The Role of Virtues in Legal Education

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Abstract

The author applies virtue theory (virtue epistemology and virtue ethics in particular) to the question of legal education and examines the prospects of a virtue-based discourse in this context. Following the Aristotelian distinction between intellectual and moral virtues, he argues that law schools need to equip students – besides appropriate skills and knowledge of legal regulations – with intellectual and moral virtues necessary for a socially productive legal practice. Identifying lawyerly virtues and exploring the ways they can be fostered in a university environment might be the first steps to change the exaggeratedly formalistic thinking that seems to characterize legal education and legal practice in the CEE region.

Key words

Legal education; virtue theory; intellectual virtues; moral virtues; CEE region

Resumen

El autor aplica la teoría de la virtud (epistemología y ética de la virtud, en particular) a la cuestión de la educación jurídica, y, en ese contexto, examina las perspectivas futuras de un discurso basado en la virtud. Siguiendo la distinción aristotélica entre virtudes intelectuales y morales, el autor argumenta que las escuelas de Derecho deberían educar, además de en las destrezas apropiadas y en el conocimiento de la ley, en las virtudes intelectuales y morales necesarias para un ejercicio del Derecho socialmente productivo. Los primeros pasos para cambiar el pensamiento exageradamente formalista que parece caracterizar la educación jurídica y la práctica de la profesión en la región de Europa central y oriental podrían ser la identificación de las virtudes del jurista y la reflexión sobre cómo aquéllas podrían ser fomentadas.

Palabras clave

Educación jurídica; teoría de la virtud; virtudes intelectuales; virtudes morales; Europa central y oriental

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1. Introduction

This paper aims to apply virtue theory to the question of legal education and explore the prospects that a virtue-based approach can offer in this context. Fostering character is a recurrent issue in educational theory; the basic idea is that the fruitful exercise of a profession does not only require knowledge of technical skills and competencies but also the possession of certain "virtuous" character traits (Cooke and Carr 2014, 91). From the perspective of legal education, three virtue-oriented disciplines seem to be relevant: virtue ethics, virtue epistemology and virtue jurisprudence. Although virtue ethics is rooted in ancient philosophy, its revival is a relatively new development in modern moral philosophy.[1] Rather than relying on abstract principles, proponents of this ethical trend believe that the best way to "preserve morality" is to develop moral character because a virtuous person will make right choices, even if there is no moral rule applicable to the ethical dilemma in question. Virtue epistemology emphasizes the role of intellectual virtues in the process of acquiring knowledge. In short, intellectual virtues are characteristics "which make for an excellent cognizer" and seem essential to the success of any kind of learning process (Greco and Turri 2015). Virtue jurisprudence, probably the most recent development in virtue theory, aims to identify judicial and lawyerly virtues, i.e. virtues that are relevant to the good practice of law.[2]

Two caveats must be made before examining the relation of virtues and legal education in more details. Firstly, virtues are generally associated with individual character; institutions and institutional problems of legal education are only passingly dealt with in this paper. Secondly, this paper does not aim to come up with a definitive list of lawyerly virtues or to explicate the exact content of virtues that are relevant to the practice or the education of law. My objectives are less ambitious, in the sense that I merely try to give an overview of the different categories of virtues and apply these categories to legal education. During this process, a set of virtues will emerge that are potentially relevant for law students and legal practitioners. Finally, I will examine how these character traits can be fostered in the course of legal education. Three potential *methods* will be discussed: modeling, practice and direct instruction of virtues.

2. Virtues in the context of legal education

Aristotle differentiates between moral and intellectual virtues. Moral virtues (e.g. friendliness, modesty, temperance, courage) are always located between extremes of vices and they develop through practice. Courage, for example, is a character trait that is in the middle way between the vice of rashness and the vice of cowardice. Intellectual virtues are virtues of the rational part of the soul that are rather cognitive capacities than character traits. Aristotle distinguishes between five types of intellectual virtues: art (*technê*), scientific knowledge (*epistêmê*), practical wisdom (*phronesis*), theoretical wisdom (*sophia*) and intuitive reason (*nous*). The relation between intellectual and moral virtues can be characterized as a means-end relation: "[Moral] virtue makes the goal correct and practical wisdom makes what leads to it correct" (Aristotle 349 B.C./2009, 115).[3] From the perspective of legal education, this tempts us to distinguish between cognitive capacities that are *instrumental* to a good (i.e. efficient) lawyer and character traits that *define* a good (i.e. morally virtuous) lawyer. A knife that carries the property of sharpness can be used for both

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[1] The beginning of this revival is usually associated with the publication of Elizabeth Anscombe's essay *Modern moral philosophy* in 1958.

[2] Important works in the field of virtue jurisprudence are Solum 2003, Farrelly and Solum 2008, Amaya and Ho 2013.

[3] Lesley Brown, in his introduction to *The Nichomachean Ethics* (2009), claims that such means-end characterization of the relation between moral and intellectual virtues (in particular, practical wisdom) is an oversimplification. Moral virtues and phronesis are interconnected: phronesis cannot develop independently of moral virtues, while moral virtues in turn can only reach their perfection under the guidance of reason (Aristotle 349 B.C./2009, xvi).

good and evil purposes – analogously, a lawyer with appropriate intellectual virtues (e.g. technical skills, doctrinal knowledge, etc.) might be successful in winning court cases but skills alone will not provide him the moral insights necessary to determine what his skills should be used for. In the context of virtue theory, a persistent question of legal education seems to be whether law schools shall focus *merely* on the development of intellectual virtues or they have the task of fostering 'substantive' moral virtues that characterize an *ideally* virtuous lawyer.

2.1. Intellectual virtues

The claim that law schools have to equip their students with intellectual virtues that help them in their future professional careers seems relatively uncontroversial, while the question whether legal education shall extend to the inculcation of professional values, for example through the education of legal ethics, is more contested.[4] As we have seen, Aristotle understands intellectual virtues in a fairly wide sense including *craft knowledge* (*technê*) in this group as well. In what follows, a somewhat narrower account of intellectual virtues will be given.[5]

The emerging field of virtue epistemology draws attention to the importance of intellectual virtues in the process of establishing epistemic truth. Virtue epistemology has two major trends, virtue reliabilism and virtue responsibilism. Virtue reliabilists conceive of intellectual virtues as *cognitive faculties* that dispose persons to acquire true beliefs, including intellectual capacities (memory, reason) and perceptual faculties (perception, e.g. eyesight and hearing).[6] Such an understanding of intellectual virtues is rather different from Aristotle's, although both approaches seem to share the view that intellectual virtues should be primarily perceived as mental faculties and capacities (Baehr 2011, 6-8). Virtue responsibilists, on the other hand, claim that intellectual virtues are similar to moral virtues in the sense that both of them are complex *character traits.* Intellectual virtues include, for example, intellectual honesty, courage, autonomy, open-mindedness and love of knowledge, all of these traits contributing to the process of attaining reliable knowledge and understanding the world that surrounds us. It is rather the trend of virtue responsibilism that merits attention from an educational perspective. Since a major part of education is about learning and understanding, many educational theorists consider it paramount to instil these kind of intellectual virtues in students: if a student possesses intellectual virtues (e.g. open-mindedness, intellectually curiosity, honesty, conscientiousness, etc.), he is more likely to be successful in his studies, let the aim of the education be the acquisition of knowledge or developing a relevant skill (Schwartz and Sharpe 2012, Ortwein 2017). To be sure, intellectual virtues alone are no substitutes for the teaching of legal skills or black letter law. No law firm will choose to employ a freshly graduated lawyer who is "brimming with the love of truth, honesty and perseverance" but has not heard of tort law before (Schwartz and Sharpe 2012). However, intellectual virtues help law students to accumulate, understand and systemize legal knowledge and learn legal skills.

From the perspective of *legal* education, the virtues of intellectual autonomy and open-mindedness seem to have special significance in maintaining critical thinking. If one agrees with Duncan Kennedy that law schools are intensely political places disposed to reproduce social hierarchy, then autonomy and critical thinking are crucial to resist indoctrination and to prevent the 'servile' acceptance of prevailing

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[4] Legal ethics courses were virtually non-existent during the heyday of legal formalism and the dominance of Langdellian law schools in the United States. It was the legal realist movement which started to incorporate the education of legal ethics into the curriculum of US law schools (see Graham 1995, 27–35).
[5] Jason Baehr separates intellectual virtues from intellectual skills, temperaments, talents and cognitive faculties. He argues that intellectual skills are not as personal as intellectual virtues, in the sense that they do not contribute to personal worth in the same way as intellectual virtues do (see Baehr 2011, 29–32).
[6] Virtue reliabilism has important implications as to the definition of knowledge. Virtue reliabilists define knowledge as "true belief held out of intellectual virtue", instead of the traditional approach that understands knowledge as "justified true belief" (see Ortwein 2017).

legal regulations. Intellectual autonomy can be fostered by encouraging students to step out of their comfort zones and experience the joy of creative and constructively critical thinking.

Intellectual honesty is a virtue that is particularly important in higher education and in academic settings. Apart from issues of plagiarism, the virtue of intellectual honesty predisposes students and academics to fairly assess their learning and research progress. A realistic self-appraisal concerning one's intellectual strengths and weaknesses can eventually lead to a more fruitful learning and research process.

Art or *craft* is the expertise in producing some outcome, the knowledge of how to make things: to build a ship, to construct a house or to reach a desired verdict. Some legal skills can certainly be thought of as being *technical* in nature; some even perceive the whole practice of law as a craft rather than a scientific enterprise (cf. chapter 3.3). A good (efficient) lawyer knows how to make the desired outcome of a case more likely by applying the *arts* of legal reasoning, argumentation and rhetoric.[7] On the most basic level, plausible legal reasoning involves compliance with general rules of reasoning, such as being un-contradictory and consistent, which requires that "one step in the reasoning should truly follow from the other" (Jakab 2007, 281). Lawyerly accuracy implies that lawyers use legal concepts in a consistent way, while "comprehensiveness in argumentation" suggests that a good lawyer is able to neutralize all potential counter-arguments and show that the reasoning he has selected is the *only* correct path to take (Jakab 2007, 281). For the sake of conceptual clarity, legal skills will be treated as distinct from both intellectual and moral virtues in the following chapters.

2.2. Moral virtues

Legal education requires at least a tacit consensus as to what character traits constitute a virtuous lawyer and what kind of lawyer is expected to be trained at law faculties. However, it is not easy to draw up a definitive list of *lawyerly* virtues – in fact, it remains an open question whether there are profession-specific moral virtues at all (Cooke and Carr 2014, 100). It is possible to argue that there is no difference between a morally virtuous lawyer and a morally virtuous person *in general* because moral virtues apply to someone irrespective of his or her profession.

Even if moral virtues are not profession-specific, it might be that some virtues are more often invoked in relation to a given profession than others and that 'abstract' moral virtues are "differently shaped" by the requirements of each profession (Solum 2003, 189, Cooke and Carr 2014, 100). Moreover, lists of professional virtues are often *mixed* in the sense that they seem to contain moral virtues, intellectual virtues and technical skills at the same time. The proposed lists of lawyerly and judicial virtues are also *mixed* in this sense. Emphasizing that his list is illustrative rather than exhaustive, Lawrence Solum (2003, 185-200) mentions the following judicial virtues and vices:

TABLE 1

Virtues	Vices
Judicial temperance	Corruption
Judicial courage	Civic cowardice

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[7] The question whether rhetoric qualifies as art divided ancient philosophers. While Plato argues that rhetoric cannot be a *technê,* since it is not related to a definite subject, Aristotle takes the opposite view (see Rapp 2002).

Judicial temperament	Bad temper (e.g. quick to anger)
Judicial intelligence	Incompetence
Judicial wisdom (practical wisdom or *phronesis*)	Foolishness (lack of practical wisdom)
Justice	Injustice

Table 1. Judicial virtues and vices according to Solum.

Some of these judicial virtues might be perceived as centrally important to legal practice in general. The virtue of temperance, for example, is important for preserving lawyers' moral integrity: someone who is unable to control his or her desires will be easier to corrupt. Justice can also be extended to the whole legal profession. According to Solum, justice encompasses the (somewhat conflicting) notions of fairness and fidelity to law. Fairness requires empathy (cf. sensitization of students to social issues) which might be just as important from the perspective of justice as the *indoctrination* of students with the formal fidelity to law.

Other lists of judicial virtues have also been proposed. Iris van Domselaar (2015, 26) mentions six virtues that are central to the process of adjudication: judicial perception, courage, temperance, justice, impartiality and independency. The first four virtues can be seen as *concretizations* of medieval cardinal virtues to judicial decision-making, while impartiality (i.e. the judge's ability to distance himself from previous personal experiences, biases, preconceptions, etc.) and independency (i.e. the judge's independence of external pressure) are distinctly *judicial* in nature.

The next question is whether judicial virtues can be equated with virtues that characterize lawyers in general. The answer seems to be a partial "yes" insofar as *some* judicial virtues seem to apply to all forms of legal practice (cf. justice and temperance in Solum's list). Blomquist (2009, 111-157) specifies ten lawyerly virtues: balance, integrity, idealism, compassion, courage, creativity, energy, justice, discipline and perseverance. An empirical survey of 966 lawyers and law students in the United Kingdom found that the most important character traits of an *ideal* lawyer were considered to be fairness, honesty, judgement, perseverance and perspective (Arthur *et al.* 2014, 29). As mentioned before, such moral virtues are not necessarily specific to legal practice. Consequently, one must be careful not to equate any virtuous character trait automatically with lawyerly virtues. For example, character traits that appear in the twelve points of Scout Law might be relevant to legal practice but the idea that scout virtues (e.g. cheerfulness, friendliness, cleanliness, reverence) *define* a morally virtuous lawyer seems strained (Brown 2013).

Taking a less *value-saturated* approach, it is possible to emphasize efficiency as the most important hallmark of a *good* lawyer – the *measure of quality* being the number of court cases an attorney wins or the number of judgments a judge delivers. In the pursuit of value-neutral efficiency, law schools might resort to the *indoctrination* of legal formalism and positivism that allow students to hide behind the *fetishization* of rules and disregard wider social considerations. For sure, respect for rules is an essential character trait of lawyers but rigid formalism can decrease sensitivity to other potentially relevant moral requirements such as fairness and social justice. Virtue theory offers an alternative to formalism when legal practitioners face hard cases due to gaps in the law or in the rules of professional conduct. If legal education was capable of transmitting those virtues that are essential to the good practice of law, practitioners would be able to better preserve their professional integrity and make better choices in morally controversial situations, e.g. when requirements of *formal* and *material* justice collide. The advantage of a virtue-based approach is that it does not require the teaching of a fixed set of professional rules and duties.

Consequently, it seems more versatile and flexible than the formal tuition of legal ethics (cf. Chapter 3.4).

3. Educating 'lawyerly' virtues

Aristotle (349 B.C./2009, 23) believes that moral virtues "come about as a result of habit" and, unlike intellectual virtues, they "resist" direct education. Moral virtues cannot be learned from books, partly because it is impossible to lay down in abstract terms what a given virtue requires from moral agents in a specific situation. Rather, they develop through practice and experience: in order to acquire a moral virtue, people must perform virtuous actions. This paradox is resolved by introducing *external* circumstances that lead people to start exercising virtues. These factors are not necessarily coercive; someone may start to practice a virtue because he or she wants to model the behaviour of a virtuous person. Thus, role models have a key role in the acquisition of virtues. In the course of legal education, law professors inevitably become such role models and they seem to play an important part in fostering virtues that are essential to the good practice of law.

According to Aristotle, intellectual virtue "owes both its birth and its growth to teaching". From this, one might conclude that it is only *proper* education that is necessary to acquire intellectual virtues. It is true that a master can explain the working of a skill (*technê*) to his apprentice (i.e. give a precise account of what he does and why he is doing what he is doing) but it also takes time, practice and personal experience to learn a skill properly (Annas 2011, 20). Similarly, virtue epistemologists emphasize the importance of practice and experience with respect to intellectual virtues. Jason Baehr (2015, 9-32) distinguishes three possible ways to foster these virtues: modeling, practice and direct instruction. He argues that "the traits in question [i.e. intellectual honesty, open-mindedness, curiosity, etc.] develop through thinking, reading, interpreting, reflecting, analyzing, and discussing academic content in ways that are inquisitive, attentive, careful, thorough, honest, and so on" (Baehr 2012, 8). A classroom environment that creates opportunities for practice seems to be essential for this development. An intellectually unchallenging, uninspiring class rarely fosters intellectual virtues and it seems safe to say that traditional teaching methods of higher education do not help this either (i.e. lecturing, imparting information in a dominantly one-way communication).

In what follows, I will examine three potential *methods* of fostering lawyerly virtues and skills. With respect to modeling, the examination will focus on the character traits of law professors since they have a determinative effect on future practitioners during their university years. The question of experiential learning (*learning by doing*) will be associated with the question of acquiring legal skills. We will see that the importance attributed to practice-oriented education partly depends on the way someone perceives the legal system (i.e. law as science or law as art). Finally, the issue of direct instruction will be remotely mentioned. Besides its obvious function of conveying doctrinal legal knowledge to students, professional ethical rules can also be taught through legal ethics courses – it is another question that formal ethics courses and professional code of conducts are not always the best means to resolve moral dilemmas that practicing lawyers might face.

3.1. Law professors as role models – modeling virtues?

Most law professors have *multiple identities* in the academic environment. They seem to have two main roles: they work as educators and as legal scholars at the same time. The exact relation between research and teaching is not entirely clear. Traditionally, the two activities are considered to be complementary and inseparable from each other. The idea is that scientific research contributes greatly to education (e.g. research provides up-to-date content for courses, active researchers are better acquainted with the topic that they teach, etc.) and that teaching, although to a lesser extent, can also positively affect research (e.g. teaching helps researchers not

to lose track of the big picture and to put their research in a wider context) [Marsh and Hattie 2002, 603-605]. Quantitative research shows that this positive correlation between academic research and teaching might not be as strong as previously thought.[8] Even if we accept that the two activities go necessarily hand-in-hand, the proper balance still seems to be an open question. Due to various institutional reasons, there seems to be a general tendency (at least in American law schools) towards the appreciation of research and the devaluation of teaching activities (Tamanaha 2012, 39-62). Teaching is often neglected at the expense of various research and administrative duties. Nevertheless, it seems safe to assume that most legal academics (even those working in research-only positions) will encounter both tasks at some point of their professional career.

The two activities seem to require different character traits in most cases. Thus, three apparently simple questions shall be addressed at this point: what makes a good teacher, what makes a good scholar and what makes a good lawyer. Answer to these questions involves fairly different virtues, although it is possible that some of them overlap (e.g. that there are virtues that characterize both a good teacher and a good legal professional). Also, it is not entirely clear if each professional activity (i.e. teaching, research and legal practice) has its own specific set of moral virtues. As discussed before, it is possible that moral virtues belong to a morally virtuous person in general, irrespective of the person's professional activity. Under ideal circumstances, a good law professor would exhibit a *fair balance* of virtues from all of the three categories. However, this does not always seem to be the case. One might think of a formidable legal scholar who possesses all the intellectual virtues necessary to be a successful scientist, but lacks the character traits necessary to be a good teacher. The following paragraphs discuss some of the virtues that should potentially characterize a law professor in each of his or her professional roles.

1   Some virtues characterize law professors as educators. It is quite obvious that good teaching requires certain skills, competencies and an appropriate knowledge of the curriculum. Moreover, teachers have to possess intellectual virtues in order to be able to foster these in students: love of knowledge, inquisitiveness, etc. all seem to be central to both learning and teaching. In fact, it is possible to argue that moral virtues are *secondary* to intellectual virtues in teaching because teachers do not need to possess *extraordinary* moral virtues while intellectual virtues are central to this profession: "[A]nyone who lacked intellectual curiosity or openness to personal development (…) would be hardly worth the name of teacher" (Cooke and Carr 2014, 106). On a different account, representatives of care ethics emphasize the role of caring in education – according to Noddings, caring can be understood both as a virtue and as a relation between the carer (teacher) and the cared-for (student) [Noddings 2007, 41].

2   Some character traits are related to the *scholarly* identity of law professors. These traits seem to be distinct from the virtues of the legal profession because they characterize good scholars in general, more or less irrespective of the field of scientific research. It seems to me that intellectual virtues such as curiosity or open-mindedness have a distinguished role here. Some argue that there are certain moral virtues that are also relevant in the process of scientific research, such as courage, respectfulness, resoluteness, sincerity, humility and reflexivity.[9]

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[8] It is possible that there is no correlation between the quality of teaching and the amount of research conducted at a given university. Moreover, it is also possible that the two activities are antagonistic and limit each other, e.g. because teaching takes away time from research and *vice versa*. The results of Marsh and Hattie (2002, 635) show that teaching quality and research productivity are nearly uncorrelated. A modest positive correlation is shown by Qamar uz Zaman 2004, 5.
[9] This list was originally proposed by Bruce Macfarlane (2009, 47-137). David Resnik (2012, 336) summarizes the content of these virtues in the following way: courage – standing up at the appropriate time for what one believes in despite some potential personal cost; respectfulness – treating others with

3   The third set of virtues, *lawyerly* or *judicial* virtues, have been already discussed in the previous chapter. Since these virtues are related mostly to the good practice of law, it is dubious whether non-practicing legal educators need to possess such *lawyerly* character traits. However, if one accepts that virtues are acquired partly by copying role models then it seems important that educators exhibit at least some of the character traits that practicing lawyers have. Moreover, it might be argued that it is precisely the possession of such lawyerly virtues and skills that separates a good *legal* academic from a good academic in general.

3.2. Law professors as role models – modeling hierarchy?

From a critical perspective, law faculties are perceived as starting points for the ideological indoctrination of future lawyers aimed at reproducing hierarchical power relations and preserving existing social and political inequalities (Kennedy 1998). Duncan Kennedy (1998) draws a parallel between the hierarchical structures of legal education and legal practice outside academia. Law school *prepares* students for legal practice not only by teaching legal skills but also by instilling a non-critical attitude in students towards existing legal institutions and social/professional hierarchies. Hierarchical classroom experience and the behaviour of teachers contribute to this process of socialization. "Law teachers model for students how they are supposed to think, feel and act in their future professional roles" (Kennedy 1998, 66) partly by the way they relate to other faculty members, for example younger academics and administrative staff. Their friendly but condescending behaviour exhibits a "sense of superiority" and Kennedy argues that students, witnessing these relations, learn that human relations work similarly in legal practice as well (Kennedy 1998, 68). The relation of professors and students is comparable to the relation of senior partners and junior associates within law firms or the relation of judges and lawyers in courtrooms. Students perceive each other as peers but they are often distrustful of their fellows, similarly to the collegial but competitive environment of law firms.

The preservation of existing social hierarchies can be associated with an uncritical respect for legal authority and legal institutions. Legal formalism and (radical) legal positivism are often mentioned as *ideologies* that isolate lawyers from social reality and contribute to the maintenance of legal and political stability. It is probably not a coincidence that the dominant theory of adjudication in communist Central Eastern Europe (at least in the second part of its ideological development) was socialist normativism, a kind of legal formalism which emphasized the primacy of statutory law in the process of judicial decision-making (Kühn 2011, 67). Although it is probably an oversimplification to attribute the region's formalistic tradition to one specific historical factor, formalism seems to have been preserved until today both in legal education and legal practice (Cserne 2015, 24). Post-communist Central Eastern Europe is sometimes considered as the *last bastion* of formalism (Kühn, cited in Cserne 2015, 23), an environment that cultivates *primitive positivists*, i.e. lawyers who apply rules with mechanical precision, but lack skills of argumentation and interpretation.[10] Even though Kennedy's object of critique (i.e. the US system of legal education) and the development of legal education and legal culture in CEE countries are far from each other, they both seem to underline the fact that legal education is capable of serving social and political interests, probably to a much higher degree than the education of other disciplines. A virtue-centred approach of legal education

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the respect they deserve; resoluteness – staying with one's work, forging on despite difficulties, within the bounds of reason; sincerity – being honest and truthful when appropriate, believing what you say; humility – giving due weight to one's strengths and weaknesses; reflexivity – being critical enough of one's work, making due allowances for one's own biases. Note that the last two virtues, humility and reflexivity probably qualify as intellectual rather than moral virtues.

[10] Krygier and Czarnota (2006, 318-319), referring to Zirk-Sadowski, use the expression "primitive positivists" in relation to Polish lawyers.

emphasizes that lawyerly virtues can serve as safeguards against formalism and uncritical legal thinking isolated from values and/or social reality.

3.3. Learning through practice

There is a longstanding debate over the *practical* or *theoretical* character of legal education, i.e. whether law schools shall focus primarily on the education of legal doctrine or on the training of lawyerly skills. Legal tradition seems to influence legal education in this respect. The doctrinal and academic character of legal education in continental Europe can be partly attributed to the prominent role that medieval universities and legal scholars played in the creation of *ius commune Europaeum* (i.e. a unified body of law based on Roman law) from the twelfth century onwards (Siems 2011, 74-75). English common law, focusing on specific cases rather than abstract rules, is more practical and less doctrine-oriented. The training of lawyers in the Anglo-American legal tradition used to take place in an apprentice system; institutional university-based legal education is a relatively new development here (Siems 2011, 73). On a more fundamental level, the balance of theory and practice in legal education is related the way someone perceives the nature of law. If law is seen as a craft, then it is best learned "at the knee of a master craftsperson" (Scharffs 2001, 2334). If law is a system of stable rules, as legal formalists claim, it can be explored by scientific means and can be learnt from books in a university environment (Alton 2010, 346-352). This view was taken by Christopher Columbus Langdell when implementing educational reforms at the Harvard Law School at the end of the nineteenth century (e.g. introducing the *case method* which still dominates US legal education). Legal realists, in opposition to Langdell, argued that law is not an exact science but should rather be seen as an art that is best learnt through practice. Jerome Frank, promoting clinical legal education, writes:

> [T]he practice of law and the deciding of cases constitute not sciences but arts – the art of the lawyer and the art of the judge. Only a slight part of any art can be learned from books. Whether it be painting or writing or practicing law, the best kind of education in an art is usually through apprentice-training (...). [Frank 1933, 923]

Following this line of thought, an analogy can be drawn between law and traditional crafts such as pottery or carpentry (Scharffs 2001, 2274-2278). Although a bit far-fetched, it is possible to argue that the defining characteristics of crafts (i.e. craft is made by hand, it is identified with specific materials, it has functional use and relation to the past) apply to law as well (Scharffs 2001, 2274-2278). For instance, just as a potter creates each pot by hand, judicial opinions are also carefully *handcrafted* in each particular case. Consequently, becoming a legal craftsperson does not only require learning professional rules *in abstracto* but also following the example of a *master lawyer* and getting immersed in real legal practice.

Practice is also important for acquiring intellectual and moral virtues. Jason Baehr (2015, 19-20) proposes a number of methods how to encourage the practice of intellectual virtues in a classroom environment. Open-mindedness, for instance, can be fostered in academic debates by asking students to argue for the opposite view that they actually accept. Intellectual courage can be stimulated by creating an intimate learning environment, where students are praised for their willingness to think about problems and for articulating their views, regardless of the correctness of answers.

3.4. Formal education

The role of formal education in the inculcation of professional values is probably secondary to the role of practice. Most lawyers think that *lawyerly* moral values are acquired in an informal learning process at the workplace and, to a smaller extent, already in law schools (mainly within the framework of less formal extracurricular activities such as legal clinics, moot courts, etc.) [Arthur *et al.* 2014, 23]. Formal legal ethics courses have the limitations associated with rule-based deontological

ethics. Such courses are limited to the education of professional codes of conduct but such codes with a *closed* set of rules are incapable of providing clear solutions to each and every moral dilemma that lawyers might face during their practice (Arthur *et al.* 2014, 9-10). Fostering moral virtues central to the practice of law is an alternative to the formal education of legal ethics, inasmuch as virtuous character might help lawyers to make the *right* choice when moral rules and principles fail to give appropriate guidance. Some claim that legal clinics provide an ideal environment for fostering these lawyerly virtues already during law school years (Graham 1995, 8-9).

4. Conclusion

Even if it is not possible to identify a strictly law-specific set of virtues, there are certain intellectual and moral virtues that have a distinguished place in the legal profession. It seems that intellectual virtues and technical skills contribute mainly to the efficient practice of law, while moral virtues pertain to the *external morality of law* in the sense that they are capable of complementing rules of professional conduct and creating a less formalist and more *value-saturated* environment for legal practice. Obviously, legal education that focuses on character does not imply that the teaching of legal doctrine is unnecessary; a deep and detailed knowledge of the legal system is an essential feature of a virtuous lawyer as well (cf. the virtue of judicial intelligence in Solum's terminology; Solum 2003, 191-192). However, placing virtues on the conceptual map draws attention to the significance of two, sometimes underemphasized factors in legal education: experiential learning (i.e. learning through practice) and the character of legal educators who, as role models, have a key part in fostering virtuous lawyers for future practice.

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