develop legal skills by offering students the opportunity to provide legal consultation to the least advantaged. The second task is to help society in general by expanding access to justice.[6] Within this task, we also plan to start doing public interest cases. At present, two faculty members of the Law Department are drafting ideas for a public interest project.

Higher legal education reform also focuses on changing the learning process. Changing the learning process is a challenging task. It takes time to change the mentality of professors, teaching methodology, and teaching materials. The Law Department has been working on developing and changing learning process within the following frame:

A. Regular professor training program. It is evident that if you are changing the educational system, you must start by training professors, many of whom are used to a Soviet approach. The Soviet teaching methodology was not focused on analytical and critical thinking, but rather on rote learning. Important elements of modern education such as professor-student interaction were missing. Teaching basically consisted of delivering lectures (while students took notes), and asking students to replay the lecture to professors during seminars. Many professors still use this approach to ensure that students know information by heart. Professors, however, do not teach students how to apply the achieved knowledge.

Therefore, a professor training program is necessary. Within this program, the Law Department has both long-term and short-term goals. Long-term goals include support for overseas faculty training and education, while short-term goals include hosting events such as training sessions for professors each semester. Training is focused on improving teaching methods, development of syllabi, and integration of legal skills in each course. A Critical Thinking Laboratory at AUCA organizes special training for the whole AUCA faculty on a regular basis.

B. Materials development program. This initiative seeks to obtain up-to-date course materials that incorporate problem-oriented, interactive teaching methodologies. This program also is directed at checking whether professors are using their course materials properly. Within this task, syllabi of all mandatory courses are evaluated and must include legal writing, analysis, research, and reasoning. Moreover, our professors will draft problem-oriented textbooks, which will contain complex hypothetical cases and will aim at encouraging students to *use* their knowledge, rather than just absorbing the contents of textbooks.

C. Evaluation system. Every semester, each course and the professors are evaluated by students. By the end of each semester, every AUCA professor is also evaluated by the head of the department in which he or she works. During the whole semester, professors visit each other's classes to provide peer reviews. Evaluation results affect the salary of the professor. This system works well in the sense that it provides professors with an opportunity to work on their development as they are given feedback from both students and colleagues. Such feedback can work as a great incentive to motivate professors to professionally improve themselves.

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[6] American University of Central Asia, Legal Clinic, http://www.auca.kg/en/resources/academic_resources/legal_clinic

3. Problems in the process of reforming

In the process of reforming legal education, the AUCA Law Department has faced two categories of problems: problems concerning the State Educational Standards and problems concerning the adaptation of the American education model to the Kyrgyz context.

The first problem is the students' workload, set as such by the Ministry of Education of the Kyrgyz Republic. According to State Standards rules, the Law Department has to teach twenty-four courses.[7] Some of these courses are mandatory and some are elective. However, mandatory and elective courses are both required by the Ministry of Education. AUCA law students are not interested in the specific elective courses that are defined by the Ministry, because they have no practical use. Two examples of nonpractical courses are History of Political and Legal Doctrines, and History of the Law in Foreign States. Such courses are totally theoretical and are more historical than legal. Besides, this leaves little opportunity for the Law Department to offer innovative elective courses, because the workload for staff from the mandated curriculum fills all their time. The solution would be not to follow the 24-course rule established by the Ministry by seeking approval for an alternative curriculum.

The second problem is related to the conflict between American and Kyrgyz models of legal education. This second problem has ramifications as to the requirements to be admitted to law schools, to language issues, to cultural issues, and to the differences between the American Common Law system and the Kyrgyz legal system. The American model of legal education requires students to obtain a bachelor's degree and then enter law school, where they take only law courses. In the Kyrgyz legal education system, students have just graduated from high school and take general education and legal courses together. These different requirements lead to the admission of different student bodies with different student needs.

Starting in the 2007–2008 academic year, AUCA, together with American universities worldwide, was required to go through the U.S. accreditation procedure. AUCA, therefore, joined the accreditation process for the New England Association of High Schools and Colleges (USA), which requires that the AUCA has to teach 80 percent of courses in English. The AUCA Law Department, however, must teach Kyrgyz law for Central Asian markets, which means that fundamental courses have to be delivered in the native language rather than in English. Another problem is a lack of teaching and reading materials in English (textbooks, codes, and statutes).

The adjustment of the law faculty to the American model of legal education is also problematic because more than half the faculty members were educated under Soviet rule. Therefore, the Law Department has to organize training sessions to change and develop teaching skills of local faculty members, and to convince them to adopt more interactive methodologies. In addition, the department has international and returning scholars, who were educated abroad and who can, along with their teaching activity, provide training for local faculty.

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[7] See *supra*, note 3.

4. The response of the AUCA Law Department to current problems

Since the Law Department was established, it has tried to find new teaching methods. In particular, law professors sought those teaching methods used by American law schools. However, AUCA professors came to the conclusion that Western teaching methods cannot be applied in their entirety to the Law Department at AUCA for several reasons. First, as mentioned before, students are admitted to law school in Kyrgyzstan just after graduating from high school; they do not go through an undergraduate course as American law students do. Kyrgyz students starting university are not necessarily ready for the new teaching methods that require intensive participation of students in class. They are not always prepared for teaching methods that are geared to thinking analytically and studying individually. Second, the Kyrgyz legal system is different from the common law system and requires specific methodologies. For example, the common law system recognizes cases as a source of law and, in teaching law, professors employ precedents. In the Kyrgyz legal system, cases are not a source of law; therefore the approach to teaching needs to be different.

In order to find a system that suits the Kyrgyz Republic's particular circumstances, the AUCA Law Department has decided to combine a number of teaching methods, resulting in the following: student self-preparation, Socratic case studies, group work or cooperative learning, lecture discussion, brainstorming, and participation of guest speakers.[8] However, each course requires a different combination of teaching methods:

A. **Student self-preparation**. This method requires that students prepare reading materials on a new topic before it is discussed in class. Such method teaches self--learning skills. All AUCA faculty currently employ this method even though it is a new one that is not commonly used in other Kyrgyz universities. The main task of the professor applying this method is to check that students have completed the outside preparation through methods such as written assignments, discussions, etc.
B. **Socratic case studies**. This method is focused on a question-answer-based way of teaching, where instructors call on students randomly. This method teaches and develops inductive, analytical thinking and problem-solving skills, as well as how to explore solutions for complex problems. This method is used starting from the second year of study. The second year curriculum includes courses that require studying case law. Socratic case studies are a new methodology of teaching, which is not used by any universities in Kyrgyzstan except AUCA. Students have difficulty reading cases and adjusting to this method easily, since our legal system does not contain case law as a source of law.
C. **Group work or cooperative learning**. This method allows the participation of every student in the class, develops teamwork skills, and makes learning more comfortable for students. The method has proven reasonably successful in fostering further participation in class, especially through in-group brainstorming and discussion.

[8] Kamila Mateeva, "Teaching Methodology" (paper presented at the Academic Fellowship Program annual meeting, Alushta, Ukraine, May 2007).

D. Lecture discussion. This is an interactive way of presenting new materials to students. This method allows everyone to participate in an active process of learning. Lecturing has always been a basic method of teaching, but we believe that this method must include the cooperation between the professor and the student. The method requires pre-class readings that allow students to think about a particular issue before entering the classroom and to discuss with the professor while in class. By discussing a subject, students not only learn about it superficially, but also actually strengthen their previous knowledge on a given topic.

E. Participation of guest speakers. This method is used to show students either practical aspects of a topic in discussion, or to provide them with deeper insights into the topic. Practicing lawyers (specialists in a variety of areas) are invited, and they explain and illustrate how topics arising in a course works in real life. Typically, guest speakers will spot active, enthusiastic, and hard-working students and provide them with an internship.

F. Individual meetings with students. In these meetings, professors evaluate students' written assignments. They discuss problems in students' work and try to prevent plagiarism. The Law Department started to use this method two years ago, when two instructors (recent graduates from a U.S. law school) came to teach in the department. This method is employed in skills-oriented courses such as moot court, legal research and writing, legal skills, etc. For instance, in the legal research and writing course, most of the workload of the course focuses on students' individual work, where students are given a hypothetical situation, and each of the students has to solve it by preparing a legal memorandum. Preparing a legal memorandum consists of several stages. In the first stage, students must individually research the law and find applicable norms to a hypothetical situation. In the second stage, students must write a draft of the paper with their own arguments. In the third stage, students must analyze and write their own conclusion to the given problem (this method helps professors check whether students are guilty of plagiarism, since they see each student's work during all stages of preparation).

The main problem of using this teaching method is the strain this puts on the professor in terms of workload. Courses on legal skills are mandatory courses; therefore there are at least 30 people in a class. To conduct an individual meeting with each student increases the workload of professors threefold.

Conclusion

The State Standards of Higher Legal Education do not correspond to the needs of the market economy and general demands of society in the Kyrgyz Republic. There is a great need to change educational systems due to internal and external reasons. However, at present, the Kyrgyz State System of Higher Education is not open to change and not ready for reform. These circumstances have required an evaluation of AUCA's options. After a long process of evaluating the system and researching alternative teaching methodologies, the department has realized that it can change significant aspects of the system, namely the learning process, the content of courses, the mentality of professors and students, and especially teaching methods. These changes do not end with the Law

Department at AUCA. Some AUCA law professors also teach at other universities and have started to employ the new teaching methods they learned at AUCA. In conclusion, such a change is just the beginning. To use a Kyrgyz expression: a first drop is always needed to create a sea.

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Chapter 5: The Environmental Law Clinic: A New Experience in Legal Education in Spain

Introduction

In 2006, a group of public law lecturers at Rovira i Virgili University established an Environmental Law Clinic (ELC) with the aim of exploring new, cross-functional approaches to teaching environmental law to students at the master's and undergraduate levels. The ELC offers both high-quality teaching and an exciting, practice-oriented curriculum.

In terms of teaching, students gain diverse insights into environmental law, as they are taught by lecturers from a variety of disciplines within public law: international public law, administrative law, criminal law, constitutional law, and philosophy of law. In terms of the curriculum, the ELC is both a core subject in the syllabus of the master's degree in environmental law and an elective in the undergraduate course in law. The content of the course focuses on real-life examples of institutions that act in the public interest. In particular, cases are drawn from the public administration sector, such as the Vilaseca Borough Council, Reus Borough Council, Tarragona Provincial Government, and the General Council of the Valley of Aran; the administration of justice sector, for example, the Public Prosecutor's Office of Tarragona Provincial Court; and nongovernmental organizations or foundations, such as the Platforms S*alvem els Muntanyan* and *Salvem la Platja Llarga*, and the Foundations *Nueva Cultura del Agua* and *La Red de Defensores Comunitarios* in Chiapas, Mexico. In Spain, students are not permitted to act in court proceedings. Thus, the work of the students in the ELC consists of providing legal assistance to individuals, community groups, and not-for-profit organizations that seek to protect and restore the natural environment for the benefit of the public. The ELC trains law students to be effective environmental lawyers with high ethical standards and sensitivity to the natural environment. Working with real clients and with real problems allows law students to begin the lifelong process of becoming thoughtful, responsible,

[1] Professors and researchers of the Universitat Rovira i Virgili, Tarragona, Spain.

and reflective lawyers. Students working under the close supervision of their clinical professors are encouraged to identify and pursue their own learning goals while providing representation to a wide range of clients.[2] Clinic students test their strengths as they take on increasing responsibility for their clients' cases, knowing that they have the watchful supervision of their experienced teachers, yet feeling the profound weight of representing clients in important, and often personal, matters.

The ELC provides intellectually stimulating, professionally challenging, and personally rewarding instruction by granting students a real-world look at the practice of environmental law. Clinic students gain critical skills in communication, information gathering, persuasion, and legal and factual analysis that prepare them to address the multifaceted needs their clients will present. In addition to performing law school tasks, such as writing legal memoranda and briefs, students in the ELC participate in client meetings as well as the development of case strategy and its resolution. Clinic students receive a rich educational experience: applying the legal theory they have learned in the classroom to help real people outside the classroom.

By integrating theory and practice, the ELC goes beyond mere "black-letter law," creating the possibility for students to acquire an in-depth understanding of the subject matter. Ideally, students will leave law school with an awareness of nonlegal issues and a firm grasp of the principle of accountability in professional practice. More specifically, the ELC expects to achieve the following learning outcomes:

A. Encourage a cross-functional approach to learning in law.
B. Integrate theory and practice.
C. Develop skill and practice in teamwork.
D. Establish the principle of accountability in professional practice.
E. Enhance capabilities in dealing with sources and raise awareness of nonlegal issues and their implications.
F. Teach skills in reporting investigations.
G. Teach the ability to draft local laws.
H. Develop skills in the management of conflicts of interest within the sphere of environmental law
I. See the broad picture
J. Raise deeper awareness of environmental issues.

Assessment of the experience

The aim of this chapter is to identify the strengths and weaknesses of the ELC in relation to each of the intended learning outcomes. "Strengths" and "weaknesses" are understood to refer to those specific circumstances at the ELC that either foster or impede achievement of the learning objectives. It is not our aim to present the well-known benefits of clinical legal education, nor is it our intention to describe each one of the learning outcomes from a theoretical perspective. Rather, we wish to highlight those particular circumstances

[2] Although students are not allowed to provide representation to real clients, the clinic coordinators ask students to respond to issues posed by real clients. Students' responses are not used on behalf of clients, but only as an education tool to better understand legal practice.

that, within the ELC framework, favor the achievement of the aforementioned learning objectives. Weak points are those aspects detected by the lecturing team that might lead to the introduction of improvement measures. The strengths and weaknesses, on occasion, reflect two sides of the same coin. However, rather than constituting a contradiction, we believe this circumstance is simply a reflection of the fact that the ELC is a work in progress.

A. Fostering cross-functional learning in law

There is no tradition of cross-functional approaches in legal education in Spain. The ELC is breaking new ground, pushing beyond the boundaries of the traditional, discrete-subject approach typical in law faculties. The ELC method emphasizes the transfer of in-depth, cross-functional learning, using a teaching team that represents different fields of expertise in environmental law, shares research projects, and works with students on live cases. In this context, students encounter complex problems that require the joint management of various information sources. The opportunity to work on cases supplied by foreign clients makes it possible for students to identify and work with key features of different legal systems.

The ELC's tutoring system is one of its great strengths. More than one tutor is appointed to a team, each from a different field and with different legal expertise. The tutors meet regularly to coordinate their work and discuss the problems that arise at the clinic. All students are required to attend monitoring sessions at which task content, the work plan, and partial and final outcomes are discussed. Students are also required to attend training sessions on issues affecting cases.

There are several challenges to the success of this cross-functional learning model. Because the ELC accepts both undergraduate and postgraduate students, these students have disparate levels of legal knowledge and practical skills; their interpretation and application of the law, especially where aspects derive from comparative analysis, is uneven. And while the ELC is proud of the large number of cases it takes each year, the volume of cases can overwhelm the ELC. The workload of lecturers is such that they are unable to contribute more fully in their field of expertise in each case. To overcome this challenge, a new strategy has been adopted over the past two years, assigning a principal tutor and an assistant tutor to each team, each of whom specializes in a different field. Nevertheless, when confronted with issues that fall outside their area of expertise, the problem persists. The fact that lecturers are not devoted exclusively to the ELC makes it more difficult to increase the number of coordination meetings, which, if that were possible, could provide a solution to this problem.

B. Integrating theory and practice

From the outset, the law faculty at Rovira i Virgili University sought to establish strong ties with key stakeholders in the community, especially practicing environmental lawyers and public administration officials who, for example, are the designers of environmental policies and who apply environmental law. These ties have been particularly significant for environmental law studies (grant schemes, funding for activities and publications, development of research and transfer projects). They also have created a professional

network of prominent local figures in environmental law who have entrusted research projects and cases to the ELC.

The fact that some postgraduate students are also practicing lawyers compensates for the imbalance between undergraduate and postgraduate team members. Undergraduates are able to contribute the more basic theoretical aspects, while the postgraduate students apply their deeper knowledge and greater experience in both the scientific and the professional contexts. It should be noted that among the ELC's postgraduate students are individuals from different countries who hold a degree in law or another discipline.

However, the ability of the ELC to manage cases effectively is limited by several factors: 1) students cannot act in court; 2) it is difficult to achieve a "fit" between a real case and the time restraints imposed by the academic calendar; 3) students find it difficult to propose creative solutions to the legal problems posed when these have not been previously addressed by doctrine or jurisprudence; and 4) students tend to lack practical, cross-functional legal training and find it difficult to understand the clients' brief and, therefore, meet their needs. In cases supplied by the Public Prosecutor's Office in Tarragona, students tended to focus on unnecessary, basic content without taking into account that the Public Prosecutor's staff members are already well versed in criminal law. To a lesser degree, postgraduate students from other countries have a hard time understanding the Spanish legal system.

The ELC's lack of experience makes it difficult to integrate theory and practice in a truly advanced way. Incorporating practicing lawyers into the clinic has been a step in the right direction. However, real immersion in practical aspects can only be achieved by greater interaction with the professional sector. The challenge for the ELC is to help students move beyond academic models, which are either more research-oriented or are broad approaches to subjects, in order to get them to adopt the more practical focus needed to deal successfully with specific tasks and objectives.

C. Developing the capacity for teamwork

Lecturers at the ELC attempt to create "balanced" work teams, taking into consideration the previous training and learning of the members and their countries of origin. These teams use different types of technology to facilitate group work, and they receive training in the use of these technological tools. All the resources and infrastructure of the university are made available for meetings, data compilation, and collaborative work.

Unfortunately, Spanish universities lack the tradition of fostering collaborative practices. Their students lack training in how to manage problems as a team or to skillfully use pedagogical tools to diagnose each other's learning styles. Knowing whether an individual adopts a theoretical, reflexive, active, or practical approach to learning is something that might be taken into account both from the training perspective and in the team-monitoring process. Some students are reluctant to work in teams that they have not joined voluntarily. Others are not used to debating with one another, receiving constructive criticism, or contributing to improving a colleague's work.

The ELC needs diagnostic tools to measure the students' initial level of autonomy, because teamwork is a complex competence linked to other skills such as planning and organizational capacity, participation in decision-making, conflict management, leadership skills, and the ability to be both critical and self-critical. In the same way

that identifying a student's prior level of legal knowledge is relevant when training and tutoring teams, the same information applied to particular generic competencies could contribute to optimizing teamwork. Furthermore, the lecturing team needs a systematic appraisal process involving tutor, peers, and self-assessment in order to better assess teamwork.

D. Assuming responsibility for a professional task

Cases are assigned by lecturers to students, regardless of the student's personal preferences, and as a result, students are forced to focus on the needs of real clients and the responsibility that this implies. This forces them to assume greater ownership of their work, have greater commitment to the quality of the end product, and to consider more than just academic results. This awareness is particularly evident in cases with a high degree of social commitment. A key factor in reinforcing students' sense of responsibility is the participation of the client in rating their performance: the client's appraisal represents 40 percent of the overall mark for a task.

The delivery of quality services to clients by the ELC is jeopardized when students lack specific training in certain practical skills (such as interviewing techniques) and also when there is insufficient interaction between the client and the team during the case. Some students also lack confidence when they face legal realities for the first time. One potential solution has been for lecturers to increase their monitoring of students' work via a system requiring the lecturer's authorization before further steps are taken or drafts go to the client. The ELC's lack of a code of ethics also poses a problem, but a code is currently being developed.

E. Understanding the role of legal and nonlegal sources, and managing this information

Students are encouraged to consult informed sources and technically qualified people who are not directly associated with the client. For example, lecturers of the clinic invite external experts (in law or other fields) to take part in sessions at which aspects of cases are discussed, and lecturers provide access to documentary sources and specialists in other disciplines external to the university. However, many students lack research abilities in the field of law, particularly in applying scientific criteria when choosing their sources. Many students also lack adequate command of nonlegal technical concepts that are commonly used in environmental regulations, as well as the scientific knowledge to correctly interpret and apply such regulations. In addition, lack of command of foreign languages among students is a problem. Finally, some students do not take the initiative to request specialized training sessions or consult sources and specialists from other disciplines, unless encouraged to do so by their lecturers.

F. Effectively communicating the results of an investigation

In order to help students develop their oral and written communication skills, the clinic requires them to attend plenary monitoring sessions where different teams report on their progress and results and describe the difficulties that they have encountered in their handling of tasks.

It is compulsory for students to make an oral and written report of results for the client. Many students find it difficult to present these results in a format that is appropriate for the client, because they are accustomed to academic writing and less familiar with communicating in nonacademic contexts. In addition, it is a challenge for many students to produce fluid, detailed legal texts while employing the appropriate terminology. Unfortunately, the clinic does not include any specific training for students in oral and written communication techniques, and there are no self-assessment resources available in this subject at the university. Lastly, many students have a tendency to delay writing their results until late in the project, despite the lecturers' insistence that this task should be undertaken earlier. This has negative effects on the degree and quality of collaboration on the task in this phase of the work.

G. Drafting local laws

Having the Public Administration as a client makes it possible to receive satisfactory experiences in the drafting of legal texts, including ordinances, guidelines, guidance memos, rulings on some type of matter the agency adjudicates, and other legal documents. Students also give opinions on existing drafts, and they are able to apply the theory that they have learned in other classes.

This experience has benefited students tremendously. However, although students have some opportunities to actually write the government ordinances, these opportunities are still quite limited. To really develop the skill of drafting laws, students would need further exposure to this kind of work.

H. Managing conflicts of interests

Direct relationships with the client allow students to suggest possible courses of action and offer a more critical and objective view of the legal problem in question, while simultaneously allowing the client to consider different approaches to her/his problem.

A conflict of interest arises depending on the type of client students have and what the students think the clinic can do for them. As a conflict arises, it gives students the opportunity to deal with it in an educational environment. Students are, for instance, usually comfortable working for environmental NGOs in defending collective interests. They are usually not so comfortable, however, when there is a need to defend private interests, which are business-related and profit-oriented. Clients are, notwithstanding, quite diverse. A conflict of interest also arises in the clinic when associations and nongovernmental organizations have opposing interests. Take, for example, those cases regarding the conflict between the promoters of an urban development project with high environmental impact, and the neighbors living in the affected zone. In such cases, students are usually confused about the position to be taken. Lastly, there is no specific training provided for students in conflict management; and discussions on how to deal with conflicts of interests are unfortunately limited to cases where the conflict appears in the real case.

I. Seeing the broad picture

Another challenge in the clinic is to convey to students the broad picture in a case. Students usually become so partial that they are only able to perceive their clients' point

of view. Students also often encounter difficulties in presenting alternatives that balance their clients' positions with broader public interests or environmental interests. This limits their capacity to produce unbiased solutions and arguments that will actually favor their clients without strongly damaging broader environmental interests.

J. Raising deeper awareness of environmental issues

Students' experiences in the clinic give them the opportunity to work within the framework of a broader institutional strategy for specialization in environmental law. The variety of clients, including associations and nongovernmental organizations, provides students with an ideal context for acquiring awareness of environmental issues. Currently, however, there is no suitable assessment mechanism for learning about the acquisition of this skill.

Conclusion

After three academic years of incorporating the clinic method into environmental law studies, the staff's overall evaluation of the ELC is generally positive, despite the weaknesses identified. ELC staff members, aiming to improve the clinic in upcoming years, have proposed several measures to improve the identified weaknesses.

The graduate and undergraduate students in the clinic should be separated in order for instructors to better adapt the learning process to each student's capabilities. Before undertaking cases, students should receive specific training to reinforce their abilities in the areas of conflict management, interviewing skills, computer skills, and oral and written presentations. In addition, lecturers should receive specific training through courses, seminars, and conferences in order to equip them with improved pedagogical tools. The ELC should develop a strong system for tutoring and supervision of the students' work progress during the early stages of the clinic. A code of ethics for working in the ELC should be adopted in the near future by the teaching staff, which should consider the possibility of writing it with the students.

In order to strengthen the client involvement throughout the clinic process, several interviews and meetings should take place between students and teachers during the school year in order to facilitate greater interaction between the clients, students, and teachers. Staff members should develop "best practice" networks on legal clinic education in Spain (in Madrid, Valencia, Barcelona, Tarragona) in order to learn about other experiences from law clinics developed in other law schools, and promote an interchange of best practices.

After the assessment of the ELC's strengths and weaknesses, these potential solutions are all under consideration. ELC staff members are aware of the difficulties in implementing these solutions, and they realize that these proposals are an experimental process to improve current ELC practices; these and other potential solutions will be developed further in the upcoming academic years.

Marta Janina Skrodzka[1]

Chapter 6: The Judicial Practice Center: The Connection between Theory and Socially Responsible Professional Practice

Introduction

Living in the twenty-first century means that everything looks different from even twenty years ago. The progress of the modern world brings change to every field of everyday life and challenges that every person needs to face and respond to with flexibility. The competitive nature of today's higher legal education accelerates the pace of development – from theoretical to more practical models, and from national to international legal knowledge.[2] Clinical legal education (CLE) can fill some gaps in higher legal education and can help create future lawyers who are qualified, educated, and socially responsible professionals in a modern world.[3]

This chapter describes one of the new inventions in clinical legal education teaching programs in Poland – the Judicial Practice Center (JPC). The JPC was established three years ago as a part of the Legal Clinic at the Faculty of Law, University of Białystok, and offers a new way to connect theory and practice with the objective of preparing students to be creative, professional, and socially responsible lawyers in the future – lawyers who can easily work in a modern world.[4]

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[1] Marta Janina Skrodzka is supervisor of the Legal Clinic at the University of Białystok, Poland. Kosciuszko Foundation and PILI Fellow 2007.

[2] Rafał Gołąb, "Zakład Klinicznego Nauczania Prawa – odpowiedź na wyzwania postawione uczelniom europejskim przez proces boloński," *Klinika* 4(8)(2008): 18.

[3] Maria Szewczyk, "Thoughts on the Reform of the Teaching of Law," in *The Legal Clinic: The Idea, Organization, Methodology*, ed. Dariusz Łomowski, (Warsaw: Wydawnictwo C.H. Beck, 2005), 17, http://www.fupp.org.pl/down/legal_clinic.pdf; see also Edwin Rekosh, Kyra A. Buchko, and Vessela Terzieva, *Pursuing the Public Interest: a Handbook for Legal Professionals and Activists* (New York: Columbia Law School, 2001), 257–58.

[4] Marta Janina Skrodzka, "Centrum Praktyk Sądowych – symulacje rozpraw sądowych wpisane na stałe w działalność studenckiej poradni prawnej," *Klinika* 3(7)(2007): 14. The idea of the Judicial Practice Center is based on the moot court simulation. The need for including moot court simulation into the Polish law schools' educational scheme mainly within the clinical structure as a good source of achieving practical knowledge was described by Urszula Kalata Gryko and Marta Janina Kuklo in "Symulacja rozprawy sądowej jako źródło praktyki studentów w klinikach," *Klinika* 1(5)(2006): 9; see also Łukasz Bojarski and Barbara Namysłowska-Gabrysiak, *Symulacja rozpraw sądowych jako metoda edukacyjna* (Warsaw: Wydawnictwo C.H. Beck, 2008), 1–10.

1. Polish CLE and the example of its innovative teaching method

In the last ten years, clinical legal education in Poland has established, developed, and strengthened its position within university structures.[5] The position of legal clinics is so strong in the country that it was possible to create a network of twenty-four legal clinics.[6] Five years ago, the clinical movement formed the Legal Clinic Foundation, which supports and coordinates activities of the network of Polish legal clinics.[7] As clinics achieve good and stable positions within universities, more opportunities are created for further developments in clinical education, and for the adoption of other innovative teaching methods. New projects are necessary to create a modern model of CLE within "the new law school."

The JPC at the University of Białystok was established in 2005 as a new option for law students to engage in court internships.[8] The JPC was the idea of Judge Tomasz Kałużny (now the Chief Judge of the Court of First Instance in Białystok) and Professor Teresa Mróz from the Faculty of Law, University of Białystok.[9] They sought more interesting and creative ways to satisfy the court internship requirement in which every Polish law student must participate during his or her legal studies. From the very beginning, the JPC idea was supported by the Dean of the University of Białystok Law School, Professor Leonard Etel.[10]

Like most Polish law students, students of the University of Białystok Law School must take part in a minimum of two internships for at least two weeks, one of which must take place in the court.[11] Until the creation of the JPC, students did not have much flexibility within mandatory court internships. Mandatory court internships sometimes did not provide a chance to really observe judges during their everyday work. Very often, students' regular duties were to "sew court documents" and make coffee.[12] The JPC offers students a chance to observe professional lawyers and judges at work, and to prepare and present cases similar to those they have observed in a simulation, with feedback from judges and practitioners.

Classes that combine a moot court simulation with other teaching methods are rare both at the University of Białystok Law School, and among Polish legal clinics

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[5] Edwin Rekosh, "The Development of Clinical Legal Education: a Global Perspective – International Experience, The History of Legal Clinics", in *Legal Clinic*, ed. Łomowski, 43.

[6] The data on the exact number of legal clinics in Poland is available at the Legal Clinics Foundation website: http://www.fupp.org.pl/index_eng.php?id=clinics_poland

[7] Filip Czernicki, "The Legal Clinics Foundation – The Creation, the Objectives and an Outline of Activities," in *Legal Clinic*, ed. Łomowski, 209.

[8] Skrodzka, *supra*, note 4.

[9] Tomasz Kałużny is the Chief Judge of the Court of First Instance in Białystok. He also cooperates with the Faculty of Law at the University of Białystok; Teresa Mróz is professor at the Faculty of Law at the University of Białystok. She is the head of the Institute of Trade Law. Her fields of study are civil law and the privatization of enterprises.

[10] Leonard Etel is professor at the Faculty of Law at the University of Białystok. He is head of the Department of Tax Law and also the dean of the Faculty of Law at the University of Białystok.

[11] The data on mandatory practices by law students during their studies at the Faculty of Law, University of Białystok is available online (under "studies"): http://www.prawo.uwb.edu.pl/page.php?id=153

[12] In Poland, paper documents presented in a lawsuit (petition, testimonies, etc.) are sewn together and filed at the court.

in general.[13] Although the JPC and clinics have at least one goal in common, that is, a broader legal education through the development of students' legal skills, the JPC offers more diverse teaching methods than clinics.[14] While Polish clinics usually offer only seminars and workshops, the JPC offers the possibility of discussing legal issues on the basis of the concrete facts witnessed in court, participating as observers in real court activities, and preparing for moot court simulations.[15] The JPC offers an opportunity for students to stand in front of an audience of fellow students, teachers, and professional lawyers, and to synthesize all the skills learned during JPC classes.

Although the JPC is open to all students of law in their third, fourth, and fifth year of studies, priority is given to students of the Legal Clinic. This priority is given because the JPC was created within the Legal Clinic Department at the University of Białystok. Secondly, as the JPC and the Legal Clinic share similar goals of connecting theory and practice and providing legal aid, it is understood that the pool of Legal Clinic students is committed to these goals.[16] This commitment is key to reaching good educational and legal aid results.

2. The structure and the methodology of the JPC

As mentioned before, the JPC uses different forms of teaching methods: moot court activities, observation of court proceedings, seminars, and workshops. All those methods combine theoretical and practical elements. The JPC activities are run by judges (practitioners) and university teachers (legal theorists). The diverse set of teaching methods, the manner and environment in which classes are run, and the developing level of students' engagement during each stage of the JPC create opportunities for the development of basic legal skills, which are still not very well known among Polish professors teaching law, nor among clinical professors.[17] Such skills encompass problem-solving (including ethical problems), legal analysis, legal research, factual investigation, communication, counseling, negotiation, litigation, alternative forms of dispute resolution, and organization and management of legal work.

Classes within the JPC are held in four teams of eight to twelve people, which are divided according to students' interests. During the first year of the JPC operation, a civil and commercial law team and a labor law team were established.[18] In 2007 and 2008, two

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[13] A Faculty of Law in Poland that created an innovative structure based on the moot court simulation, but not related to the clinical movement, was the Faculty of Law, Canon Law and Administration of Catholic University in Lublin. The Center for Advancing Legal Skills (CALS) was established in 2005 for the development of education in legal skills for law students and legal practitioners. More information on CALS can be found on the Faculty of Law, Canon Law and Administration of the Catholic University in Lublin website: http://www.kul.lublin.pl/art_697.html.

[14] Łukasz Bojarski, "The Aim of Legal Clinics," in *Legal Clinic*, ed. Łomowski, 19. As for goals, while clinics often have to balance two goals (students' broader legal education and the provision of legal aid for people that are underrepresented), the JPC clearly focuses on the former goal.

[15] The Law School has created a special courtroom for moot court activities.

[16] Barbara Namysłowska-Gabrysiak and Fryderyk Zoll, "The Methodology of Clinical Teaching of Law," in *Legal Clinic*, ed. Łomowski, 186–189.

[17] *Ibidem*.

[18] The first year of JPC activity was in the spring semester of the 2005/2006 academic year.

additional teams were added, focusing on administrative law and criminal law. Due to the strong interest among students in the JPC, these four teams were offered in the fall semester of 2008 and the spring semester of 2009. There are also plans to extend this schedule to future academic years.

Classes for each team take place once a week and last at least ninety minutes. Classes are held for ten consecutive weeks and are concluded with a moot court simulation. Students completing the JPC receive the necessary credit for the mandatory court internship.

The ten theoretical and practical classes are divided into three blocks, as described below.

First block. The main objective of the first block is to develop theoretical knowledge concerning the general structure and functioning of courts. This includes the roles and responsibilities of judges, referees, judges' assistants and trainees, plaintiffs, and defendants, as well as pleadings, preliminary proceedings, court sessions, evidence, appeals, and other court activities. The primary teaching method used is the Socratic method in the form of informal discussions among team members. The block is composed of three classes. In the first class, students receive a syllabus, including the necessary materials and information that help students prepare to take an active part in the following classes. During each class within the first block of the JPC internship, students receive homework intended to prepare them to speak in front of their colleagues. The first three classes are conducted by practicing judges. Small discussion teams are supervised by the judges themselves or by a leading student, depending on the issue that is to be discussed and the task assumed by the discussion team.

During team meetings, supervisors distribute the fact pattern of the simulated case from which they will work. Additional information and instructions on simulation exercises will come later in the semester. At the first meeting, students are asked only to think about the concrete problems and the legal provisions that can be applied to the case. In the second and third classes of this first block, supervisors spend at least forty-five minutes discussing the case and preparing exercises that may help develop legal skills such as problem solving, legal analysis, legal research, and factual investigation. By observing how students cooperate and their reactions to problems, supervisors distribute further instructions and role divisions within the second block of classes. At the end of the third class, supervisors exchange opinions on students' work and give feedback on their performance.

Second block. The second block's main objectives are to show students how theoretical information received during the first block of classes works in practice, to introduce students to the case they will be simulating, and to observe the participants of the lawsuit so that students can choose the role that suits each of them best. Classes are taught by judges of the district court in Białystok (the same judges to whom students are assigned for observation). Each team meets with the relevant judge for three classes where issues are raised, such as the most common cases brought to court, legal provisions applicable to those cases, and main challenges faced. In the second class of this block, students have the chance to observe the activities of a real court and to discuss their impressions. This latter class actually takes place in court.

Teams observe court activities within their general subject matter area. As an example, the entire criminal law team observes the same two or three criminal trials. The judge working with the team tries to take students to cases that are similar to the case prepared

for the moot court. The discussion in the first and third classes within this second block helps students better understand the court system and allows them to compare the information they received during the first block of classes with real court life, and to prepare for the moot court. By creating an opportunity for students to be passive observers, the second class in this block opens up possibilities for an in-depth analysis of the situation, for thinking through the observed hearings, for connecting theoretical knowledge with real practice, for raising more specific practice-related issues, and for answering questions. It also grants students the opportunity to familiarize themselves with the courtroom and its special kind of atmosphere.

Finally, the last forty-five minutes of each class within the second block is spent discussing and reframing the case that will be simulated. This case analysis helps develop the administrative skills necessary to organize and manage legal work effectively and to realize skills involved in recognizing and resolving ethical dilemmas. Students are specifically asked about ethical issues they have noticed during court observations, their reflections on what kind of ethical dilemmas can appear, and their perspective on what sets of skills can be helpful in resolving these dilemmas. Students are also asked to create and discuss a list of skills that are necessary to organize and manage legal work effectively. Their homework is to try to apply some of the skills mentioned above during the third block of classes, so that they can work effectively and ethically on the moot court simulation.

Third block. The main objective of the third block is practical: to prepare students for the final moot court simulation. This block consists of four classes that are run by three coordinators: one judge and two university teachers. Coordinators divide each team into four small groups based on students' earlier work: plaintiffs' counsel, defendants' counsel, witnesses, and judges. Each group works together with its own coordinator, preparing for the final moot court simulation. The first task is to prepare a step-by-step paper that shows all stages of the court action and the strategy that the group has chosen for each of these stages. This strategy includes who will be questioned and why, what kinds of questions will be raised, and the reasons for choosing those specific questions. The judge in the three-person supervision team for this block writes the final version of the case for simulation.[19] The coordinators work with the students to help them connect the facts of the case with legal provisions in an appropriate way, and prepare a course of action for the trial. Each group has one to three witnesses.

For ninety minutes in each class, students are involved in writing pleadings, interviewing their own witnesses, and considering how to interview witnesses of opponents. Coordinators look to assure that students are using the skills they studied during the first two blocks of classes. More specifically, classes encompass the following activities: summarizing case facts, dividing roles, discussing activities that the group has to implement, preparing a step-by-step paper, preparing witnesses, thinking of possible answers for questions that might be raised by the other side, rehearsing and then presenting the moot court simulation. Guests are invited for the latter activity, and feedback on student performance is expected both from the invited experts and the students/observers.

[19] This is a simulated case, based on the real cases that took place in the Court of First Instance in previous years.

As mentioned before, classes in this third block are held in very small groups, divided in accordance to the roles that will be played in the final moot court simulation. The interactive work developed with other students (i.e., brainstorming, logical thinking, the ability to connect facts and legal norms, etc.) and the supervisors in each of the small groups aims not only to lead students to an appropriate, responsible, and reliable presentation in the final moot competition, but also to lead students to a socially responsible professional practice.

Conclusion

As mentioned in the introduction, the progress of the modern world has brought changes to every field, as well as challenges that every person needs to face and respond to with flexibility. In the context of legal education, those responses should not imply a mere replacement of "old" methods of teaching by "new" ones. It should require combining old and more theoretical teaching methods with new and more practical teaching methods, as both methods are indispensable for creating a holistic system of higher legal education. This is the reason why "the new law school" should bridge theory and socially responsible professional practice. Among other initiatives in Poland, the JPC has attempted to achieve this goal. Since it was established in 2005, the JPC has become more and more popular among law students. Students who have participated in the JPC understand that this new initiative provides them with the possibility of acquiring important legal skills, including critical thinking, stress control, legal writing, public speaking, and teamwork. The JPC is one possible response to challenges imposed by the modern world on legal education.

PART FOUR:
THE ACADEMIC CAREER IN LAW

Fryderyk Zoll[1]

Chapter 7: The Challenges of the Mass University and the Civil Law Country Model of Legal Education: How Open Is the Polish University Model to Innovative Teaching and Nurturing of Clinical Programs?

Introduction

The legal clinic program at the Jagiellonian University was established more than ten years ago. Since then, almost every law school in Poland has organized a program that at least aspires to be a "legal clinic." Even the Polish private law schools competing with the established state institutions have accepted clinical programs as necessary components of the law schools. Poland has been extremely successful in organizing, promoting, and developing these programs, establishing a national Foundation for Legal Clinics that supervises clinical programs by testing their setting, equipment, reliability, and compliance with adopted ethical standards. The clinical programs survived the cutoff of the substantial external funding of the pioneer era. Despite this success, however, the role and function of the legal clinics in Poland is still not fully decided.

Clinical programs are entering a phase of transition from the first generation of clinical teachers to the next. This transition is sometimes complicated. The clinics' founders benefited immensely from their participation in the process of establishing the clinics: they were supported by external international funding; they developed professional and personal relationships; and they had opportunities to travel for conferences, receive training, and to train others. Moreover, they have witnessed the development of the project, as well as its success. The next generation of teachers is beginning its work with far fewer incentives.

The question of desirable incentives for the next generation of Polish clinical teachers raises the question of whether the structure of Polish law schools – the prevailing model for an academic career, the role of professors and academicians in the whole legal system, and the structure of academic and professional education – is sufficient to attract younger colleagues to work in clinical programs. And one must also ask if clinics are

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still an attractive place for the first generation of clinical teachers to continue working. In the end, those who wish to pursue an academic career must fulfill the conventional steps within the existing system. Given this reality, can the personal aspirations of teachers be fulfilled in clinical programs?

In this chapter, I will consider the main features of the Polish law school and analyze whether it offers the space to develop innovative programs. In addition, I will address the question of whether true innovation will occur in Polish law schools, as other possibilities are emerging.

1. The teachers, the model for the academic career, and the "habilitation bubble system"

The Polish system for academic careers is a result of the German university tradition, the socialist past, free market opportunities, and the resistance of academic society toward innovation. Polish academics fight to protect the benefits of the positions they have, but the academic structure is constrained by limited resources.

Central European universities were tremendously influenced by the German conception of the university and the role professors should have in the legal system. The Polish university structure has a number of apparent similarities to the German system, such as doctorate and habilitation[2] degrees, ordinary and extraordinary professorships, and organization by chairs. A closer look, however, discloses that a fundamentally different structure is hidden under similar sounding concepts. The academic career in Germany is based on a highly competitive model. A German PhD who earns the habilitation degree must leave his or her home institution to pursue an academic career. He or she can be appointed only to another university faculty. Each German university has a limited number of positions, and candidates may apply only if there is an unoccupied position. Very often there are more than forty candidates for an academic position on a German university law faculty.

Once professors have a position at one university, they can apply for a new position at another. This requirement to move to a new university for a first position, but then to move to another to advance, creates competition among German universities to enhance working conditions to attract the most talented academics.

Nothing similar to this career track exists in the Polish university system. Although Polish requirements to achieve a doctorate and habilitation are high, and a vast number of papers produced by candidates in the legal sciences are of high or at least acceptable quality, this is only part of the story. The Polish system of academic appointment is not selective and it reflects various biases.

State universities in Poland usually hire numerous "assistants" – junior academics who are seeking a PhD while teaching classes called "exercises." While there is formally a competition to be appointed as an assistant, the person who is supported by the faculty is often the one who gets the job. The Polish assistant is not an assistant to a professor in the German sense of this word. Assistants remain quite academically independent; however they are not economically independent because the salary is somewhat symbolic, often

[2] See page 83 for an explanation of this term. – Ed.

not enough to survive in a large city and to maintain a family. As a natural consequence, assistants look for work beyond the university quarter as lawyers, judges, or teachers in a private but less prestigious law school. The university quickly becomes a place to fulfill ambitions of gaining prestige, but it loses its position as the young academic's main occupation, since his or her main source of earnings is located outside the university.

This centrifugal pull is a decisive factor in a law school's ability to accommodate and maintain innovative teaching methods. The overburdened assistant must prepare numerous classes, write the doctoral dissertation as well as other required publications, and perform his or her "main" job as a lawyer: to earn income (or teach in a private school for supplemental income). If the candidate finishes the dissertation, it is reviewed by a "home" professor and by an "external" professor from another school. If the dissertation is successfully defended, the new doctor is promoted to the so-called adjunct position at the university where the PhD was completed.

The new PhD's life, however, does not change dramatically. Probably some new duties emerge, such as reviewing papers of master's degree students and holding "lectures" and exams (when authorized by the faculty council). But the working conditions essentially do not change. The young scholar still cannot support himself or herself solely on the salary coming from the law school. Some emerging private schools offer slightly better conditions than public law schools, and the newly minted PhD is pressed to develop a professional career outside the university where he or she continues to be appointed.

Additional publications are expected as well as the development of the second dissertation necessary for the habilitation degree. The teacher's publication list becomes the major factor of his or her evaluation. The habilitation paper must be analyzed by four reviewers: two appointed by the university and two others appointed by the state qualification agency. With pulls in so many directions, time becomes a precious commodity, and there is none left for developing new classes. Teaching, therefore, is the first victim of the system. Classes must be taught with the smallest possible investment of preparation time. Further, teaching plays no part in the evaluations that will determine whether a candidate receives the habilitation degree.

Once a candidate successfully defends the habilitation before the faculty council, the situation changes. He or she becomes a so-called independent researcher and his or her university position is secured. The new habilitation recipient is not formally a professor yet, but "almost" a professor. The fresh Polish "habilitee" automatically remains appointed to the university at which the habilitation was conferred, even if the law school has no need for someone to teach and do research in his or her field of expertise.

Is such a new "independent researcher" with the given profile and specialization needed at all? This question is simply not asked. Moreover, the new "independent researcher" must have enough lectures to fill the required number of teaching hours. Rather than creating classes to meet student need, therefore, a university faculty council creates classes to provide newly habilitated academicians with the ability to meet their required teaching hours. And, while the habilitation brings a salary increase, it is not enough to give the "habilitee" the incentive to dedicate himself or herself exclusively to his or her academic career. A second job at a private school or in law practice usually pays much more than the "prestigious" habilitation-granting law school, and the professional adjusts his or her life to accommodate that source of greater income.

Although the university position is now more or less secured, another step remains: to become a professor. The first step in this regard is to be named a "university professor," nominated by the rector of the university, and the second to be appointed the so-called "Belvedere professor" by the president of the state. (Belvedere is former residence of the president of Poland). Further publications are required to obtain these honors; the quality of teaching, however, is ignored in consideration of these advancements.

Until there is fundamental reform, it is nonsensical to put more money into the Polish legal education system. No school can reasonably operate when faculty appointment is not related to the needs of the school, does not consider the merits of the candidates, and does not balance teaching and publishing as relevant criteria. The Polish system needs competitiveness based on quality of teaching and research, incentives for academic mobility, and encouragement for teachers to focus their primary energies on their academic career.

2. The students: Just getting through

While state universities are still considered the most prestigious institutions, private schools have the highest number of students enrolled. There are on average five thousand law students per law school in Poland (in a five-year program). The main classes are mass undertakings with two hundred or more participants. There are some small seminars devoted to the preparation of a master's thesis, but assistants and professors do not have much time for individual meetings with the students.

Class attendance is not mandatory. Attending lectures is a right, but not a duty. A considerable number of students appear only for exams and seminars; they work rather than attend lectures. Such students do not even have the opportunity to get bored in class. And students who do attend class are not expected to prepare: only final exams matter. This educational pattern does not prepare students for the diligent rhythm required for good legal work. Rather, it promotes an accidental type of learning and delivers a false impression of the requirements of a good lawyer's work.

3. The educational result: Pessimistic and optimistic views

The picture delivered above is not very optimistic. Teachers cannot focus on teaching because they do not have enough time. Their main goal is to publish to gain academic advancement, and, for economic reasons, their main professional occupation lies outside the university.

Fortunately, this picture is only partially accurate. I have heard from many foreign professors that the Polish Erasmus[3] students are among the best and hardest working students in their programs. Polish legal scholarship is not experiencing a crisis; on the contrary, there are indications of a renaissance. The quality of judges and lawyers is

[3] "Erasmus is the EU's flagship education and training program, enabling two hundred thousand students to study and work abroad each year, as well as supporting cooperative actions between higher education institutions across Europe." For more information, see http://ec.europa.eu/education/lifelong-learning-programme/doc80_en.htm – Ed.

improving. The universities are crowded. Almost every Polish university has numerous international programs; more specifically, there are foreign law programs – American, German, French, Austrian, and Spanish – taught by professors from these countries. Numerous students are trained in different legal systems and in different languages. In these aspects, the preparation of many Polish students meets the needs of the European market.

The existence of successful clinical programs is also proof of the ability of Polish law schools to adopt and maintain innovation. How is it possible to have innovation in an environment that is usually not friendly toward innovation? One answer to this question is unfortunately not very optimistic: Polish law schools have benefited enormously from the period of transition, during which they have received immense support from foreign institutions. Many prominent professors from around the world have been attracted by the peculiarity of a country in transition. Although this effect continues, it is hard to believe that this engagement will remain a permanent factor.

A final element that has influenced educational quality was the engagement of a new generation of teachers in the 1990s. Many of them had studied abroad and came back to Poland with the willingness and enthusiasm to renew their home institutions. For those teachers of the "pioneer era," there were many funding opportunities available, which allowed them to focus with much greater intensity on academia and teaching.

Unfortunately, the period of clinical programs' development was not sufficiently used as an opportunity to reorganize the structure of Polish law schools. Despite many successes, the schools remain institutions where financial and intellectual resources have been wasted. The historical career model has not been challenged, in spite of the (not yet fruitful) discussion to abolish the habilitation system. This discussion, which has some merits, is meaningless if the whole structure remains in place. The new generation of teachers, therefore, has neither the abundant funding of the "pioneer era" nor reformed institutions.

4. What needs to be done?

Modifications of the system are urgently needed. Some elements of the German model should be replicated with a few essential modifications (mostly concerning the "educational record" of the candidate). When the teacher obtains his or her habilitation degree and becomes an "independent researcher," he or she should be required to leave his or her home institution and compete for positions at other universities. There should be a clear ban against hiring a teacher in the same place that she or he obtained the habilitation.

The number of professorships should be strictly limited and appointment based on merit. Evaluation should focus not only on the applicant's publication list, but also on the educational achievements of the candidates, such as clinical experience. If there were a smaller number of professors, salaries could be increased. Once salaries are increased, any additional occupation should be forbidden. Increases in salaries beyond normal university levels should be dependent on a teacher getting an offer from another institution. Only then would there be a need to renegotiate the employment conditions at the home institution. Once law schools have reduced but selected and well-paid faculty

– which can be achieved only by promoting objective and open competitions and by adopting exclusive employment contracts – teaching reform can be introduced. In the current system, too many faculty members are simply not interested in the success of the institution. They are, in fact, interested in maintaining the *status quo*: after all, what they need is the label of being a professor, not the duties of being a professor.

These circumstances regarding academic careers are related to the situation of legal clinics because the sustainability of the clinics depends on a healthy career model focused on innovation, research, and education. Without full-time teachers, such a model cannot exist.

5. Essential change is coming: Possible impact on law schools

Another factor needs to be considered. The post-academic education of lawyers is changing dramatically. The old inefficient system of apprenticeships, which was required for admission to the Polish legal professions, is now being subjected to fundamental reorganization. The first step will be the establishment of the Judges School in Kraków. This school will be a center for a three-year training program for future judges and prosecutors. The program for the Judges School, which focuses on practical education, is nearly ready. Much of the education will be through simulation, fully interactive classes with teamwork and case-method instruction. Externships will be included, but with seminars in which the externship experience is analyzed. While it is a pity that legal education reform may start outside academia, the success of the Judges School may influence the whole system and launch real educational reform.

Dubravka Akšamović[1]

Chapter 8: Croatian Legal Education Reform at the Crossroads: Preparing the Modern Lawyer

Introduction

Like many countries in Central and Eastern Europe, Croatia has embarked on substantial reform of its legal education system. These reform efforts began with Croatia signing the Bologna Declaration in May 2001, although the actual implementation of Bologna in the field of legal studies began a few years later, in the fall of 2005.[2]

In order to prepare new generations of legal experts for new and more competitive business environments in the global market, legal education reformers in Croatia are seeking to use Bologna to:

1) establish consistent standards in academic titles, i.e., comparable degrees and diplomas throughout Europe;
2) implement the European Credit Transfer System;
3) increase the mobility of students across Europe;
4) establish a European Qualification Framework to achieve a common level of quality in higher education in Europe;
5) implement a two-cycle system of legal education throughout Europe, where the first level is an undergraduate degree, usually lasting three years, and the second level consists of a graduate degree, i.e., an LLM or PhD degree.[3]

While most experts agree that the quality of legal education in Croatia needs vast improvement, some experts are questioning whether the rush to reform has discarded some of the best elements of the old system. It is too early in the reform process to have an objective evaluation of the results, but in the next three years, when the first generation of "Bologna students" graduate and compete for jobs in the local and global labor markets, objective, fact-based results of the current reform process will become evident.

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[2] For more information about Bologna reform in Croatia, see http://www.nzz.hr/docs/radionice/Bjelis_Divjak_TEMPUS_Sljeme.ppt, and http://www.azvo.hr/lgs.axd?t=16&id=850

[3] Confederation of EU Rectors' Conferences and the Association of European Universities (CRE), "The Bologna Declaration: an explanation," http://ec.europa.eu/education/policies/educ/bologna/bologna.pdf

1. The rush to reform

The signing of the Bologna Declaration sparked rigorous changes in the law faculties, including changes in curricula; the introduction of new, more practical teaching methods; the implementation of the European Quality Assurance Program of Evaluation; reform of LLM and PhD programs; and attempts to increase the mobility of students and law professors while removing obstacles concerning academic titles.[4] Although progress on the reform of LLM and PhD programs is in its very early stages, and results are being realized much more slowly than expected, some other reform aims already have been achieved. For example, in the last three years a number of elective subjects were introduced into the curriculum, and students are now able to choose among different courses and modules. The curriculum has been significantly reshaped so that every subject is completed within one semester, leaving law professors more time for their professional development and research, and also making courses more intensive for students, better preparing them for exams. The European Credit Transfer System (ECTS) has been implemented, bringing Croatia in line with the European system of credit evaluation.[5] This should enable students to move from one university to another and possibly to foreign universities as well. Furthermore, Croatia has introduced a two-cycle, "binary system" of legal education in accordance with Bologna's call for quality assurance, a concept that includes both evaluation and accreditation.

In the long term, the Bologna process is expected to produce significant improvements in legal education, but at the moment it is at an early stage, and there are still a number of old problems that have yet to be resolved.

2. Lingering problems

Despite these initial reforms, several problems remain common to all four public law schools in Croatia. There are not enough law professors to accommodate the vast number of students who want to study law. Law schools lack the physical space to accommodate these large numbers of students. The curriculum remains predominantly theoretical, with few practice-oriented options, for example, legal clinics. New teaching methodologies are introduced slowly and often reluctantly. Meanwhile, the mobility of students and academics has not been fully realized. Young researchers are under extreme pressure to publish in order to advance in their academic career, and this competes directly with their full-time teaching demands.

One major critique of legal studies is that it lacks a practical element. Students are trained to learn codes and legal rules by heart; therefore, they are not prepared to think

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[4] Although not required by Bologna, law schools in Croatia have undertaken the demanding task of changing the curriculum. This has meant defining those subjects that are "core subjects," those that are elective, and those that will be abandoned altogether. Content of some core subjects had to be modified, and each new subject had to have its content verified by special commissions set up by the Ministry of Education. Each subject had to be accredited as well. See http://www.mzos.hr

[5] Faculty of Law Osijek, "Pravo Je Zakon! Vodiè za brucoše 2008/2009," Faculty of Law in Osijek – Croatia, http://www.pravos.hr/vodic2008/brosura2008.pdf. Previously, lecturing was considered the primary academic activity, but this has been shifting in favor of research.

critically and to elaborate on more sophisticated legal problems. From this critical point of view, after finishing law school, students are not well prepared to practice law because they lack sufficient practical experience.

Over the past fifteen years, Croatian society has gone through complex reforms, including a noticeable transformation of the economic and political order. Its new legal education system needs to support these general changes in society. Legal education needs to adapt to new trends and new demands from the business community and from the public sector. The old-fashioned model, with its heavy emphasis on theory and memorizing statutes, is not able to satisfy the growing demands for lawyers with practical problem-solving skills. An entirely new branch of law – "European law" – has emerged in Croatia, and as a European country, it must adjust its legal education to ensure that students are fluent in this new subject.

In practice, mobility on a European level is hard to achieve because differences in national legislation and legal traditions remain significant. Young academics still do not have enough opportunities to study abroad, and if a student chooses a foreign law school for either graduate or undergraduate study, there may be problems later with recognition of the diploma in Croatia. While previous programs are outdated, new LLM and PhD programs in Croatia are still "under construction."[6] This caused a number of problems for young academics who were supposed to achieve an LLM or PhD degree within deadlines established in governmental regulations.

There is now a public debate going on in Croatia about whether higher education reform was needed at all. Was it just to satisfy European standards with an eye on Croatia joining the EU?[7] Some critics claim that current reforms have wiped away all of the positive elements of the old system of legal education.

Legal education in Croatia is at a crossroads, somewhere between abandoning the old system and moving to a new one, with the results of current reforms not yet visible. The old system has a long tradition, dating back a century or more. On one hand, it enabled students to gain solid theoretical knowledge, a necessary skill for practicing law. The old system was predictable, in the sense that evaluation criteria were more or less standardized and widely known. Furthermore, there is no doubt that a substantial number of excellent lawyers were educated in that system of legal education. On the other hand, the new system is still "on probation."

3. Analyzing the issues

The core issue of this chapter is how to improve the current system. It has been difficult to merge the old system and the new, to determine what to keep, what to discard, and what to add. A few basic questions beg to be answered. What is the purpose of legal

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[6] Josip Kregar, "Studij ne smije biti masovna proizvodnja," *Vijenac* 330 (2006), 9; National Union of Students in Europe, *The Black Book of the Bologna Process* (Bergen: National Union of Students in Norway, 2005), http://sus.org.yu/dokumenta/crnaknjiga.pdf; Pravni Fakultet, *Pravni Fakulteti i Njegove Perspektive u Reformi Visokog Obrazovanja* (Zagreb: University of Zagreb, 2002), http://dns.pravo.hr/PRAVO/3_studij/reforma/perspektive.pdf

[7] Vesna Tomašić, "Reforma Visokog Obrazovanja – u Interesu Hrvatske Ili Za Potrebe EU?," *Kemija u Industriji* 54, no. 4 (2005), 217, http://knjiznica.irb.hr/hrv/kui/vol54/broj4/217.pdf

education? Have circumstances in Croatian society changed so dramatically that it needs to change most of the current system of legal education, or can the current system be adapted to new conditions? What does Croatia want to achieve with its current reforms? What measures should be taken to achieve them? What kinds of lawyers does the country need? What are the demands of the labor market?

Recently, there have been a number of public debates and conferences in Croatia regarding higher education. The opinions of participants about purposes, outcomes, and aims of legal studies reform were highly varied, with the most dominant opinion being that legal education should favor specific learning outcomes and focus on the results of legal education and not the process itself.

Those who are more traditionally oriented claim that the main task of legal education in current times is to educate capable and brilliant academics who will, in a time of mass legislative activity in the EU, be able to understand the purpose of the legislative act or court decision, and use this to influence national legislative procedures. Others claim that we need a reform that will enable academics to educate lawyers who will be able to interpret new codes and court judgments with a deeper understanding of the core problem. Finally, there are the more market-oriented members of the academic community, who claim that legal education, as much as any other discipline in higher education, has to serve economic development.[8]

4. Solutions for Croatia

Legal education reform is burdened by a number of problems, some financial, some rooted in reluctance to change the traditional system.[9] Other European countries are facing some of the same difficulties in implementing the Bologna reforms. To reform the legal system in Croatia successfully, many factors – historical, cultural, and ethical – must be taken into account. The issue is too complex to apply only one of the approaches mentioned above.

Croatia is a civil law country and, as such, legal education has traditionally relied more on legislation and law theory than on case study. Legal theory always has had a significant place in the legal curriculum, and that probably will never change. Only solid theoretical knowledge can ensure good practical legal work. On the other hand, theory and practice are both essential parts of the curriculum. It is a question of proportion. Construction of legal theory requires a close study of practical cases, and practice is much more efficient when it is supported by theory. Learning and teaching law nowadays is not only about learning law theory or understanding law practice. A lawyer should have a sound comprehension of the complexity of social interactions – matters that can only be properly understood with an awareness of the social, historical, and cultural heritage of a country's jurisdiction. A lawyer should be a promoter of legal values and the rule of law.

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[8] Croatian Academy of Science and Art (HAZU), *Reforma pravnog obrazovanja, Modernizacija prava* [Reforming Legal Education, Modernization of Law], Book 5, Scientific Council for Public Administration, Justice and Rule of Law, 2007.

[9] Germany and Austria might be typical examples of countries in which Bologna reform is to some extent not well accepted by certain academics. See below, note 10.

Reformers cannot achieve all of their goals by a simple transfer of knowledge or skills development, nor by a change in curricula or implementing quality standards. Academics and other law experts must be willing to respond to the demands coming from the broader community, to offer students insight into positive law, and provide the broader social and historical contexts for law. In an era of increased globalization, this is how we will preserve national identity, traditional values, and the useful elements of our old system of education. The curriculum must be flexible and adaptable, and there must be enough space for skills development. Law schools must create a positive working environment for academics and students. An incentive system of rewards based on objective criteria must be established on all levels, and while the autonomy of universities must be respected, this autonomy should not be abused for private purposes. To insure this, an external body should have the authority to oversee universities for particular issues in order to minimize the risk of abuse, for example, with respect to employment policies and financial matters.

The outcome of quality legal education should be a creative and socially responsible lawyer, who is able to recognize legal problems, find and apply law in specific cases, and understand and be able to settle cases without trial. She should be able to prevent disputes or legal difficulties in the future by legal counseling and the shaping of transactions, and she should represent clients according to her highest professional ability. Can we hope to achieve such success through the current reforms? Although certain reforms will be hard to implement, there is hope that some will succeed.

The European dimension of this reform is its peculiarity. For the first time, most of Europe has a common educational platform for higher education and, in part, for legal studies, too.[10] Some important changes in legal studies have already occurred. For example, an ever-increasing number of European law schools are accepting legal clinics as a tool to improve current learning processes and supplement *ex cathedra* lecturing with practical teaching.[11] Furthermore, some form of quality-assurance standards have been applied throughout Europe; once the results of an evaluation are available, it will be possible to define the problems more precisely and to work on solving them. Moreover, an accreditation system is being introduced (although it greatly differs among European countries). While ten to fifteen years ago, there was little to compare in terms of legal education because of the limited possibilities for cooperation, the situation today looks rather promising. The Bologna process has established a precedent for successful reforms in the future.

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[10] CCBE, "Comparative Table on Training of Lawyers in Europe," *The Council of Bars and Law Societies of Europe* 201 (2005), 23–26, http://www.ccbe.org/fileadmin/user_upload/NTCdocument/comparative_table_en1_1183977451.pdf. The Bologna process has affected the system for granting law degrees in fifteen of the thirty-seven jurisdictions. Ten countries have provided a negative response to Bologna reform, while another ten have accepted Bologna standards only partially.

[11] Legal clinics are becoming increasingly popular in legal education in Europe. Recently, a number of European countries introduced clinics in legal education, for example, Spain, the Netherlands, Croatia, Hungary, and Poland.

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Chapter 9: The Need for a New Law Professor in Moldova

"The main hope of a nation lies in the proper education of its youth."
Erasmus

Introduction

This chapter proposes developing a new law professor as the key factor in reforming the law schools, given the changed legal environment and needs in Moldova. The new law professor should help law students gain knowledge, but also help them develop critical thinking and the ability to apply the law. While this is a more or less acknowledged need, how to foster the construction of such a position remains a major challenge. We suggest some possibilities in this respect: a change in policymakers' attitudes to legal education; a change for the law professors themselves; continuing training of the entire teaching staff, not only junior members; a policy change in law professors' remuneration; introduction of a well-conceived evaluation of the staff; and connection of the university with the law practice.

1. The need for a new law professor

Before the 1990s, legal education was primarily focused on building knowledge of substantive law among students. It paid little or no attention to the skills and attitudes of lawyers. One of the main reasons was perhaps market demand, which was determined by a legal system based on a very strict approach to interpretation of the law. In a system where judges had little discretion in interpreting the law and where precedent had no

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value, there was less need for skillful lawyers than for lawyers who knew the letter of the law very well. The legal system itself was not human rights-based, but rather a machine meant to ensure order in the state. In a context of strictly technical application of the law, demand for critical thinkers was missing and the law schools produced technocrats rather than lawyers in the full meaning of the word.

The democratization of the country and the switch to a market economy has meant radical changes in the legal system, which now needs lawyers to deal with human rights, European matters, complex legal issues related to international trade, competition, intellectual property, and other subjects that were missing or not very popular before the 1990s. With the ratification of the European Convention on Human Rights and its protocols, particularly Protocol 11, Moldova *de facto* has accepted these protocols at least as a source of interpreting the law, if not yet officially recognized them as a source of law.[4] Further, in the last fifteen years, Moldova has undergone a series of reforms in the legal field that have brought new concepts or dimensions to many of the national legal institutions. All these factors have resulted in a radical change in the need for lawyers who can skillfully apply the relevant national and international law.

The demand for new skills for lawyers should have brought about a change to a new law school model some time ago. This, however, has not been fully realized; some parts of the old legal system persist. There are still lawyers who achieve good results for their clients without good legal skills through effective personal connections. These lawyers see no need to change the current legal education system. However, such lawyers are no longer the absolute majority, and this should be encouraging for law schools. Regretfully, law schools are not yet reformed, and the graduates they prepare are not responding to the needs of the legal system. It should be alarming to local law schools that the best paid jobs are obtained by students that studied for some time abroad. While scholarships abroad are the "lifeboat" for the Moldovan legal community, the money available is dwindling, and, in any event, it is high time for local law schools to reform in order to produce good lawyers. In addition, one of the Bologna process objectives is to equip law schools to enter into competition with European or American schools of law and to be able to maintain their position in this field. To achieve this goal, Moldovan schools still have much to do. The most important task is to make sure that the Bologna reform process does not meet the fate of many internationally led reforms: a faked reform that meets all the formal criteria but only scratches the surface, or a false reform that does not change the teaching process and does not prepare law specialists.

The relationship of the law school with the legal system needs to cover two areas. On the one hand, law school education should be determined by the skills required by the practice of law. On the other hand, law schools also shape the legal system through their cadres: the teaching staff, who often act as experts; drafters of legal norms and practitioners; and the students who graduate and apply in their practice what they have learned at the law school. With an outdated law school, it is very difficult to make changes in the legal field. Therefore, the need is even more acute for new law professors who can

[4] Protocol 11 replaced the former European Commission on Human Rights with the new European Court on Human Rights in order to strengthen the system's effectiveness.

assume a crucial role in educating a new generation of lawyers, directly or indirectly shaping the legal system in the country.

Among the different goals that legal education should have, we would like to stress the two goals that are often overlooked, if not altogether missing, in current law schools and that we consider crucial: fostering critical thinking and promoting social justice. The new law professor should focus on these skills so that law graduates are able to apply the law and/or look for the appropriate law in their legal practice, as well as to act responsibly toward marginalized groups in the country.[5] Unfortunately, such groups are growing in Moldova as the country gets poorer, and prospects for an improved economy are far away.

The law professor should tailor his or her teaching toward promoting these goals. The new teacher model should display not only knowledge, professionalism, responsibility, communication skills, and research abilities, but also openness to changes, willingness and ability to implement new teaching and research techniques, and willingness to engage in self-evaluation and continuing self-improvement.[6] The new teacher also should exhibit a different attitude toward the student and treat students as participants in the teaching process, not as mute recipients. Teachers need to adopt teaching techniques appropriate for adult learners, rather than treating pupils as those who need someone to read them what the law says. Instead, they should concentrate on helping students understand and use the law. Teachers need to be flexible in responding to student needs and adjusting to differing student requirements.

Besides a good command of subject matter, teachers should communicate clear expectations, enthusiasm, and expressiveness. Effective teachers are often identified as those who encourage classroom interaction, establish rapport with students, and provide individualized feedback and reinforcement of student performance. Good teachers are further described as approachable, interested in students' learning and well-being, accessible, open to students' ideas and questions, and concerned about students' progress.[7]

Walter Bennett encourages all law professors to embrace the challenges posed by teaching professionalism. After describing the importance of helping law students begin the process of viewing themselves as members of a noble profession and acting accordingly, Bennett wrote:

> And law professors should not be exempt from the process. In fact, the professor in the class will be competent to lead it and to read and grade student papers if, and only if, above all she views herself as a professional and fellow pilgrim on the personal and professional myth-way. The notion that law professors (and law schools) are somehow exempt from the process of inculcating professionalism because they are engaged in more lofty and arcane pursuits is an attitude the legal profession can no longer afford (if it ever could). A professional school should be staffed by people

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[5] By "legal practice" here, we mean in general any profession that is related to the legal system.

[6] These are skills that are very important for a law teacher, and that are necessary for beginning an academic career in law. Of course, managerial skills are very important for those who are appointed to an administrative position, but this is not a general requirement, at least for the employment phase on a competitive basis (it should be just an advantage, not a requirement).

[7] Roy Stuckey *et al.*, *Best Practices for Legal Education* (Columbia, SC: Clinical Legal Education Association, 2007), 81, http://www.cleaweb.org/documents/bestpractices/best_practices-full.pdf

> who think of themselves as professionals with perhaps an even greater obligation than practicing lawyers to pass on the professional creed.[8]

In Bennett's words, law professors should follow the rules below to improve their professionalism and to contribute to effective teaching:

1) do no harm to students;
2) support student autonomy;
3) foster mutual respect among students and teachers;
4) have high expectations;
5) foster a supportive environment;
6) encourage collaboration;
7) make students feel welcome and included;
8) engage students and teachers;
9) take delight in teaching;
10) give regular and prompt feedback;
11) help students improve their self-directed learning skills;
12) model professional behavior.[9]

This new model for teachers does not necessarily mean that the Moldovan law schools need new people that will be able to create a new education path.[10] Many Moldovan teachers are talented professionals, and already try to foster critical thinking among students. However, this is not the rule, and many law professors would have to change considerably to reach the model described above. The reasons for change would vary among professors, a detailed discussion of which is beyond the scope of this paper. Here, we refer to a few factors that, in our view, are the determinants of the current state of affairs in law schools and the greatest obstacle in creating a new model of law professor:

- Law professors resist the need to change.
- Teachers' careers are inadequately paid. Good teaching requires time for preparing for classes, giving feedback to the students, publishing articles, etc. If this time and effort is not adequately remunerated, it is naive to expect quality. The remuneration levels for all Moldovan teaching positions have not been brought into line with living costs. Under these conditions, many teachers are forced to have two or even three jobs. This impedes quality in legal education, because teachers lack the time to always provide quality services and to work for the improvement of the law school. Because the question of financial resources is complex and related to other policy areas than education, we do not propose solutions to this problem, but wanted to highlight it, as it is a very important one.
- Law professors are not evaluated or given any feedback on their performance. Even young teachers are not supervised on a regular basis, this being mostly left to each Chair's discretion. Without feedback for their work, it is difficult for any but the

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[8] Stuckey, *Best Practices*, 75–76.

[9] *Ibidem*, 81–95.

[10] Traditionalism has its advantages as well, and sometimes traditionalism itself is an advantage for a law school (meaning traditionalism as a form of customs and image), but the competiveness of the Moldovan law school model needs to improve its traditionalism in order to move toward innovative teaching and a reorganized legal education system. The model of the teacher can be one of the starting points, in this case.

few most naturally talented and oriented toward self-improvement to change or improve their teaching performance.

- Law professors will not improve as long as at the policy level legal education goals and standards are not brought in line with law practice. In Moldova we do not have any meaningful coordination between law practice and legal education, although many of the law professors are also practicing lawyers.

2. How to foster the creation of the new professor: Change of attitudes at individual and policy levels

The currently dominant type of professor is focused on building students' knowledge. Hence, the main teaching methods are lecturing and questioning.[11] To prepare successful lawyers,[12] law professors need to employ other teaching methods, but this will not happen if the habit of lecture-based teaching style is too strong and lack of appreciation for the need for change is too persistent. Various types of professors are resistant to change to something beyond the lecture format:

- Law professors who have taught for a long period of time are accustomed to the old teaching methods, have no desire of their own to change, and nothing is pushing them to change.
- Law professors who do not practice and do not appreciate the changes in the legal system that require a new type of lawyer.
- Law professors who became disillusioned with the legal education system, which has gone through different stages in the last fifteen years, from state to private to a mixed model.
  (In the battle for law school survival, many changes have been made to the way the law school is run and the new requirements for teachers and students are usually settled without considering the value of reforms. The latest reforms related to the Bologna process are looked on in the same way as previous reforms, ones that will "come and go, but we will do business as usual.")
- Finally, law professors who tried participatory and interactive teaching methods, but found no audience due to lack of interest from the students. Students who pay tuition to a private or mixed (private and state) university and who care to get the value for the money they pay to study might be more responsive. (Regretfully this is not the case in Moldova. Because of the reliance of law schools on student tuition, schools do not enforce sanctions on students who do not meet expectations. Failure to demand adherence to academic standards has led to a dramatic decrease in the appreciation of the school by the students and their willingness to take law school seriously. With

[11] Currently, two types of classes are used for teaching each discipline: lectures, where the professor (who must have a doctoral degree) usually reads or explains the topic to an audience of 30 to 100 people; and seminars, in which professors are meant to explain the topics taught during the lecture. Seminars are expected to apply mainly interactive methods. However, in most cases so far, they have been limited to asking questions and having students supply the answer.

[12] The term used here refers to any legal professional, not only the strict term of "lawyer" or "attorney" (in Romanian, a lawyer is an advocate, or legal professional who represent the client in court, while the generic term for anyone with a law degree is "jurist").

an inert student body, it is very difficult to be a good professor. However times are changing, and more people understand that a diploma without knowledge and skills is not sufficient. Such students are rarer than we would like, but they exist, and should be targeted by law schools, rather than a singular focus on students who are able to pay for their studies. Law schools will have students and survive only if they are providing the best study environment for their students. The quality of law school graduates are the best evidence of a school's success. First, the university management and then law professors need to understand this and try to perform accordingly.)

To foster the creation of a new law professor, it is important for law school management and a critical mass of new model law professors to build a consensus among the teaching staff about the goals of the legal education they provide and to work with each professor to show ways of achieving these goals in their teaching.

A difficult obstacle in developing a new model of law professor in Moldova is the attitude of older and more experienced professors toward new and progressive techniques implemented by younger colleagues, and the general resistance to learn anything new by such professors. The collaboration between generations in this field doesn't work very well, as youth are considered simply as new people in the profession, and are not encouraged to develop a more effective teaching methodology or to have a fresh view on so-called traditional ways of teaching. Respect for older generations and a presumption that the older generations know better is deeply embedded in Moldovan society, with repercussions on the law professors as well. In this sense, we should welcome a professional selection of academics who are able to cover current educational needs and thus assure the quality of legal education.

Finally, along with changing attitudes, law professors need training in how to foster goals that have been set. Again, law professor resistance is an obstacle. The need for continuous professional development is not generally acknowledged and appreciated, but rather often dismissed as a new invention of the West. Unfortunately, many training sessions in Moldova are of such poor quality that the concept is discredited. Many previous training activities were targeted at other legal professionals, e.g., judges, police, prosecutors, lawyers, bailiffs, notaries, etc. Few, however, were focused on law school professors, who overnight were expected to become new professors and trainers, without proper education for those roles.

3. How to foster the creation of the new professor: The role of evaluation

Evaluation is one of the main tools for change, but to be effective, it needs to be tailored to the goals of the education process. Referring to a law professor's role as fostering critical thinking and educating law students about values, evaluation should assess, first, the teaching performance of the law professor – how she achieves the stated goals through teaching and interaction with the student – and, second, the law professor's own critical thinking and commitment to social justice. One cannot be a good teacher unless one is practicing what one is teaching; otherwise, the process is transformed into preaching rather than teaching. These capacities could be evaluated based on the research skills and social engagement of the law professor.

Evaluation should also assess more general characteristics of the law professor, such as academic integrity in the teaching and learning processes, including the following:[13]

1. "Values and standards of academic integrity provide the foundation for knowledge development, quality teaching and the training of students as responsible citizens and professionals. The academic community must be committed to the promotion of such academic integrity and strive actively for its embodiment in the everyday institutional life of its members." (Section 2.1)
2. "The quest for honesty should start with oneself and be extended to all other members of the academic community, avoiding systematically any form of cheating, lying, fraud, theft or other dishonest behaviors which affect negatively the quality status of academic degrees." (Section 2.3)
3. "The trust that is mutually shared by all members of an academic community is the backbone of that climate of work that fosters the free exchange of ideas, creativity and individual development." (Section 2.4)
4. "Ensuring fairness in teaching, student assessment, research, staff promotion and any activity related to the awards of degrees should be based on legitimate, transparent, equitable, predictable, consistent and objective criteria." (Section 2.5)
5. "A free exchange of ideas and the freedom of expression are based on the mutual respect that is shared by all members of the academic community, regardless of their position in the hierarchy of learning and research. Without such exchange, academic and scientific creativity is reduced." (Section 2.6)

The first step for establishing an evaluation system is the elaboration of evaluation criteria that can reflect all aspects of academics' work. These are the basic criteria to be considered in the evaluation of academic staff:

- didactic activity;
- research activity;
- scientific contribution, and
- professional prestige.

An effective evaluation system should meet the following criteria:

1. **Scientific**: the evaluation index system must be built on a scientific and rational basis. It should follow the special rules of a teacher's work, and reflect the main contents of a teacher's achievements and interrelationships. Moreover, attention should be paid to optimize the whole system.
2. **Measurable**: the index system should be quantitative, if possible. Each index has an exact definition of the standards for quantitative measurement.
3. **Objective**: the index system should reflect the teaching and research achievement situations of teachers as objectively as possible in order to reduce any manmade negative impact.

[13] The Bucharest Declaration on Ethical Values and Principles of Higher Education in the Europe Region, adopted at the International Conference on Ethical and Moral Dimensions for Higher Education and Science in Europe, Bucharest, Romania, September 2–5, 2004. http://www.cepes.ro/information_services/sources/on_line/Bucharest.pdf

4. Easy to administer: the index system should be simple and easy to use.[14]

The evaluation criteria should be based on principles stated in the treaties that the law school has entered. For example, the State University of Moldova has signed the Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education (1988), the Magna Carta of European Universities (Bologna, 1988), and acceded to the International Association of Universities and the Declaration of Bologna (1999). The university has also prepared a draft Code of Ethics for the teaching staff and the students that should be taken into account when developing the evaluation.

Teaching-performance skills should be evaluated through a combination of methods, such as observation (by more experienced professors and/or peers), followed by feedback (by assessing the performance of the students at the exam, which should be done by peers rather than by the same professor who gave the exam), peer performances, publications, etc. The final evaluation should consist of a series of indicators taken from all these possible evaluators if the evaluation is to be considered complete and useful.

While the other methods may be more or less acceptable to most of the teaching staff, the performance of students as an indicator of law professors' teaching performance and evaluation by the students are debated methods.

Students' evaluation is currently not significant in the evaluation of the teachers and cannot be considered determinative, as it does not affect the employment process of the teaching staff nor the employment policy of the university.

The students' perspectives on the professor's performance should have an important role in the evaluation of academics, bringing useful reflections about the teaching methods used, the knowledge and professionalism of the teacher, and the usefulness of the course itself. Students should be considered important actors in the evaluation process as they are the consumers of the academic product, and they are able to appreciate the attitude and abilities of the teachers and – why not? – their professionalism. However, students' opinions are not always objective, and thus student assessment should be only one indicator – not the only method of evaluation applied.

Students' appreciation is not currently taken into account in the teaching process in Moldova because of some preconceptions and old traditions regarding students' role in the teaching-learning process. Moreover, students' opinions regarding teaching methodology, course curriculum, and the abilities of the teacher are not taken into consideration for the improvement of the system. Even if some surveys are performed inside the institution, the results do not affect the teacher or decisions regarding the university curriculum. At the same time, the fact that such surveys have started to be implemented in the education system, that students are asked, at least, to express their opinion, and that the results are discussed at the faculty meetings is an indication that some progress has been made.

For the evaluation to have any meaningful impact on a law professor's performance, it should have clear goals and be followed up. The goal is not to downgrade or check the professor, but rather help her to provide the best for students and improve her weak points.

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[14] Jian-Hua Zhao and Xiao-Hua Li, "Investigation on Comprehensive Evaluation of University Teachers' Achievements" (proceedings of the Fifth International Conference on Machine Learning and Cybernetics, Dalian, China, August 13–16, 2006), http://ieeexplore.ieee.org/iel5/4028021/4028022/04028342.pdf?tp=&isnumber=4028022&arnumber=4028342

The follow-up should consist of some concrete activities, such as recommendations and/or help when possible (e.g., for taking certain skills-development courses). The results of an evaluation should be taken into account when awarding the academic degree of the law professor.[15]

Evaluation of law professors' research skills is done through a separate system of awarding scientific degrees (under the responsibility of a special committee). Although debatable, we think evaluating teaching performance could include some questions to be filled in by the evaluator (be it the evaluation of a peer, a student, or another evaluator) about the research skills of the law professor. Such evaluation could give important feedback to the professor about the usefulness of her research (articles, reports, research papers, etc).

We feel compelled to note here, that legal research skills in general in Moldova are weak, regretfully including among law professors. While purely theoretical research can be found, applied legal research is almost completely missing. Scientific degrees are awarded on a very formalistic basis, without proper analysis of the content and use of the produced papers. Legal research is mainly limited to desk-review methods with rare use of other methods. To change this, before elaborating an evaluation process, we strongly urge starting with setting standards for research papers, at least for those claiming scientific degrees.

The ability and success of the law professor in promoting social responsibility is perhaps the most difficult to assess. To avoid unrealistic recommendations, we think that obligations regarding one's social responsibility should be left to the discretion of the law professor and the student.

Finally, the law professor and student evaluations will have little impact if the law school does not institute an evaluation process to assess whether their institutional practices, taken together, have achieved the stated goals. The law school management could do this evaluation or it could be outsourced to a private, specialized company. The evaluation could consist of feedback from the teaching staff and feedback from students on whether the curriculum followed produced graduates who possess the skills, knowledge, and values promoted. By ensuring that graduates attain the desired educational outcomes, law schools fulfill their missions.[16] Law school evaluation should also include feedback from teaching staff and students to the management about the administration of the school.

Currently, the reforms undertaken in the legal education system of Moldova have introduced a specialized committee (Commission for Quality Assurance) at faculty and university levels that controls not only the teaching process itself, but teachers' performances. We hope this committee will set up a manageable and useful evaluation

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[15] The difference between a scientific and didactic degree lies in the different qualities and procedures through which they are awarded. The scientific degree is awarded after completing a certain study and writing a thesis, (e.g. master's and PhD degrees) or writing a thesis (e.g., *Dr. Habilitat* – there is no English equivalent; it is the highest degree that implies a thesis, but of a more complex value and nature than a PhD). The academic degree is awarded according to the number of years that the person has worked in the academic field, and consists of the following degrees: lecturer, senior lecturer, *Dr. Conferntiar* (a level above senior lecturer), and university professor. Both degrees require a certain number of publications of a certain standard to be produced by the candidates.

[16] Stuckey, *Best Practices*, 68.

system in Moldova. The Committee for Quality Assurance also contains a liaison between the management structures at an institutional level and education activities on the faculty level. Traditionally, this committee has been involved in the elaboration of teaching materials (curricula, methodology guides, handbooks, and scientific work), their evaluation, and methodological advice. The employment of teaching staff is also a prerogative of this committee, as it has been involved in the evaluation of teaching and scientific abilities of the teaching staff.[17] However, this committee does not have as its main purpose the evaluation of teachers' research performances. The main role of this committee is to assure an effective teaching process and to implement the reforms belonging to modernization of the teaching methodology and achievement of learning outcomes.

4. How to foster a new law professor: Connecting legal education to legal practice

Currently, law practice does not have much influence on the law school curriculum. We believe, however, that the relationship between practice and curriculum should be enhanced. Students currently must participate in particular internships, but these internships are poorly managed. When students are accepted for internships, they often miss class to attend, which affects the teaching and learning process. Finally, no internship has any plan with clear goals and targets set out. This leaves the student at the total mercy of the person who accepted the student for the internship, and rarely results in a useful experience for the student. As for law clinics, they have not yet been incorporated into the curriculum.

Conclusion

The time is ripe for a new law professor in Moldova, given the objective changes in the legal environment, the accession to the Bologna process, and the desire for Moldovan society to integrate with Europe. Without an overhaul of the legal education system that would change the focus from knowledge-building based on memorizing to the development of critical thinking in law students, we do not have much hope of Moldovan degrees being recognized outside the country, and therefore risk students losing the opportunity to be accepted for demanding legal jobs.

The new law professor should foster critical thinking as well as develop social responsibility in law students. In promoting these capacities, we also ensure a future for our legal system.

To implement the new model of law professor, changes in attitude are needed at the personal and policy levels. Remuneration must increase, a system of effective evaluation for teaching and resulting student performance must be instituted, and the law school's program must be connected to the needs of legal practice.

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[17] Elena Muraru, Managementul calitatii USM (in possession of the author).

Irma Gelashvili, Nino Rukhadze[1]

Chapter 10: Some Aspects of Academic Legal Careers in Georgia

Introduction

The Georgian system of higher education was essentially reformed with the enactment of the Georgian Law on Higher Education (hereinafter, the Law on Higher Education) on December 12, 2004. The law in question covered all key aspects of university level education. At the time of the adoption of the Law on Higher Education, Georgia was not yet a participating country in the Bologna process.[2] Still, the drafters of the legal act took a very close look at the Bologna instruments and created a higher educational system that was to a considerable extent in compliance with the main requirements of those instruments.

There is a vast range of issues that have been addressed by the fundamental reforms derived from the Law on Higher Education. Without exaggerating, it can be asserted that these reforms have affected all departments of every institution of higher education in Georgia, though with varying degrees of intensity. One of the most reform-devoted universities has proved to be the Ivane Javakhishvili Tbilisi State University (TSU). Within the university itself, the Law Faculty has become a leader and promoter of reforms, setting an example for organized and in-depth reform for law schools countrywide. In fact, TSU has become a "center of excellence" in this regard.

The reform carried out by the TSU Law Faculty was a complex and far-reaching undertaking, focusing on the essential aspects of legal education. It encompassed a reorganization of degree programs, curriculum development, and the restructuring of academic positions. In this chapter, we will address four issues that have come about as a result of the reform: (a) the impact on academic freedom and competitiveness; (b) the flaws of the hiring committees; (c) the impact of exclusive employment agreements on practical education; and (d) problems regarding current rules for salaries.

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[2] Georgia joined the Bologna process in May 2005.

1. The impact of legal education reform on academic freedom and competitiveness

The most painful and difficult phase within the reform process was the announcement of a competition for newly created academic positions, which was held for the first time after the adoption of the Law on Higher Education in the summer of 2005. The vacancies were announced for the academic positions of full professors, associate professors, and assistant professors, as the Law on Higher Education contains an exhaustive list of categories of professors. As a result of the competition, the old system of organizing academic personnel was completely dismissed and replaced by the new format. The main differences between the old and new systems of an academic legal career can be expressed in two concepts: academic freedom and a high degree of competition.

Previously, all teaching faculty members (i.e., professors, docents, and teachers) were members of the so-called "faculty Chair" operating in a particular field of legal studies. The faculty Chairs dictated the content and format of courses, which were taught by its members. In addition to faculty Chairs, scientific institutes and laboratories were also in operation. Research activities of the university academic staff were basically carried out in institutes and research laboratories funded by the government. Salaries were paid in accordance with the actual work conducted by each faculty member for those institutes. While research laboratories carried out large-scale research in exact sciences, they focused on specific fields of humanitarian and exact sciences. Institutes and laboratories differed from Chairs, because the former gave more emphasis to research activities and the latter to teaching.[3] Although it was necessary for faculty members to be part of a Chair, they were not required to conduct research activities within the laboratories and institutes. Laboratories had their own research focuses and research plans. The individual research activities of the faculty were restricted, to some extent, to the work with the laboratories. If the research purposes of a faculty member did not concur with the line of research adopted in a laboratory, he or she could not work in the laboratory, nor be paid for his or her individual research activities. It was only the laboratory that was capable of submitting proposals or projects for scholarship fellowships, and it was only the head of laboratory who could be the manager of these projects. Faculty members were not allowed to submit fellowship proposals or projects individually, and they were not allowed to become managers of their own research initiative.

> Today, academic freedom, which implies "the right of academic personnel […] to carry out research [and] teaching […] activities independently," is guaranteed and enforced under the law. Therefore, the faculty member is the one who decides the content and format, the teaching methodology, etc., of the courses on offer. Moreover, the grant system established as a result of the reform enables faculty members to design individual or joint projects, and get financial support for their implementation

[3] Research activities of the personnel engaged in the Chairs were confined to annual research reports. The members of the Chairs, on their own initiative or under the assignment of the head of the Chair, selected the research topic on which they would usually work throughout the whole year or years. At the end of the year, Chair members presented reports on the outcomes of their research. The annual reports were published and passed to the university archives.

from either private or governmental funds. Government funding is carried out mainly by two foundations: the Rustaveli Foundation and the Georgian National Science Foundation.[4]

The second essential feature of the newly established system is a highly competitive environment among those who wish to pursue an academic career. First of all, it should be mentioned that in the pre-reform period, scholarship activities were not mandatory for faculty. Their main responsibility was teaching. As a result, the faculty might have been staffed with teachers (the lowest rank of instructor) who had thirty years of seniority in their position, but had produced only one or two scientific papers. That had a negative effect on teaching quality. Today, scholarship and teaching are integrated in institutions of higher education; therefore, academic personnel are valued not only for their teaching abilities, but also for their scholarship contributions. The research activities are one of the weightiest considerations in the hiring process. The hiring process takes place once every three years for full and associate professors, and once every two years for assistant professors. Article 34 of the Law on Higher Education prescribes that for the recruitment of academic personnel, there should be an "[…] open competition based on the principles of transparent, equal, and fair competition." The exact procedure for faculty hiring is not prescribed by the Law and is left to the discretion of law schools.[5] Although the faculty hiring process is far from perfect, there are still some aspects of the hiring process that can be deemed acceptable and successful.

During the intense process of reformation, many minor issues were not given due consideration, which is understandable: when dealing with the vast amount of work involved in the reform, it is unrealistic to scrupulously and deliberately weigh all the pros and cons of endeavors undertaken. Therefore mistakes were inevitable. However, the period of drastic change has come to an end. Now it is time for correction, improvement, and perfection.

As might be expected, the competition for filling vacancies regarding academic positions was the most heavily criticized part of the reform carried out at the TSU Law School. The competition raised doubts about its fairness and success.[6] The second round of competitions proved that the existing model for faculty recruitment has some deficiencies and that it would be wise to consider modifications to it.[7]

This chapter does not make an overall assessment of the hiring policies and its format. Rather, it addresses the particular issue of staffing a hiring committee for the TSU Law Faculty and identifies problems that exist in this regard. The reader should not expect to find solutions here. This chapter simply highlights current pressing and problematic issues related to faculty recruitment that have already surfaced and need to be addressed.

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[4] The Rustaveli Foundation, see http://www.rustaveli.org.ge/?lang=eng; the Georgian National Science Foundation, see http://www.eng.gnsf.ge/

[5] In the case of TSU, the hiring process is prescribed by Resolution # 91 of the Academic Council of the TSU (August 25, 2008). The Georgian text of the Resolution is available online at http://www.tsu.ge/news/acadc/dad91.asp

[6] American Bar Association and Central European and Eurasian Initiative, *Georgian Legal Education Assessment, Final Report* (Washington DC: American Bar Association and Central European and Eurasian Law Initiative, 2005), see http://www.abanet.org/rol/publications/georgia-legal-education-assessment-2005--eng.pdf

[7] The second round of competition for assistant professors was held in the summer of 2007; for full and associate professors it was held in the summer of 2008.

2. Flaws of the hiring committees

For each new round of competition, new members of the hiring committee will be appointed. As a rule, members of the hiring committee are high-ranking officials from the Ministry of Justice, Office of the Public Prosecutor, Parliament, and predominantly from the court system.

As mentioned above, recruitment of assistant professors takes place once every two years, and once every three years for associate and full professors. Candidates for the academic position of assistant professor have to undergo a two-stage selection process; full and associate professors undergo only one. During the first stage, those applying for an assistant professorship must submit an application in which the three fields of specialization desired are to be specified, as well as provide a résumé and a recommendation from a full or an associate professor. Candidates who advance to the second stage are interviewed by the commission. The propriety of the existing hiring process of assistant professors is dubious. The primary responsibilities of assistant professors are guiding student workshops and seminars, reviewing student writing, and conducting research for full and associate professors. The main job of assistant professors is to assist full and associate professors. Thus, it seems that such professors should be deemed to be the most competent and authoritative figures in determining the suitability of an applicant to job requirements. However, the current hiring procedure allows for the reconsideration of a professor's opinion by the members of the hiring committee, whose qualifications in terms of teaching experience and scholarship activities are undoubtedly less impressive than those persons whose decisions are being reviewed, and even rejected, by the committee.

The second problem with the hiring committee is that it is mainly composed of judges from the appellate courts and the Supreme Court. The most recent hiring committee formed for the purpose of conducting a competition for the academic positions of full and associate professors was chaired by the head of the Supreme Court of Georgia. In compliance with the Georgian Administrative Code, an administrative act can be appealed to a higher administrative body or to a court in case there is no appropriate administrative body. If the ruling of the committee is an administrative act, and the committee is not reportable to any higher body, the ruling of the committee has to be appealed in court. However, it is nonsensical to say that the decision of a body comprised of members of the Appellate and Supreme Courts and chaired by the presiding judge of the Supreme Court should be appealed to a first-instance court. If such a court were to annul the hiring committee's decision, the appeal of the court ruling would go to the Court of Appeals, or the Supreme Court, to be heard by judges when they, or their fellow judges, were the original decision makers. Hence, it seems likely the original decision would be enforced.

An additional issue for academic legal careers, discussed within this chapter, is part of a broader question: How valued should practical instruction be? Attracting practicing lawyers to academia and developing clinical legal education are the best means for achieving practical legal instruction. The existing practice of drawing up exclusive contracts, as well as dictating the faculty teaching load, may become major obstacles to launching legal education into practice, something we will address below.

3. The impact of the annex to the employment agreement on practical education

The annex to the employment agreement was a rather interesting new twist introduced at the Department of Law at the TSU. As the annex to the employment agreement entered into force, its implementation became mandatory for all persons holding academic positions. The annex was first applied to the hiring of full, associate, and assistant professors. After the 2008 summer competition, the employment agreements with full and associate professors were changed. We will discuss the changes that resulted from the implementation of new employment agreements below. (At present, the annex is still only valid for assistant professors.)

The annex to the employment agreement encumbers the establishment of a legal clinic faculty, the latter being very important for setting up and developing quality clinical programs. The specific characteristics of a clinical program's arrangement and functioning require the availability of a nucleus of academic staff that will concentrate on working solely in legal clinics. However, while the annex encompasses the establishment of a legal clinic faculty, it requires the faculty to work so many hours in other tasks that it becomes impossible for any assistant professor to work at a clinic. According to the annex to the employment agreement, the assistant professor is obligated to complete an 880-hour workload per semester, comprising 15 weeks. The annex provides a list of tasks: lecture preparation; developing written tests; correcting papers written under supervision; essay correction; correcting doctoral students' papers; consultations; preparing a new academic course; supervising master's degree candidates; supervising doctoral students; making translations; reviewing publications; developing textbooks; publishing articles; developing grant projects; organizing conferences on behalf of the university; secretarial work within the professorial Chair; tutorials; having membership on the university or the faculty committee; and performing permanent administrative functions.

Component	Hours[8]	Limitations
Giving a lecture/Seminar	1	Minimum 30 (60) hours
Preparing for a lecture	1	1 hour per academic hour
Developing written exams	4	
Correcting a paper done under supervision	0.25	
Correcting an essay	1	
Correcting the seminar work of a doctoral degree candidate	8	
Tutorial	1	Maximum 120 hours
Preparing for a new course	100	
Supervising a master's degree candidate	80	4 hours per week for 20 weeks with an annual limit of 400 hours
Supervising a doctoral degree candidate	160	4 hours per week for 40 weeks with an annual limit of 480 hours
Evaluating an academic thesis	90	

[8] This column refers to the number of hours allocated to each type of activity. For example, conducting one lecture will count as one hour toward the required 880 hours that need to be completed.

Component	Hours	Limitations
Translating	24–400	According to the number of pages
Publications	80	
Editing university publications	24	
Reviewing publications	24	
Developing teaching materials	1,000	Once every three years, in the case of publication at the TSU press
Publishing an article	1,200	Once every three years, in the case of publication at the TSU press
Preparing and editing translated teaching materials, or a monograph for publication	1,200	Once every three years, in the case of publication at the TSU press
Developing a grant project	80	
Implementing the university research project	330–660	15 hours per week
Arranging scientific conferences on behalf of TSU	30	
Preparing a presentation for a conference on behalf of TSU	40	
Supervising a clinic	150/300	12 hours per week for the lecture period
Tutorials	150/300	10 hours per week for the lecture period
Secretarial work for the respective professor	440/880	20 hours per week
Membership on the University or Faculty commissions (boards)	60/120	4 hours per week
Permanent administrative duties	440/880	20 hours per week

Despite the list being rather long, which ensures a wide selection, assistant professors encounter rather large problems as well. On the one hand, this is a step forward. The activities become more interesting and comprehensive, as they encourage the faculty to always be available for academic activities and to improve their skills. On the other hand, an inadequate number of hours are allocated and prescribed for each of the abovementioned components. To be more precise, if an assistant professor dedicates, for instance, 12 hours to seminars per week, develops 10 written exams, and corrects approximately 400 papers per semester, he or she will still not be able to fulfill the workload of 880 hours per semester, much less work at a clinic. Besides this, assistant professors are required to conduct eight hours of classroom teaching per week.[9] Because of this, assistant professors aspiring to pursue a clinical track will neither be able to work all the 880 hours required by the annex nor to complete the eight hours of classroom instruction and, therefore, will end up violating contracts signed with the university. In sum, under the new rules, assistant professors have no motivation to get involved in the activities of legal clinics. This lack of motivation is especially problematic, as assistant professors, the youngest employees of academia, are usually the ones who show the most intense interest and willingness to inculcate and develop innovative programs. In order to encourage the creation of clinical staff in academia, the conditions of the annex should be revised and adjusted.

[9] See Resolution #122 of the Academic Council of the TSU (September 8, 2008). The Georgian text of the Resolution is available online at http://www.tsu.ge/news/acadc/d122_08.asp

There are some additional problems with the annex of the employment contract regarding the secretarial work within the professorial Chair, the tutorials, and the assuming of a permanent administrative function by the professor. When a faculty member assumes such administrative positions, 440 hours should be spent on presenting at the professorial Chair, answering students' questions, and also providing consultations. The latter task requires spending at least four hours in the educational institution during the day. It is also noteworthy that performance of a permanent administrative function, which is noted in the job description of the position of head or specialist in a certain area, is a paid position, and that compensation exceeds the salary of assistant professors.

An additional issue is that, according to the requirements of the Law on Higher Education, a doctor or a doctoral student may be elected an assistant professor. A doctoral student must be focused on writing and defending a doctoral paper, which is a priority issue for the development of scientific research, and, generally, for the improvement of a law school. Unfortunately, the doctoral paper is often delayed because of lack of time, as assistant professors need to fulfill the requirements of the annex to the employment agreement.

4. Problems regarding current rules for salaries

As a result of the competition, 40 percent of former faculty members were dismissed from their positions. The second round of job cuts was announced during the competition for positions of full and associate professors, held for the second time in the summer of 2008. Their number went from 45 to 30. Job cuts were justified by a threefold increase in salaries. Today, the monthly salary of a full professor is GEL 3,000 (approximately US$ 2,100); the salary of associate professors comes to GEL 2,500 (approximately US$ 1,800).[10] However, this concerns only those full and associate professors who have signed the so-called category-A employment agreement (or exclusive employment agreement).

Besides the massive dismissal, another problem should be highlighted: the payment of different salaries for similar work. Employment agreements in three categories have been introduced under Resolution #135 of the Academic Council of the TSU (as of September 13, 2008), which determines the salaries for full and associate law professors: A, B, and C contracts.[11] Category-A contracts are designed for full professors who carry out eight hours of classroom teaching and eight hours of consultancy work each week, as well as for associate professors who comply with the contract requirements concerning the full teaching load (including the mandatory ten hours of classroom teaching and ten hours consultancy work). Faculty members who sign the category-A contracts are barred from working elsewhere; this is the so-called exclusive contract. Category-B contracts are designed for faculty members who have already reached the age of 62 by the time of being elected into an academic position, and who will in the near future be granted the

[10] It is said that the salary of assistant professors will increase after the third competition, which will take place in the summer of 2009. From experience, it can be asserted that job cuts among assistant professors are likely to occur.

[11] The Georgian text of Resolution # 135 of the Academic Council of the TSU (September 23, 2008) can be viewed at the TSU web page: http://www.tsu.ge/news/acadc/d135_08.asp.

title of Professor Emeritus. They are also required to perform the minimum workload spelled out in Resolution #122 of the TSU Academic Council (as of September 8, 2008), which sets monthly salaries at GEL 900 for full professors, and GEL 720 for associate professors.[12] Category-C contracts are designed for faculty members who have their salary determined by the actual time spent in the classroom. Faculty members who have signed category-B and category-C contracts are allowed to be engaged in legal practice. However, faculty members who carry out their teaching load under category-A contracts, but have parallel work outside the university, receive a much lower salary than those who only hold an academic position. As a result, salaries within the academic faculty may differ significantly, depending on whether a specific person has signed the exclusive contract or not. The possibility of having professors receiving different salaries is a new twist that has been actively disputed, since the vast majority of the newly elected faculty members are practicing lawyers, employed by law firms and government agencies.

The "exclusive contract" has its advantages and disadvantages. The advantage is that this contract is directed at fully occupying academic staff and directing their energy and efforts toward the academic process, which aims at improving the quality of education. The disadvantage is that the introduction of the exclusive contract carries the risk of decreasing the role of practicing lawyers in legal education. Practicing lawyers can make unparalleled contributions to the students' educational experience, because law is much more than a simple unity of legal norms, regulating relations between individuals and legal entities; it is also about putting these norms into practice. Therefore, it is impossible to have both a perfect knowledge of the law and to teach a subject in which you have not had any practical experience. This disparity between the theoretical and the practical is particularly obvious with those who hold the academic position of assistant professor and conduct working meetings and seminars with students, where very often practical questions arise; the resolution of such questions requires practical experience.

Before the different categories of employment contracts came into force, bonuses in amounts of 40 percent, 70 percent, and 100 percent were determined for the academic staff, according to the criteria defined by the Decision of the Academic Council of the Department of Law (DACDL). Now the DACDL is valid only for assistant professors. The bonuses were introduced for full and associate professors for one semester (after the introduction of the A, B, and C categories of employment agreement in 2008, the bonuses were abolished for the latter categories of professors). The bonuses for assistant professors were operative until at least the end of 2008. However, the DACDL also had some flaws, such as the basic requirement that anyone who had not published an article

[12] According to Resolution #122 of the TSU Academic Council (September 8, 2008), the full professors should complete at least a four-hour teaching workload per week; associate professors, six hours; and assistant professors, eight hours. The Georgian text of the Resolution is available online at: http://www.tsu.ge/news/acadc/d122_08.asp. It should be noted that category-B contracts have been received with varied degrees of support, as the experienced, honorable, and highly reputed faculty members will be granted in the near future the title of Professor Emeritus, and will receive a salary three times lower than faculty members who have signed the category-A contracts. The reason for such a difference in compensation is explained by the fact that the state pension is quite low, and according to Article 34 of the Law on Higher Education of Georgia, "the difference between the salary that Emeritus professors received before the conferral of that title and the state pension shall be covered by the higher education institution." Therefore, the higher the remuneration of emeritus professors, the higher the difference to be covered by the higher education institution.

in the last three years could get only a 40 percent bonus. More specifically, professors who had performed considerable academic work, including the publication of articles over many years, could not receive any salary raise or would be restricted to a symbolic 40 percent bonus, if for any reason they were unable to publish an article in the most recent three years (for instance, because they were a judge in the Supreme Court). At the same time, a novice lawyer who had published one article, or the same article under different titles (even without a professor's review), in different journals would be given a full extra salary as a reward.

These rules regarding salaries were unfair and created an awkward situation in the eyes of both the faculty and students. They were not focused on in-depth scientific research or on the improvement of teaching. In this case, the priority was the number of articles, not their quality.

In general, it is recommended that one take into consideration the qualifications and merits of the scientist and/or the lawyer in each specific case when resolving the issue of salary raises and bonuses.

Finally, an exclusive contract may be considered the best form of motivation of academic staff in scientific and academic areas, with certain prerequisites, as well as a step forward in the improvement of legal education. However, an exclusive contract should not belittle the role of a practicing lawyer and ignore his/her potential contribution as a law teacher. Although high salaries dependent on exclusive agreements should be used to improve professors' academic performance, huge differences between salaries should be avoided, especially when a professor with other employment still performs his/her obligations in an excellent manner. Moreover, low salaries for people with other employment will increase the temptation to focus exclusively on one's activities as an attorney or a lawyer; that is, low salaries may cause an exodus of practitioners from law schools.

Conclusion

It is still premature to attempt exhaustive coverage of the reform of legal academic careers in Georgia; changes have just been implemented. However, discussions about problems and challenges faced in the reform are essential in order to identify hiring and promotion policies that will lead to further academic excellence.

APPENDIX

Public Interest
Law Institute

Uniwersytet Jagielloński
Wydział Prawa i Administracji

AGENDA

The Need for a New Law School

Michała Bobrzyńskiego Room, Jagiellonian University (ul. Jagiellońska 15)
Kraków, 19–21 June 2008

Thursday, June 19, 2008	
	Arrival of Participants in Krakow
18.30	***Reception and Welcoming Remarks*** Pod Różą Restaurant at 14 Florianska Street ***Fryderyk Zoll, Jagiellonian Unviersity, Krakow, Poland*** ***Ed Rekosh, Public Interest Law Institute (PILI), Budapest, Hungary***
Friday, June 20, 2008	
9.30–11.00	Session 1. The Goals for Legal Education
	Panelists: – Challenges to the Mass University Model of Legal Education ***Fryderyk Zoll, Jagiellonian University, Krakow, Poland*** – The Relative Significance of Legal Tradition to Legal Education Reform ***Diego Blázquez Martín, University of Carlos III, Madrid, Spain*** Moderator: ***Leah Wortham, The Catholic University of America, Washington, D.C., USA***
11.00–11.30	Coffee Break
11.30–13.00	Session 2. Governance of the Law School: Decision-Making and Quality Assurance
	Panelist: – School Governance in Armenia ***Arman Tatoyan, Yerevan State University, Yerevan, Armenia*** Discussants: ***Filip Wejman, Jagiellonian University, Krakow, Poland*** ***Michiel van de Kasteelen, Utrecht University, Utrecht, The Netherlands*** Moderator: ***Ed Rekosh, PILI, Budapest, Hungary***

13.00–14.30	***Lunch*** Kazimierza Wielkiego Room at the Jagiellonian University
14.30–16.30	Session 3. Optimal Academic Curricula and Teaching Methods Part 1. Teaching Methodologies
	Panelists: – What Are the Purposes of Interactive Teaching in the Law School of the 21st Century? *Arkady Gutnikov, St. Petersburg Institute of Law, named after Prince P.G. Oldenburgsky/Clinical Legal Education Foundation, St. Petersburg, Russia* – Judicial Practice Center: Connection Between Theory and Socially Responsible Professional Practice ***Marta Janina Skrodzka, University of Białystok, Białystok, Poland*** Discussant: ***Dmitry Shabelnikov, PILI, Moscow, Russia*** Moderator: ***Basia Namysłowska-Gabrysiak, University of Warsaw, Warsaw, Poland***
16.30–16.45	***Coffee Break***
16.45–17.45	Presenter: SIMPLE: Learning Through Simulations ***Michael Hughes, University of Strathclyde, Glasgow, Scotland*** Introduction by: ***Leah Wortham, The Catholic University of America, Washington, D.C., USA***
17.45–18.00	Reflections on the Day's Discussion ***Fryderyk Zoll, Jagiellonian University, Kraków, Poland***
Saturday, June 21, 2008	
9.30–12.00	Session 4. Optimal Academic Curricula and Teaching Methods Part 2. Structural Issues Related to Encouraging Innovative Methods
	Panelists: – A Better Education Depends on Us ***Ecaterina Erjiu, Chisinau State University/Moldova Ministry of Justice, Chisinau, Moldova*** – The Twofold Role of Legal Education ***Elena Croitor, Moldova State University, Chisinau, Moldova*** – Modern Methodology of Jurisprudence and Education ***Marina Nemytina, Legal Reform Project Center, Saratov, Russia*** – Introducing New Teaching Methods in Armenian Law Schools ***Davit Melkonyan, Yerevan State University, Yerevan, Armenia*** – The Principles of Higher Legal Education in the Kyrgyz Republic and the Peculiarities of Educational Process at the AUCA Law Department ***Elida Nogoibaeva, AUCA, Bishkek, Kyrgyzstan*** Moderator: ***Daniela Ikawa, PILI, New York, USA***

12.30–13.30	***Lunch*** Kazimierza Wielkiego Room at the Jagiellonian University
13.30–15.00	**Session 5. Optimal Academic Curricula and Teaching Methods** **Part 3. Legal Clinical Education**
	Panelists: – The Environmental Law Clinic: a New Experience in Legal Education in Spain ***Susana Borràs, Universitat Rovira i Virgili, Tarragona, Spain*** – The Mediation Clinic in Academic Curricula ***Rafal Golab, Wroclaw University, Wroclaw, Poland*** – Legal Clinic Education ***Lenara Mambetalieva, AUCA, Bishkek, Kyrgyzstan*** Discussant: ***Łukasz Bojarski, Helsinki Foundation for Human Rights, Poland*** Moderator: ***Lusine Hovhannisian, PILI, New York, USA***
15:00 – 15:30	Coffee Break
15:30 – 16:30	Session 6. Academic Careers in Law
	Panelists: – Advantages and Disadvantages of the Position of an Assistant Professor ***Irma Gelashvili, Tbilisi State University, Tbilisi, Georgia*** – Academic Careers in Law: Necessities and Perspectives ***Mihaela Vidaicu, Moldova State University, Chisinau, Moldova*** – Academic Careers in the Croatian Context: Current Situation, Problems, and Possible Solutions ***Dubravka Aksamovic, Law School, Osijek, Croatia*** Discussant: ***Małgorzata Z. Król, Unviersity of Łódź, Łódź, Poland*** Moderator: ***Ed Rekosh, PILI, Budapest, Hungary***
16:30 – 17:00	Concluding Remarks ***Leah Wortham, The Catholic University of America, Washington, D.C., USA*** ***Fryderyk Zoll, Jagiellonian University, Krakow, Poland***
18:00	**Farewell Dinner** Jarema Restaurant at 5 Matejki Street

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