

Development and Topical Questions of the Legal Education

I. Premises and goals of the research

The aim of this study is to research the problem of legal education within the education and law system. For a better understanding of the problems discussed, to the extent necessary, the dissertation has cast a glimpse into the issues of legal culture and development trends without providing the reader with a thorough analysis of these trends.

1. The main rationale of the dissertation is based on the easily understandable fact that in the literature of Hungarian legal studies there is a gap in the field of academic examination of legal education. This fact might not seem to be a well-based rationale as there are several fields which represent a gap in legal academic knowledge. On the other hand, considering the institutionalised legal education overseas and in the continent where traditionally the practical and academic spheres are separated, it can be realised that legal education has made a more significant effect on legal life than this could be assumed by relying on the references from the literature. It becomes obvious from the few available comprehensive resources that, as mentioned above, legal education has a key effect on the legal society, law and the law system. Such source can be a study by *Béla Pokol*, which study depicts the outstanding influence of German legal studies, or the legal history study of *György Bónis*, which study discusses the relationships of European legal education and legal practice through the lenses of continental legal professionals. In connection with the tutors of the law faculties in the USA *Pierre Schlag* has written that the academic definition of legal studies has functioned in two ways. In the first place, it has made it possible for law schools, which have a significant role in legal education, to be taken into account by universities, and in the second place, similarly to the positions of the German legal studies, to enable the American academic legal professionals to have a role in forming the legal syllabus. An important attribute of the legal education in the USA is that the inner perspective of the legal tutors is similar to the practical legal perspective i.e. to the perspective of the judge. As a consequence, the American legal tutors give the impression that they are not examining, but creating law. This fact in itself demonstrates the weight of legal education, and this importance is present not only in the North-American region, as the historical example of the “*doctors*” who used the law of universities all across Europe is well-known. It is also an undeniable fact that for legal professionals law faculties are the primal socialising contexts.
2. In a dissertation, it is essential to have aims and objectives and raising problems to solve are often more important than finding the final solution to those problems. Such a problem could be the several criticisms received by legal education during history, and it is likely that in the future legal education would continue to be addressed by such comments. One such critical approach in legal theory literature is the *legal realism* movement and to a lesser extent *sociological jurisprudence*. A latest critical approach includes the movement of critical legal studies. The aim of legal realism movement is to make an attempt to reform law by focusing on the relationships among law, politics, and society and to achieve an integration of law and social sciences. The movement of *critical legal studies* however considers legal education as political education. The study discusses these points and critiques in detail. Besides partial reforms, the theoretical realist criticism is still prevalent even outside the USA while the critical legal studies movement still considers legal education as a neutrally positioned and hidden political socialisation process. To disclose their political aims,

the movement allows explicit political views. The study goes on to examine some recent developments, which have led to a series of reforms and will probably initiate further changes. Some of these developments are the effects of the efforts to integrate and harmonise the advances in international economics, social and legal improvements. Other effects on these developments come from the various legal attempts for an interdisciplinary education while another group of effects are the result of the relationship between the legal responses to various social conflicts and the orientation of education. It may be required to adapt to these various changes in legal education however it must be acknowledged that it may be unnecessary to complete a structural and methodological change as the current legal education in Hungary, in Europe, or in the rest of the world is sufficient. In the thesis, all these issues have been examined in detail. Considering the above-mentioned facts, the present situation and the literature in connection with legal education, the following main problem areas can be identified:

- The alteration of the syllabus to make it more practical-centred or closer to social studies, and the reforms opposing this movement.
- The adaptation of legal education to the process of legal harmonisation or to be precise an approach of legal education systems, independently from legal processes, which is understood in relation to the acquisition of Hungary into the European Union.
- Relating to the second point, the problem of grouping and dividing the present education systems.
- The relationship among lawyers, legal education and the practical activities of legal tutors. The problem includes the effects and consequences on both lawyers and tutors, taking into account the effects of the changes in legal education on practice and the effects of the developments in practice on education.
- The question of the quality of the syllabus and the problems of socialising students for “thinking like a lawyer”.

II. Research methodology

A thesis cannot be complete without a reference to its research methodology. The given research methodology is very important because it can not only influence the results, but by producing counter-conclusions, the various methods can also determine the thesis. By relying on the literature, it is essential to form a cohesive argument and clash the various concepts.

1. To be able to include a broad range of ideas and concepts in the thesis, it was essential to rely not only on the method of one particular discipline, but to employ a complex interdisciplinary approach. The thesis could not focus on one particular methodology as the chosen topic initiates a wide range of disciplines such as: the teaching methodology of legal studies, education psychology research in the law faculties, the works of legal history, legal philosophy, philosophical history and immense volumes of legal sociology. Such complexity raised the problem of cognition and finding the appropriate methodology for the thesis. A clear and single method would allow understanding to flow into one direction, which would not support the approach of the topic. The most productive method has been the utilization of a complex methodology.

In this respect, it was possible to exploit only not theories, speculations and hypotheses, but to explain our conclusions with concrete facts from historical and social situations. By making use of law sociology and sociology, it was possible to examine the facts in a broader context, and to shed light on the deeper associations of the present legal education and society, legal society, and the changing cultural, legal cultural, aspects. Furthermore, it is also possible to find solutions to the upcoming problems. It is the intention of this study to employ the research methodology in a fruitful way, avoid unjustified free interdisciplinary associations and engage into empty theorising.

2. It must be noticed that the analysis presented in this theses cannot be the “one and only” description as in that case it would ignore the power and problems of narration, which are dealt with a separate legal theory discipline in the USA. It is possible to give an account of the same concrete event in various ways, and draw a variety of conclusions. In this respect, no matter how thorough the analysis of the narratives is, and how careful the investigation may be, the results can always be questioned. During the investigation therefore, to be able to be precise, it has been vital to clash the facts and the arguments of the sources.
3. Closely relating to the above-mentioned facts is the well-known problem for both theoretical and empirical researchers. A study can begin with a hypothesis, which is proposed by the researcher and argued for during the research. The result of the research might also be a hypothesis. On the other hand, it is possible to start the research by forming a basic problem, and then making attempts to gather information about that topic while deriving conclusions as the study progresses. These conclusions may vary during the investigation and alter the course of progress, or even change the field of the study completely. It can be stated that the latter way bears more risk to the researcher. To examine legal education, this study has settled on the “riskier way” for the following reasons:
 - By insisting on a presumption, the study might exclude such factors, and seemingly irrelevant issues, which might have a great influence on the problems proposed in the research.
 - Secondly, a presumption usually assumes a given research methodology and, as mentioned above, this would narrow the scope of research.
4. Finally, some words must be mentioned regarding the special questions that could come up during the examination of education institutes and systems because any study on lawyer training includes comments on the institutes and because legal education is always integrated into a broader educational environment. With education systems, individual education facilities are associated, which is a correct association even if not all of the facilities are members of the same system. In this respect, one can make use of the so called “exchange condition”. This term means that educational institutions have an interdependent relationship i.e. it is ensured that activities awarded with a formal certificate in one institution are equal with the activities in a similar institution. In this way the activities are exchangeable from one institute to the other. It can be realised that institutes within the same educational system hold similar features, fall into the same legal authority, and part of the same legal structure. The theory of “exchange condition” shows that to have relevant results in a study, it is unnecessary to examine each institute of a given system since the formal recognition proves that the activities are relevant for all the institutes. Another significant term to consider in connection with conveying legal knowledge is culture bearing unit, which term

derives from cultural anthropology. This term explains that the educational institutes in a given region can describe the cultural context of the instruction of a discipline as much as the data and features of another similar region in another society. This does not mean that there can be no minor differences, but it is probable that the outcomes of a study on a small scale would reveal the characteristics of the entire system.

III. The results of the research

The research on the development of legal education (paragraph 1.), the structure of legal instruction of the present time (paragraph 2.), the actual questions as the connection between the faculties and the sphere of praxis, lawyer's way of thinking and its instruction method (paragraph 3.), finally the affect the changes in the lawyers society and the instruction institutes (paragraph 4.), added the appearance of legal education in legal theories has presented the results of this dissertation.

1. The examinations show that the difference among the American, English and Continental legal educations go back to historical, medieval, roots. In contrast with the English situation where the legal instruction remained in the hands of the profession with a practical knowledge, the European legal instruction, first of all served the system of the governmental authority thus their legal education has been conformed to the authoritarian aim. In the United States, legal education has been connected to the economic life of the civil society, and the local legal knowledge has been adapted to this. Exception was the so called southern strategy that reflected on the preparation of gentlemen for an intellectual education needed by those who might become politicians, legislators, or statesmen. Being aware of the historical facts has made it possible the fully understand why the legal instruction systems in these three different legal cultures vary so much in method, knowledge, practical relevance, and practical expertise. The historical research of the Hungarian legal education has shown the special reasons that led to the conformation of the Hungarian instruction system to the European mainstream.

2. Reflecting on the structure of legal education in the first place, the paper has concentrated on the criteria to classify the legal instruction systems, and secondly the paper paid special attention to the dynamics of the different educational systems. Researches have shown that there are legal instruction systems based on *one legal tradition*, and there are systems that are grounded on *two or more legal cultures*. Besides these, there is the so called *transsystemic* legal teaching where students admit into a single civil and common law program. This research has led to the analysis of the various hypothesizes, theories and predictions, *instrumentalists* and *culturalists*, that reflect on the future development of legal instruction. Nevertheless, the paper has emphasised the differences of these theoretical views. The study has also shown that in instructed knowledge, teaching profile and diploma the legal education systems are coming closer to each other almost to the point of compatibility. From the end of the twentieth century, this process will continue into the 21st century.

3. Analysing the actual questions of legal education in the first place, the research has reflected on the empirical studies that provided a comprehensive framework for the backgrounds and characteristics of *those entering law teaching* in the present time. It has been clarified that in the law faculties the greatest effect on the relationship of praxis and academic sphere is tradition. In Hungary there is a moderate contact and discourse between these two spheres.

An attempt has been made to explain what it means "*thinking like a lawyer*" as the most important segment of the knowledge in legal education, and how this way of thinking can be obtained. When an attempt has been made to define what it means "thinking like a

lawyer”, the research has employed the theories of *Nancy B. Rapoport*, *Chatherine Valcke*, and *Bela Pokol*. He emphasizes that attention must be paid to the professional legal culture, and to the autonomy of the legal profession and law, while Rapoport explicates argumentative questions. For the questions of instruction method, the thesis is based on the theory of *Basil Bernstein*. The thesis has highlighted the integration and collection type of education and the necessity of *integration* of the various disciplines and classes in legal education.

Finally three practical problems have been discussed. First of all, a solution for the problem of the final examinations was put forward. The thesis suggested that after the examination for the various legal professions, assuring the possibility of professional mobilisation, a second examination would be necessary for the specific legal professionals. Secondly, for the applicability of legal knowledge it is recommended “to build a bridge” between the practical and theoretical instructions. As a third point, the thesis mentioned that because of the effects of legal harmonization in the European Union the role of law faculties in legal education will probably increase, and the faculties have to specialize in the different fields of knowledge.

4. The dissertation reflects on two challenges for the near future. As the first issue, the problems of the multidisciplinary practice are discussed saying that only the cooperation among lawyers and members of other professions, which cooperation has always existed, is to be allowed. The multidisciplinary practice however endangers such core values of the legal profession as independence, confidentiality, and the avoidance of conflicts of interest. As the second issue, the thesis proposed that to have an optimal quality in legal instruction strategy, there has to be a balance between the face to face and the electronic teaching methods.

5. In the appendix, the appearance of legal education in legal theories has been set forth reflecting on the *Law and Literature Movement*, the *Critical Legal Studies Movement*, and on the theories of *Csaba Varga*, *Imre Sarandi*, *Béla Pokol*, and *Richard Posner*. The “crit” scholars, and also scholars from some classes of the Law and Literature Movement argued that law is nothing more than politics in a different form. These scholars attempted to show that legal education is close to ideological education, but it is necessary to emphasize that when these thinkers regarded law as politics, they could not address the legal questions properly. In spite of that the Law and Literature Movements can enrich legal instruction. Finally, the thesis reflects on the critiques of Richard Posner and Béla Pokol emphasizing that the theoretical paradox of Posner emerged from his interdisciplinary point-of-view.

6. When considering the results of the research one of the most important questions is usefulness. Perhaps this dissertation would not be useful for the theoretical or practical disciplines, but it would be very useful for one important activity of the law faculties: teaching. The results of the dissertation will make it possible to improve the means of law teaching and enable an adequate adaptation to the different conditions in the changing world of legal society.

List of publications

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