

THE LAW SCHOOL OF THE FUTURE: A EUROPEAN PERSPECTIVE

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I. LAW AS AN OBJECT OF TRADITIONAL UNIVERSITY STUDY

- (1) (1) Law schools exist as university institutions on the basis of their pretence that law is a science. If law were not a science there would be no place for legal education at prestigious universities. Yet many colleagues in the area of physics, engineering and even business administration very much doubt that law is a science.
- (2) (2) In fact lawyers themselves contradict that statement, because they consider law as an art (*Ius est ars aequi et boni*) or a profession. In many legal systems of the world training as a lawyer did and does not take place at universities, but in courts and law offices. Indeed many of the night law schools at the turn of the century in the U.S. could hardly be described as university institutions. So what made law part of the university curriculum during more than a thousand years ?
- (3) (3) The idea that law is a subject for higher learning found its concrete expression in Europe approximately a thousand years ago, when the study of law was more or less systematically organized in the higher schools of Bologna. It should be noted immediately that the law that was studied there was a very specific type of law: it was codified law the application of which was based on the premise that general rules should be applied to individual cases by way of interpretation. Since interpretation and working with texts was also the core business of theology, philosophy and the study of ancient authors, it was quite natural that law became part of the university curriculum.
- (4) (4) There is also another much more pragmatic side to the law however: it is that of solving problems as they occur. It is the long apprenticeship of decision making and crafting solutions for very specific problems between contracting or conflicting parties. It is the face of the law as a profession, a craft or an art. That part of the law has never been very high on the agenda of European continental universities. But it was the way law developed in important legal systems such as the common law and the rules in territories under Chinese influence.
- (5) (5) The scholarly study of the law was solidified in continental Europe by the codification movement following the introduction of the Code Napoleon and exported to such countries as the former colonies of Belgium, France, Germany, the Netherlands, Portugal and Spain and Japan which equated codification with modernization. The countries of the British Commonwealth and China on the other hand continued their legal apprenticeship outside the universities.

- (6) (6) The national codification of the law also resulted in a fragmentation of the scholarly study of law. Whereas in the Middle Ages and the Renaissance the law of Rome and Byzantium was still largely the common object of study, national codes and later national legislation became the object of study. This also resulted in a study of law on the European continent where the knowledge of the rules and their interpretation became the prime objective of study.
- (7) (7) One last characteristic of this development of the legal curriculum at universities was that the university became the only place where one could study for obtaining the degrees that were necessary to exercise a recognized legal profession. Universities had the monopoly on this type of legal education. Education of paralegals is a rather recent phenomenon.
- (8) (8) All these influences resulted in a model of legal learning in continental European universities, that in spite of all the differences in rules, titles and schedules, had one striking and over-arching similarity: it was the study of closed national systems of statutory law. This model persisted generally until the cultural revolution of May 1968 and in many countries until thereafter.

II. THE BREAKDOWN OF THE TRADITIONAL MODEL OF LEGAL EDUCATION

- (9) (9) This traditional model of legal education in continental Europe broke down over the last third of the past century under the influence of several events, which operated as powerful agents of change:
- (a) (a) the foundation of the European Union, which established a new supra-national legal order in the Member States;
 - (b) (b) the process of decolonisation by which formerly dependent territories broke away from the old legal order, in particular in regions under the influence of Islam;
 - (c) (c) the process of globalization of the economy, which was accelerated by the fall of the Berlin wall and the implosion of communist state systems in Europe;
 - (d) (d) the accelerating process of technical innovation, which revolutionized day to day behavior in the production of goods and services, communication, personal relationships and leisure, thereby changing the whole factual substratum for legal problems;
 - (e) (e) the disintegration of traditional religious and value systems, which resulted in the disappearance of the ideological substratum, that was holding many of these rules together.
- (10) (10) Not all of these elements had a direct impact on legal education. Most of them in fact operated indirectly through changes in the legal rules and ensuing practices, which were the objects of study for law students.
- (11) (11) The foundation of the European Union had a pervasive influence on two counts: (a) it established a new supra-national legal order and (b) it resulted in a dramatic increase in the exchange of students and academics.

- (12) (12) The new legal order was developed in the Treaty of Rome, the resulting legislation and the case law of the European Court of Justice. It resulted into new subjects on the traditional law curriculum, an explosion of new post-graduate programs in European law, and above all into the new concept of a European *ius commune*, which was a new concept of law.
- (13) (13) The exchange of students and staff and staff resulted in a confrontation of different curricula, methods of teaching and grading, and a debate about the use of best methods and practices. Finally it resulted into a whole new framework for higher education in Europe for all university disciplines including law in the rather loosely formulated Sorbonne-Bologna declaration on European university education.
- (14) (14) The globalization movement has largely become a movement of liberalizing markets and abolishing protective legal structures. Since the implosion of communist state systems and the reform movement for a social market economy in China an enormous amount of legislative work has taken place. The main objective of all these legislative reforms has been to enable independent business enterprises to operate in a relatively free market under the rule of law. The legal professionals involved in all these activities have gained the understanding that the great diversity in legal systems is only appearance, and that the functioning of a legal system for business activities is determined by a few critical choices on the structure of such a system, which should be the subject political debate and decision making.
- (15) (15) The consequence of this understanding is that any lawyer who is aware of these critical structural choices can penetrate and assimilate any legal system in no time. It means that for teaching a certain discipline it is not necessary to explain all the rules, but only necessary to explain the essential problems in a given discipline, to indicate the critical choices and the basic alternative solutions. This has resulted in the establishment of generic or comparative courses which are not linked to any particular national legal system and in which national legal particularities are only of importance as an illustration of certain types of solutions.
- (16) (16) The technical revolution is a phenomenon with which legal education is more familiar. The traditional response to challenges from new social, economic or technical developments has been to develop new disciplines such as intellectual and industrial property law and environmental law. The new twist to the technical revolution today is its speed, and its depth. For centuries a cross or a signature has dominated the rules of conveyancing and the invoice was the document for payment. Now the ordinary citizen is faced with problems of electronic identification and electronic commerce. In the field of bio-medical experimentation there is literally an explosion of new legal issues due to technical innovations.
- (17) (17) Finally there is the disintegration of religious and value systems, which previously dominated the globe, first because the basic values of Western powers had been shaped by a common Christian heritage, and second because

no other power was economically or militarily capable of rebelling against their might. All that has changed. The notions of what a person is, what a family is, indeed of what a true and lasting human relationship is on which legal structures can be built has changed profoundly. This has resulted in deep disagreements on the questions of human rights, rights of women and minorities, legal rules on racism, rights for families and family members, problems of abortion, euthanasia, experimentation on human embryo's just to name a few. In many countries the discussions of these problems have resulted into bitter political strife, which apparently cannot be resolved by the classical democratic process of decision making. Generally speaking the great cultural and spiritual diversity, which has always existed, has fully come to power, as a result of decolonisation and disintegration of religious and moral authority. The result has been an explosion of moral convictions on which legal rules should be built, or indeed the conviction that law should not be built on the basis of any moral conviction at all.

III. THE AGENDA OF THE LAW SCHOOL OF THE FUTURE

- (18) (18) All the events mentioned above are determining the agenda of the law schools for the next century. However, how uncertain and fast-moving the world may seem to be, there will always be shrinking legal islands where simple rules solve simple legal questions for local needs. In the immediate future there still is a need for lawyers to solve rental disputes, to settle or plead divorce cases and to defend the customer in the local market. This may sound as a consolation to some law schools, but we should be aware that in a not too distant future this type of teaching will no longer justify the status of a law school as a university institution.
- (19) (19) In Europe in particular law schools will have to prepare their graduates to operate in all the different legal orders of the Union, without knowing of course the black letter contents of these different national systems. In a certain way European law schools will have to decide whether they follow the US model, producing lawyers that can practice anywhere in the Union. It means that more and more European law schools will have to reserve a substantial part of their curriculum to subjects and skills (including language skills) for a European curriculum. It may result in a situation where lawyers in this type of curriculum, may not study in their own language at their own national universities.
- (20) (20) What is true for Europe is true for the whole world, although on a reduced scale. There is one difference however. Whereas in Europe the main object of study will be the European legal order and the European *ius commune*, the object of study for world lawyers will be in disciplines with generic or comparative courses, without any specific reference to a specific national legal order. The course will be an exposé on the problems and critical choices, on the basic structure of these problems and some basic non-legal choices which lead to alternative solutions in a specific discipline such as company law, s... regulations, trade law or taxation. National law will be used as an illustration of the choices and the solutions. Materials for such courses will be used worldwide

and the courses will be taught in world languages, English, Spanish and possibly Chinese, while cases taken for different countries will illustrate the rules.

- (21) (21) On the technological issues the law schools will have to play a new role. Until now the standard reaction to new technological problems has been to provide a new subject in the curriculum. That solution will not be adequate for the future. Legal solutions for technical problems in the past have largely been decided by the legislator and to a lesser extent the courts. In the future this will not be sufficient. Because of the increasing complexity of the technical problems the legislator and the courts simply will not have the technical know how to solve these problems. It is here that the law schools of the future come in. They will need to reach out to other disciplines like engineering, medicine to work out new solutions. Traditionally in continental Europe technical knowledge of lawyers has been abysmally low. If law schools want to preserve university status they will have to address these questions and present alternative practical solutions to political decision-makers. This requires a new dialogue with other disciplines, which has been lost during decades of scientific specialisation.
- (22) (22) Another role is in for law schools in the debate about the ideological underpinnings of legal systems. Traditionally, universities in general and law schools in particular have been places of open intellectual debates. This should enable them to find new ways of reconciling new and old values and to bring the question about the moral foundations of legal rules closer to a resolution. The advantage of a law school is that it is not an arena for a political power struggle, like a parliament. The advantage of law schools is also that they can look abroad to other solutions and formulas. There is a huge work to be done by our colleagues in legal theory and philosophy of law. Besides the dialogue with other scientific disciplines, there is a need for a dialogue of values.
- (23) (23) Finally there is the role that law schools will have to play in designing new types of rules. The advent of the European Union has resulted in a new rule like a directive. Legal scholars have developed the theory of soft law. It is clear that in order to meet all these challenges legal scholars will have to develop various shades of new hard and soft law to organize human behavior in the future. The variety of values and cultures and the speed with which social and economic structures change, requires new legal techniques to guide and control human social behaviors.

- (24) (24) The impact of new technologies, changes in moral values and standards and new techniques for legal rules will emphasize the importance of new directions of interdisciplinary research. Law schools of the future will be judged on their capacity to make a new regional or world synthesis for a legal framework. It is clear that not all law schools will be able to meet this challenge.

IV. THE EDUCATIONAL METHODS OF THE LAW SCHOOL OF THE FUTURE

- (25) As to which methods of education the law school of the future will use, this question is easier to answer: most methods that already exist today, but in a different proportion. Classical lectures will be improved by new technical devices such as power point today, but will decrease in importance and volume. Seminars, papers, moot courts, case studies and discussion groups will increase and use more modern communication techniques. Courses, questions and discussions will be available on internet. Unlike the design of new legal rules, where law schools need to take the lead, law schools will follow the technical lead given by new developments in telecommunication for their teaching methods.

V. THE STUDENTS OF THE LAW SCHOOL OF THE FUTURE

- (26) Emphasis of legal education will shift from full time adolescent students, to permanent education for working adults. Obtaining a degree will not be important for these adults, who will be in for life long learning (LLL programme). They will have a basic degree up to one or two weeks a year every year of their professional life obtained at age twenty to twenty-five and from then on they will study and from time to time have a sabbatical year. Law schools should be prepared to meet these challenges and prepare curricula and staff for this type of teaching that is different from teaching full-time students without job experience.
- (27) A challenge for the law schools will be that they will have to defend the full-time adolescent student. Society will put pressure on the system to make students productive as early as possible and preferably have them study while they work. It is one of the great achievements of European university education to allow young people between 18 and 25 to do a full time study during which they can complete and balance their personality, their professional skills and their “Weltanschauung” in an ever changing world. Law schools should see to it that this “free study” or “σχολη” as the Greeks called it more than two thousand years ago would not perish in the next century.