

Introduction: Legal Education in Central and Eastern Europe. Challenges and Prospects

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Abstract

Legal education in Central and Eastern Europe is often criticised for its inefficiency, outdated models of teaching, discrepancy between market needs and educational offer, strong power relations within institutions or distorted professional ethos of academics. Many of the institutional problems seem to stem from the peculiar historical past of the region, including the socialist heritage of higher education. Law is a particularly sensitive discipline in this respect as its education was – and arguably, has still remained – deeply overpoliticized. Although direct political influence ceased after the political transition in 1989, the professional ethos and the power relations of legal academia have hardly changed in the last twenty years. The papers gathered in the OSLS monographic issue *Legal Education in Central and Eastern Europe. Challenges and Prospects* discuss these problems of legal education and propose alternative solutions, which could bring about a change in the field.

Key words

Legal education; Central-Eastern Europe; CEE region; law schools; political transition

Resumen

La educación jurídica de Europa central y oriental es objeto de crítica por su ineficiencia, sus modelos obsoletos de enseñanza, su discrepancia con respecto a las demandas del mercado, las fuertes relaciones de poder en las instituciones y la distorsionada ética profesional de los académicos. Muchos de los problemas institucionales parecen provenir del pasado histórico de la región, incluida la herencia socialista en la educación superior. El Derecho es una disciplina especialmente delicada a este respecto, ya que su enseñanza ha estado -y,

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probablemente, sigue estando- profundamente politizada. A pesar de la transición política de 1989, la ética profesional y las relaciones de poder que rigen el estrato académico apenas han cambiado en los últimos veinte años. Los artículos reunidos en el monográfico *Legal Education in Central and Eastern Europe. Challenges and Prospects* analizan los problemas de la enseñanza del Derecho y proponen soluciones.

Palabras clave

Enseñanza del Derecho; Europa central y oriental; escuelas de Derecho; transición política

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Introduction

There is a growing dissatisfaction with the quality of legal education in Central-Eastern European (CEE) countries. Governments and universities are striving to make changes but it is unclear what the proper reforms should look like.¹ Law schools are asking for increased funding but governments are unable or unwilling to respond to their demands. Legal practitioners are complaining that new Law graduates are useless, whilst public opinion regards lawyers with increased suspicion and tends to blame them for all the dysfunctions in the justice system. This negative attitude is partly triggered by the gap between social expectations and the reality of legal education; Law faculties have hardly changed in the last twenty years and remain dominated by outdated structures, whereas the political and economic transition of CEE countries has created a new socio-economic environment that requires new skills from graduating students. Although expectations run high, there is a lack of consensus between practitioners, educators and the general public with respect to the exact function of the undergraduate legal education. Additionally, there has been a mass increase in student numbers during the last twenty years,² which has heavily overburdened the educational system and lead to a general decline in the quality of higher education (see Łukaszewicz 2015).

It is clear that some of the above problems are not region-specific but extend to a pan-European and global level as well. Processes of globalization and European integration require new skills and new knowledge from lawyers and many of these demands are inadequately addressed by Law schools worldwide. However, we believe that there are certain region-specific problems in Central-Eastern Europe that make the situation of legal education even more problematic and stand in the way of a successful renewal process. Legal education in the CEE region seems to share some common problems with Western Europe but there are also unresolved structural problems that stem from the common historical past of the region, including the socialist and pre-socialist heritage of higher education.

We believe that the historical burden on legal education can be attributed to the distorted development of the region's legal academic and legal culture. Law openly served political-ideological functions for more than 40 years and this over-politicised environment had negative effects on the academic sector, including political selection of academics and the lack of open scientific discussions. Although direct political influence ceased after the political transition in 1989, the professional ethos and the power relations of legal academia have hardly changed in the last twenty years. Just as before, a network of unspoken agreements and mutual dependencies dominate law faculties, concealed by an atmosphere of *friendly provinciality*, where scientific research equals repeating the obvious and human relations are limited to honouring each other with respectful manners.

¹ The question of reforming legal education periodically comes up in CEE countries, both within legal academia and in wider public discourse. Some problems that have been recently discussed in Hungary include the mass increase in the number of law students and, relatedly, the lack of career opportunities for law graduates; the discrepancy between the expectations of the job market and the skills and knowledge of students; the weight of theoretical legal disciplines and general social sciences in the curriculum. See, e.g., Takács and Bérci 2003. Students also voice their dissatisfaction with the quality of legal education in the region. According to a Polish survey, 77.6% surveyed university students and 81.4% private university students claim that “[u]niversity teachers do not care about our expectations, do nothing to stimulate discussion with us or influence development of our interests (...)”; see Banach 2005.

² There has been a dramatic growth in the number of law students in many Western European countries and in the United States between 1950 and 1970, in line with a general increase of student numbers in university education. The number of students enrolled to law schools in the U.S. has increased by 194 percent (from 38,000 to 111,000) during the period between 1960 and 1975. Due to the centrally planned character of socialist higher education, such mass increase in CEE countries only started after the political transition in 1989. The number of law students in Hungary, for example, has tripled in the period between 1990 and 2012 (increasing from 4,738 to 15,504 students). See Kissné Pap 2003, Clark 2012, 342.

Existing hierarchies are reproduced as the selection of young academics is based on their ability to understand and obey the informal *omertà* of the system, rather than on scientific merits. The lack of structural and personal renewal not only preserves the previous academic order in the region but also passes on a distorted understanding of professional *ethos* to younger generations. What we can observe right now is lack of personal responsibility and accountability amongst academics (see Štajnpihler 2017), and lack of scientific discussions grounded in arguments – an obvious demonstration of the old heritage of perceiving law as a monolithic, uncontested and incontestable phenomenon.

Specificities of the region's legal culture also affect the character of legal education. Post-communist CEE is considered to be the *last bastion* of judicial formalism (Kühn, quoted in Cserne 2015, p. 23) and the region's legal thinking is often described as having a strongly positivist character. As Czarnota and Krygier note, "(...) Polish lawyers, primitive positivists all (...), are themselves bereft of the argumentative equipment to interpret law. They simply know how to apply rules, apparently with machine-like precision and lack of imagination; they did not presume that a new role in the social discourse was required of them and, especially, of judges" (Czarnota and Krygier 2006, 319).³ Current legal education is determined by and also contributes to reproducing this mentality. The tradition of positivism requires the teaching of law to be separated from axiology (Czarnota 2013, 52), and – following a distorted interpretation of Weber's idea about value-free social sciences – CEE law schools end up indoctrinating students with the illusion of a machine-like legal order that is detached from social reality. Perceiving law in such an instrumental way does not only affect legal education but weakens the rule of law and democracy as well. With the growing politicisation of courts, it possible to observe such tendencies in Poland and Hungary in recent years.

The political transition of the region in 1989 brought about the development of market economy but left legal education untouched. Although changes in the labour market have increased the demand for law graduates, law schools continue to educate students in the traditional way without embracing new teaching methods or disciplines. The result is the output of 'legal technicians' with low creativity, a lack of critical thinking and poor sensitivity towards social problems. Even when implementing cautious reforms, law faculties have to walk a fine line between professional expectations, student satisfaction and articulated or unarticulated political demands. However, there is no acknowledgement that the successful reform of legal education first presupposes the clarification of its expected aims and social function. Consequently, there is no open dialogue about these problems in the CEE region, neither in professional, nor in public discourse.

Our collection of papers aims to provide a starting point for such a dialogue by providing analysis of selected problems that affect the region's legal academia. The authors represent the region's countries including Poland, the Czech Republic, Hungary, Romania and Slovenia. As mostly early career academics, we all share a certain amount of dissatisfaction with the present state of legal education in our home countries and wish to address problems in an open, impartial and intellectually honest manner. We try to consider whether the current low quality of education can be explained by the *unfinished transition* in legal academia and its apparently successful attempts to stop reforms with respect to the curriculum, teaching methods and the selection process of young academics. Clearly, the *unfinished transition* goes hand in hand with other variables representing global problems, like economic crises, problems of funding, and demographic decline. The

³ As Krygier points out, eminent Polish legal scholar, Marek Zirk-Sadowski claims that there is "no conception, either among citizens or among lawyers, of law as an argumentative tradition, a discourse, mastery of which might enable some disciplined, convergent but yet often novel legal responses to new situations. Rather, law is seen socially on one hand as a source of oppressive rules, and on the other as an opportunity for bonuses to be grabbed" (Krygier 2005, 10).

process of European integration also requires significant changes in domestic legal systems and consequently, in the curricula of all European law schools. Debates about adopting new teaching methods, incorporating new subjects in the curriculum, and developing legal skills instead of just technical knowledge of black letter law seem to extend beyond the boundaries of Central-Eastern Europe. However, we limit the perspective of our research to countries in the CEE region.

This monographic issue contains papers presented and discussed during our workshop at the International Institute for the Sociology of Law (Oñati, Spain) in May 2014. Papers under the first heading of *Analysis of selected problems* explore the problems concerning the academic culture embodied by the code of *friendly provinciality*. Issues discussed here range from academic honesty, such as plagiarism in academia (Tilen Štajnpihler), and the analysis of the impact that stakeholders of legal education have on the curriculum and teaching methods (Lucian Bojin), to the production of low quality legal practitioners resulting from the adoption of a narrow version of legal positivism, with an emphasis on a technical approach to law rather than critical judgement (Michał Kiełb).

Tilen Štajnpihler, in his paper *On Plagiarism and Power Relations in Legal Academia and Legal Education*, questions the romantic view of legal academia as a harmonious community without internal discrepancies. This is characterised by common interests, a single set of values, and accepted standards of behaviour, all of which are to be unilaterally transposed into the operation of the legal profession through the process of legal education. At the centre of the discussion is the issue of plagiarism in legal academia. After exposing issues regarding the standards of using sources in legal writing within the Slovenian legal academic community, the author illustrates how these are influenced by the structure of power relations that underline social practices.

Lucian Bojin's paper *The Stakeholders in the Romanian Legal Education and their Influence over the Curricula and Teaching Methods* aims to identify the stakeholders in the Romanian system of legal education and to indicate the relationship between these stakeholders and the system. His method is to analyse how well the legal education system meets the anticipated goals of stakeholders. The conclusion is that the professors and the conventions of the academic institutions have most influence over the curricula and teaching methods, even though outcomes of the legal education system are deemed unsatisfactory for external stakeholders. Explanations for this state of affairs are advanced in terms of institutional formal and informal leverage, the legal culture of Romanian society, as well as a costs-benefits analysis of the stakeholders.

Michał Kiełb, in his article *Legal Education from the Perspective of Legal Practice*, explores the consequences of the current educational model, and proposes a change in teaching methods that leads to the integration of theory and practice. One of the primary issues in the debate on models of legal education is the relationship between theory taught at universities and skills necessary in legal practice. The choice between one model and another is commonly regarded as a dilemma. The aim of Michał Kiełb's article is to show that such a perception is a misunderstanding. Correlations between legal practice and jurisprudence - legal dogmatic – are ubiquitous. Consequently, the solution is not to advocate any of the seemingly opposite options, but to skillfully balance and combine the needs of theory and practice. Their successful combination involves a change in the manner of teaching, not the subjects taught. Such a change preserves the idea of academic education, while also providing the skills necessary in legal practice. In order to justify the above thesis, the paper presents a critical analysis of the model of modern Polish legal education, with the emphasis on its main drawbacks seen from the point of view of a legal practitioner.

Papers in the second section, under the heading of *Prospects and alternative methods*, deal with new educational methods. Lidia Rodak's paper on experiential

learning deals with integrating experience and emotions into the learning process in order to tackle the deficiencies of the CEE region's positivist, black-letter legal education. Tereza Krupová and Marek Zima focus on legal clinics as a means of fostering civic engagement in a region where civil society and civic virtues are still fairly underdeveloped. Finally, the paper of Antal Szerletics explores the axiological and ethical aspects of legal education, investigating the potential benefits of an educational system that focuses on fostering intellectual and moral virtues in students.

Lidia Rodak, in her article *Bringing Emotions into Legal Education through the Experiential Learning Model: A Proposal*, calls for the integration of legal and non-legal elements in legal education. Teaching of law artificially separates legal and non-legal elements, such as axiological, sociological and psychological aspects, as it is mostly based on an orthodox version of legal positivism. The ideas put forward have their roots in the work of American educational psychologist, David A. Kolb. Using his Experiential Learning Theory Model, the paper demonstrates how the same principles can be adapted to suit legal education. Referring to the psychological theory of the education of adults, the author indicates the reasons why legal education is so ineffective and also suggests effective models of learning that could be successfully adapted to legal education. Through two sets of examples indicating the application of Kolb's model into legal education the author offers the potential to change the attitudes of lawyers and their perception of law. It can greatly stimulate social and psychological sensitivity of future lawyers and effectively increase the awareness of the human contribution to the process of applying law.

Tereza Krupová and **Marek Zima** present the history and the current state of clinical legal education in the Czech Republic. The paper *Legal Education from the Perspective of Legal Practice* examines clinical legal education both as alternative method for teaching law students and as a way to increase legal knowledge amongst members of the public. Drawing on personal experiences and quantitative research results, the authors investigate the future prospects of legal clinics in their country.

Antal Szerletics, in his paper *The Role of Virtues in Legal Education*, applies virtue theory (in particular virtue epistemology and virtue ethics) 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, along with relevant legal skills, need to equip students with intellectual and moral virtues necessary for successful and socially productive legal practice. Instead of indoctrinating students with legal formalism, reforms in the CEE region should involve adopting an approach that fosters *lawyerly* virtues.

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