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Touching upon issues such as lawyers' critical competences, the adequacy of law schools' professional training or the way legal students relate to civic engagement, this paper will present the research activities of the Centre for Legal Education and Social Theory, will analyze the results of empirical surveys on legal education conducted within the Centre and will advance a series of tentative proposals on how to epistemically and pedagogically reimagine legal education.

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I. Introduction

Legal education remains a marginalized research topic. Lawyers are ready to acknowledge its importance as a matter of pedagogy but do not usually envision it as pertaining to law's social ontology, that is to law's constructed existence. Or, more than any technical subject, the way law is taught imprints a certain *mentalité* on the would-be-lawyer that will prove enduring. The orthodox official narrative whose roots date back to the Enlightenment and political doctrines of liberalism, typical for Western democracies, depicts legal education as an apolitical process. During this, as they are introduced to arcane legal knowledge, students are being taught the distance required to objectively assimilate abstract and general rules of legal

[1] Dr Alexandra Mercescu, PhD (Sorbonne University), Assistant Professor – West University of Timişoara; Dr Michał Stambulski, PhD (University of Wroclaw), Executive Director – Centre for Legal Education and Social Theory.

discourse. The aim of this process is to produce «abstract lawyers» (lawyers *per se*) – the imagined individual who perceives him- or herself as impartial, rational and thoughtful. This position can be challenged theoretically to advocate for a more humanistic and interdisciplinary legal education, meant to make students aware of the law's complicated relationship with society and, consequently, of law and lawyers' powers as well as limits. Indeed, as soon as the social conditions of knowledge transmission are looked into, it becomes patently clear that law's self-assurance manifested in specific patters of disciplinarization shapes students' minds. Therefore, it is unsurprising that students come to see law formalistically and therefore lack the ability to understand law in particular and knowledge in general in its context. Against this background, our paper seeks to familiarize its readers to the results of a number of empirical studies that the *Centre for Legal Education and Social Theory* at the University of Wroclaw, Poland, has conducted between 2016 and 2019 in the specific context of Central and Eastern Europe. While remaining aware that different contexts model different educational practices, we seek to also point out in what sense these findings are relevant for a broader debate on the purposes of legal theory and training – at least in the continental legal tradition. Touching upon issues such as lawyer's critical competences, the adequacy of law schools' professional training or the way legal students relate to civic engagement, this paper is organized as follows: in the first part, we will put forth a brief description of the research activities of the *Centre for Legal Education and Social Theory* (II). Secondly, we will present a summary of some of the results obtained on the basis of our empirical surveys on legal education (III). Finally, the article will advance a series of tentative proposals on how to epistemically and pedagogically reimagine legal education (IV).

II. The Centre for Legal Education and Social Theory

A. Our mission

The Centre for Legal Education and Social Theory (CLEST) was established in 2015 at the Faculty of Law, Administration and Economics of the University of Wroclaw, Poland, on the initiative of Professor Adam Czarnota, Dr Michał Paździora and Dr Michał Stambulski. The aim of the Centre is to conduct research in the field of legal education with a view to improving the quality of higher education for students and doctoral candidates in law by developing their social competences and integrating legal knowledge with other areas of the social sciences and humanities. The creation of CLEST was triggered by its initiators' experience of differences across various legal and disciplinary cultures as well as by the growing insecurity of legal academia in Central and Eastern Europe.

Professor Czarnota is a sociologist of law who teaches at New South Wales University in Sydney and who has participated for many years in both the European-Continental and Anglo-American academia. While teaching in various universities all over the world, he could observe how differences at the level of legal education correlated with differences in the approach to law itself. In other words, Professor Czarnota witnessed how pedagogy influences epistemology. Dr Paździora and Dr Stambulski are legal theorists who, in addition to law, also studied philosophy. When switching between the legal and philosophical courses they were teaching, they could observe how different didactic approaches shape different rationalities and thinking habits. CLEST was therefore a project born out of the experience of dealing with differences between legal cultures (mostly, civil/common law) and between various fields of knowledge (especially, sociology/law/philosophy).

Recognizing these differences inevitably led us to embracing comparative and inter- and trans-disciplinary research[2] and to promoting a critical approach to the so-called «legal doctrine» or «legal dogmatic». Indeed, as soon as we realize that legal knowledge has nothing natural about it and that we can legitimately endorse other theoretical/epistemic assumptions in relation to law, we are led to different readings of the legal institutions. As legal doctrine becomes denaturalized the door opens for bringing about in-depth reflections on law, especially as regards its social and political foundations.

The advancing precariousness of legal academia, manifest in the «freezing» of tenured jobs and the uncertain employment conditions (short-term contracts and small wages), was another incentive for setting up the Centre. Young researchers who know that the academy cannot offer them a stable career but who nonetheless would want to devote their time to scientific work are welcome to pursue their projects in an open-minded and friendly environment, which encourages more flexible forms of association and cooperation than those typical of universities and other institutes. Thus, we have conceived of the center as a space of interaction allowing people from different universities, centers, cities and countries to be brought and work together, to apply for grants and conduct interdisciplinary research unconstrained by the more traditional institutional chains.

B. Our research

As of today, CLEST consists of thirteen researchers from five countries (Australia, Bosnia and Herzegovina, The Netherlands, Poland and Romania). Prof. Adam Czarnota (University of New South Wales) is the patron of CLEST. Dr Michał Pździra acts as director and Dr Michał Stambulski as executive director. Karolina Kocemba and Wojciech Zomerski occupy the position of doctoral candidates. The rest of the members are associated researchers: Filip Cyuńczyk (University of Warsaw), Piotr Eckhardt (Jagiellonian University), Samir Foric (University of Sarajevo), Justyna Jezierska (University of Wrocław), Dr. Alexandra Mercescu (West University of Timişoara), Dr. Karol Muszyński (University of Warsaw), Dr. hab. Rafał Manko (University of Amsterdam), Jolanta Sawicka (University of Warsaw). CLEST conducts research in three main areas: constitutionalism, law and collective memory and legal education.

In respect of *constitutionalism*, we are committed to taking the inevitable semantic openness of constitutional norms and their involvement in the conflicts of values seriously. Therefore, we promote moving this area of research far beyond the typical sterile and procedural considerations of constitutional dogmatics. Thus understood, constitutionalism becomes an intellectual space at the intersection of law and politics, entangled in a dialectical process, always oscillating between the juridicization of politics and the politicization of law. This stream of research is even more relevant today as we are witnessing the rise of illiberal democracies in Central and Eastern Europe and populist discourses in many places around the globe.

Regarding CLEST's second research interest, *law and collective memories*, it is noteworthy that law increasingly embarks upon regulating the past. At the time of the end of «Grand Narratives», which were concerned mainly about the future, many centers of political power are focusing more and more on

[2] For a brief account of differences between multi, inter- and trans-disciplinarity and a detailed analysis of their relevance for law and especially comparative law, see MERCESCU ALEXANDRA, Pour une comparaison des droits indisciplinée, Basel, Helbing Lichtenhahn Verlag, 2018, pp. 155–299. We take interdisciplinary research here to mean knowledge that crosses law's boundaries in order to inform law (broadly understood as a cultural phenomenon). By contrast, trans-disciplinarily refers to knowledge obtained from outside the disciplines, driven, for instance, by an exchange with the practical world of the legal professions.

the petrification of the past. It seems that in postmodern times legitimacy is to be received from the past. Indeed, as we all know, reaching into the past – right down to the jurisprudence of ancient Rome – is an important element of legal argumentation.

As far as *legal education* is concerned, our work starts from the observation that law schools while trying to train legal professionals who will perform well in the world of legal practice neglect the humanistic dimension of law and in fact fail in both respects, in their vocational as well in their academic mission. In other words, we seek to address what JOSEPH PATTISON had already called in 1977 the «great paradox of legal education», namely that «the institutions which must produce the individuals who will play a vital role in nourishing and shaping society are, in large part, isolated from that society».[3]

The three research areas listed above are structurally interrelated: they partially overlap and surely condition each other. For example, legal education promotes a certain vision of constitutionalism, which, in turn, imposes a certain vision of the past. A perspective facilitating the study of these three topics jointly could be social theory. In our understanding, social theory amounts to a systematic reflection on the social world (its structural and cultural processes), informed by both practical as well as theoretical insights. Thus understood, social theory derives its force from a combination of qualitative and quantitative sociological studies and comparative studies. By projecting the results of detailed empirical research onto the entire sphere of the socially constructed legal world, it contributes to a better understanding of the actual functioning of law in society. Indeed, we take the view that legal education should be a topic of interest to all lawyers to not only educators, deans or researchers in higher education.

CLEST is currently implementing several grants it received from the prestigious National Science Centre in Poland: *Constitutionalism. Rule of law, the political and public sphere* (A. Czarnota), *Law and ideology in poststructural social theory* (M. Stambulski), *The hidden curriculum of lawyers training. A theoretical and social analysis* (A. Czarnota), *Socialism under construction. Law as a tool for influence of political ideology on housing, architecture and urbanism in People's Poland* (P. Eckhardt), *The political aspect and legitimacy of the discretionary power of the Court of Justice of the European Union* (R. Mańko), *The Participatory Political Decision: Conditions for the Civic Engagement in the Era of Post-politics* (J. Sawicka), *Experience and common sense. Aesthetic foundation of validation in contemporary philosophy of law* (M. Paździora).

Importantly, the Centre also publishes a magazine *politicon. rule of law – constitutionalism – democracy* dedicated to the reviewing of books which are discussed beforehand within the framework of a reading group.[4] The Centre also aims at making itself visible to a wider audience and gain visibility on the international front. For that reason, the Centre organizes annually the *International Workshops on Law and Ideology* (Wrocław 2014, Sarajevo 2015, Tibilisi 2016, Timisoara 2017, Vilnius 2018) and a series of seminars entitled *Rule of Law and the Faces of Justice*. For these and other lectures, the Centre was honored to welcome among its guests prestigious professors such as Joseph Weiler, Martin Krygier, Pierre Legrand, Zenon Bańkowski, Roland Janse, Sanne Taekema or Maksymilian del Mar.

III. Legal education, put to the (empirical) test

A. Students' motivations

One of the first activities of CLEST was to conduct a survey among law students at the University of Wrocław on their motivation

[3] PATTISON JOSEPH, Atavism, Relevancy, and the Hermit: The Law School Today, in: Journal of Legal Education 29, p. 62.

[4] CLEST report available on the CLEST website.

for taking up studies of law and their evaluation thereof. Prior to this investigation, we only knew the official position of the representatives of law faculties and state officials who emphasized the high quality of education and the wide range of career possibilities after graduation. As it is not difficult to guess, the opinions of students are very different as clearly indicated in our published report («Tedious necessity»).[5] Overall, legal studies were evaluated negatively. Thus, according to the students, law schools do not prepare well for the profession, require too much effort based on memorization and exams do not test knowledge or skills adequately. Additionally, 60 % of students stated that legal studies do not teach creative problem solving, which seems to be crucial in the work of a legal professional, especially in that of an attorney. Law schools seem to have a nefarious impact on the general well-being of students, since 63 % reported being afraid of exams and almost 30 % feel stressed during everyday activities.[6]

Interestingly, despite this critical assessment, 73 % of students would re-elect these studies. This of course can be explained by the fact that once one invests his or her effort, time and money into a specific activity giving it up is not the first option one considers even when one experiences strong dissatisfaction with that particular situation. However, here, we can point to another explanatory factor, more closely linked to what being a *law* student essentially means. A master's degree is a compulsory step in obtaining the necessary qualifications to practice law, which is envisaged by 82 % of students. To borrow from psychologists' language, the acquisition of knowledge for law students appears to be *externally* and not *internally* motivated, being perceived as something foreign and necessary only for passing the exams and not as something useful for broadening one's horizon or developing some general competences to be employed further in life. A similar depiction of education emerges from in-depth interviews carried out among students. Indeed, the answers largely coincided with those from the survey and thus supported the theses included in our report. Sadly, legal studies are seen as something one has to live through rather than a fruitful opportunity for self-development. After years of passive learning and learned passivity it comes as no surprise that law students do not exactly turn into the conscious and engaged citizens we (society) would have expected. Paradoxically then, lawyers, who should be very sensitive to social problems, are not educated to fight for their rights. Instead, they are programmed to become obedient and unreflective disciples. Didactical practice is strongly oriented towards lectures. Indeed, in their interviews, students emphasized that even the so-called exercises are conducted under the guise of lectures, which undoubtedly do not involve them. Consequently, students are not taught to discuss and express their views. Such a hierarchical model of education is based on the execution of orders, which characterizes authoritarian environments rather than democratic systems. On the other hand, it is difficult to expect students to understand democracy, if they do not experience it from law school already and only know it in theory. Moreover, «democracy» is not a notion easy to pin down conceptually and society could benefit from an affectional/emotional understanding of democracy on the part of its citizens. To take just one example, in recent years, Romania saw the rise of mass protests. In 2017, almost 500'000 people took to the streets to cry their rage against a government's ordinance perceived as infringing on the rule of law. At the time, when ordinary people felt that something went astray, many

5 Tiresome necessity. Reasons for starting the law studies in WPAE UWR and their assessment, Czarnota A./Paździora M./Stambulski M (Ed.), Legal Education and Social Theory, Wrocław 2017.

6 For similar observations in the common law space, see Krieger Lawrence S., Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence (September 2002), in: Journal of Legal Education, Vol. 52, 2002. Available at SSRN.

lawyers, by contrast, preferred either to remain silent (the academic lawyers were mounting the typical defense «we are not engaging in politics») or framed their analyses in shockingly formalist terms – be they for or against the government's measure. It is not an exaggeration to say that the eclectic masses, usually relegated to the sphere of irrationality, proved more reasonable than a well-educated community of professionals who seemed incapable of seeing the bigger picture, namely that legality in and of itself can offer no guarantees for a democratic state. Indeed, as we will argue below, lawyers conveniently believe that their mission stops where law ends – not unlike a surgeon who can certainly decide to not be preoccupied with politics while in or once he or she leaves the operating room. As a result, they tend to construct law's borders around legal texts with the exclusion of other disciplinary knowledge when in fact «all knowledge is potentially relevant for law».[7]

B. Students' perception

Another survey conducted at CLEST, which investigated the perception of legal education in four Central and Eastern European countries (Romania, Poland, Slovakia and Russia[8]), confirmed some of the failures of law schools that were already theoretically known and offered various other interesting insights. Dissatisfaction from the part of students was expressed on many grounds, ranging from the organization of space and other institutional aspects to the nature of their assessments and the insufficiency of practical knowledge. When asked directly, what bothers them about their faculty, students reacted as follows to the listed reasons: «Too many students in a group», 20.95 %; «No efficient email contact with lecturers», 19.76 %; «Lack of plan flexibility and problems related to the reconciliation of studies with work / other activities», 42.02 %; «An unfriendly administration», 31.55 %; «Lack of space designed for students to spend their time between classes», 30.71 %; «The physical arrangement of the classrooms (uncomfortable benches and chairs)», 36.31 %; «Lack of friendly relations between fellow students», 22.86 %; «Big competition between students», 21.07 %.

The perception of students as regards the methods of teaching points to another possible reason for students' discontent with law studies. First, it is worth noting that an important 43 % see no difference between what they do during the lectures and the seminars, with classes being based most of the time on lectures. When it comes to the methods of teaching the following results speak to a rather antiquated pedagogical landscape: 69.76 % consider that often or always the professor talks and the student listens, 60.84 % consider that work in groups occurs rarely or almost never, which holds true as well for discussions (40.48 %) and writing (60.95 %). Only 9.76 % state that moot courts take place often or always. Moreover, the results concerning the materials used in the classroom contribute to highlighting law schools' inability to adapt to contemporary modes of knowledge transmission. Non-traditional sources such as mass media, extra-legal knowledge or interactive materials are scarcely, if ever, used.

In line with the continental tradition, it seems that knowledge is transmitted very much in an abstract form concentrating itself on the text of statutes with rather little use of case law or other type of applied knowledge. Thus, while decisions of international courts and common courts are rarely used, decisions of apex Courts and Constitutional Courts are more often used but still an important 37 % of the students consider that they are in fact rarely resorted to. Correlating this with the fact that methods seem to matter a lot to students,[9] there are good reasons

7 GOODRICH PETER, Intellection and Indiscipline, in: 36 Journal of Law and Society 460, 2009, p. 468.

8 This paper only presents the aggregated data for Romania, Poland and Slovakia. For as of the date of the writing, the data from Russia has not yet been analyzed.

9 87.86 % of students think that good classes rest on the method of conducting them; method represents indeed the first-ranked factor among

to believe that a change in the methods of teaching, while the content stays the same, could improve the quality of legal education.

Regarding exams, 52 % of respondents said that they did not adequately test knowledge. Very often or almost always written exams are based on memorization (48.93 % of students declared this). Written exams based on the quality of reasoning of the student are rather rare (54.64 % declare they happen rarely or almost never). 46.67 % mention that oral exams, based on the quality of argumentation, take place rarely or almost never. Almost one in two students say that multiple-choice tests is a frequent option for assessing their knowledge.

We were also interested in knowing what the desires of students in relation to law schools are. It is manifest that students wish for more professionally orientated law schools meant to transmit practical knowledge. It is also obvious that law schools fail in this respect. Thus, when asked whether they can write a basic contract, students responded either by yes (approx. 48 %) or by no (approx. 50 %). But importantly enough, the response «we did not do it [learning to write a contract or a pleading] during the studies» was chosen by a total of 75 %. Furthermore, when asked about what they would change, their answers were as follows: «More debates during the classes», 41.43 %; «More writing during the classes», 26.19 %; «An internship with a legal practitioner for a couple of months», 55.48 %; «More extra-legal disciplines that would explain how law relates to the larger social context», 24.05 %; «Better treatment of students by the administration», 24.52 %; «More flexibility regarding the curriculum and schedule», 38.69 %; «More soft skills developing classes (negotiation, communication etc.)», 57.98 %. When asked what the role of legal education should be, the results clearly show that law schools are perceived instrumentally. This was vocalized by the majority of students: «Acquiring the necessary skills for professional practice», 89.29 %; «Acquiring the necessary abilities for being an engaged, responsible citizen», 15.71 %; «Acquiring information on the content of the most important legal norms», 33.57 %; «Acquiring a profound understanding of the role of law in society», 36.79 %.

However, interestingly and somewhat paradoxically, while students' answers clearly speak in favor of the need for embracing an even more vocational law school, their expectations, in terms of what kind of personality should law schools promote, run counter, at least to a certain extent, to their pragmatic orientation. While they seem unaware of the tension that lies between the two – the practical and the humanistic dimension of legal knowledge –, behind their ignorance one can nonetheless find a certain just intuition, as we will argue in more detail below. What remains then more problematic however is the fact that a great majority of students live under the impression that law schools already equip them with critical thinking (see their responses in the footnote[10]). Given the numerous studies decrying law's conformism, expressed, among other things, in the usually arid and a-contextual curriculum,[11] we are prompted to think that law students entertain false conceptions about what critique and critical thinking truly mean. Indeed, while critical of some very specific matters having to do with the concrete institutional design of law schools, students seem rather oblivious about law's intellectual reach and impact and its contribution as a discipline to society –

a list of possible factors, closely followed by the personality of the teacher.

10 Public speaking 40.24 %, Working in groups 11.67 %, Being a leader of a group 10.95 %, Negotiating 22.26 %, Critical thinking 57.86 %, Presenting your thoughts clearly 45.95 %, Being empathic 7.38 %, Dealing with pressure and stress 47.38 %.

11 See among others SCHLAG PIERRE, Laying Down the Law, New York, New York University Press, 1990; ORSONI GILBERT, Brèves notes sur l'enseignement du droit, in: Jurisprudence – Revue critique, vol. 1, 2009.

beyond the too readily fetishized justice ideal.

Interestingly but somewhat predictably, we have also observed from our data, that students tend to be more critical towards their law schools if they work (in law or an unrelated field) and/or if they have previously studied other disciplines. Thus, an important difference between Romanian and Polish students is that significantly more of the later work than their Romanian peers[12] and a larger percentage of them have also studied/are studying a different discipline. Another notable difference is that Polish students also find their law studies more boring than the Romanians do. We argue that there is a correlation between the two. Indeed, if we check for how Romanian or Polish or Slovakian students perceive their law studies along the distinction «work/another discipline vs. no work/no other discipline» we will see that differences remain statistically significant.

A possible interpretation could go in the sense that a previous disciplinary or practical experience offers them a reference against which they can measure law school's performance, also equipping them with a larger pool of comparative criteria. Since students appreciate law schools' utility as faring well as compared to other disciplines, we can legitimately conclude that finding law school «more boring than expected» can only refer to its intellectual, more abstract, attractiveness.

C. Professional training

Another CLEST research on legal education consisted in examining vocational education in Poland, which begins after graduation from university. The process lasts three years and consists in professional training for future court attorneys. There are two bars in Poland: one for lawyers and another for legal counselors. In order to reconstruct the official discourse, our research team analyzed approximately a dozen statements made by representatives of local authorities. Lawyers and legal counselors alike emphasized the practicality of the process (in contrast to the more «theoretical» academic education), the importance of mentoring, as well as its civic dimension. These statements were based on informed knowledge. The ideal of the trainee was constructed without any reference to the expectations of the trainee and those of the social environment, as well as in the absence of empirical sources of knowledge about the course of the trainee application. Bars lack internal quality control mechanisms, except for the questionnaires provided to trainees at the end of their classes and the results of the professional examination. In order to verify whether the official discourse corresponds to the impressions of the applicants themselves, the team conducted a questionnaire survey among them in December 2017. The questionnaire was filled in by approximately 1'300 respondents (about 12.5 % of all applicants) and its aim was to examine the applicants' social profiles, financial situation, including earnings and employment conditions, the evaluation of the mentoring process and, in general, the adequacy of the training activities.

The results show that trainees have to cope with financial instability and poor employment conditions, the vast majority (68.55 %) declaring that they use financial resources from their families to support their apprenticeship. The emerging image of the institution of mentoring as seen by the applicants' calls into question the official position of the bar. When asked about the relationship with their mentor, two-fifths (41.70 %) of applicants indicated that they did not actually work with his or her mentor on a daily basis and that it is only a formal requirement to be fulfilled. While almost one-fifth (17.06 %) of applicants reported that their mentor acts only as an employer and no special relationship exists between them. Only about one third (35.04 %) of applicants believe that the

12 In Poland more than one in two students work, whereas in Romania less than one in five.

mentor provides real support at work and perceive him or her as a role model. Almost three fifths of applicants (57.54 %) believe that mentoring should not be obligatory as long as having a mentor is only a formal requirement for them to finish the traineeship, and not a source of actual knowledge or skills needed in the profession. In these conditions, it is clear that the declared goal of the mentoring process, consisting in the intergenerational transfer of attitudes and values, is achieved only to a very limited extent.

The dominant didactic method used in the attorneys' and legal counselors' training is not a workshop but a lecture. Almost nine out of ten trainees (89.13 %) are convinced that this form is always used or often used, while the remaining forms are indicated much less frequently. Nearly three quarters (74.60 %) of the applicants believe that the applications are too theoretical. At the same time, the majority of them (54.62 %) are of the opinion that the traineeship does not differ from their academic studies. The difference lies only in the sources of knowledge: textbooks are replaced by court rulings. Practicality takes the form of recreating abstract rules from court decisions and not of applying law to specific cases. At the same time, it is difficult to expect effectiveness when it comes to teaching, which, despite the programmatic emphasis on workshop formats, rests almost exclusively on lectures. While the advantage of this form of instruction during the initial formation of graduates may be justified, its use for graduates who have already studied law for five years raises serious doubts.

Moreover, the exams too often boil down to the verification of memory-railed knowledge. As a result, most applicants do not perceive the apprenticeship as a source of practical knowledge, value or attitudes. A critical assessment of the application results in almost nine out of ten applicants (88.98 %) being of the opinion that the application fee is too high in relation to the quality of classes.

IV. Legal education as «tiresome rite»

These empirical results shed light on more than just didactic methods and educational frameworks within law schools. Moreover, we argue that the problems arising in legal education in the countries under review concern not only those regions, but also the whole of Central and Eastern Europe and perhaps even continental legal education. Our studies reveal the strong connection between pedagogical practices and the underlining epistemology of law. This is to say that a particular conception of law, i.e. the positivist conception of law, determines the outlook of education, which, in turn, reinforces the assumptions of that particular epistemic and ontological thinking in relation to law. To quote here PIERRE LEGRAND, a scholar who has written extensively against positivism:

«Most famously, positivism stands for the proposition that what counts as law is only what is binding as law. Also, positivists of all hues are primarily concerned with analytics, that is, with legal technique and the rationalization of legal technique. They promote 'legal dogmatics', to translate a well-established German phrase, in as much as they aim to arrange the law in the form of an orderly and systematic representation of the different texts brought into force by the state. In the process, their investigative focus remains squarely set on rules – on what has been posited by relevant officials as what the law is – and the authoritative renditions of these rules. According to positivist doctrine, the latter must aim to confine itself to something like a kind of white writing, that is, occur scrupulously exegetically or, if you will, as psittacistically as possible.»[13]

13 LEGRAND PIERRE, Foreign Law: Understanding Understanding, in: 6 Journal of Comparative Law 67 2011, p. 73.

Or, positivism surreptitiously gets translated into teaching. In fact, as GEORGE STEINMETZ argues regarding positivism in sociology, in order for students to become obedient positivists they do not even need to be explicitly taught the theory itself for it is sufficient for them to be trained in a positivist spirit.[14] This applies even better to law schools, where positivism as a theory is touched upon rather marginally. In Romania, for instance, students have a chance to discuss positivism in more detail only on the occasion of the «Philosophy of law» course which is optional and for which very few students do opt. As a consequence, it may well be that the majority of Romanian students will finish law school without even knowing what positivism means – a symptom of how «naturalized» positivistic thinking about law has become, at least ever since HANS KELSEN advocated for it in his *Pure Theory of Law*.

To put it shortly, positivism tells students that law is about correct answers and objective knowledge. It also exhorts them to keep law separated from other domains, especially politics (more than 45% of our respondents believe that interpretation in law is autonomous and does not resemble interpretation in any other field). In that, it prohibits scholars and students alike to venture into intellectual avenues that would be, in a sense or another, illegal (to be read non-legal) by being too interdisciplinary. Pedagogically, this positivist spirit embodies in the memorization of legal rules, multiple-choice tests, no use of extra-legal materials, no discussions, no close reading, no creative writing and no work in groups. Knowledge is received passively, and students immediately understand that if they want to succeed in law they have to cater to law's formalism, which supposes to temper one's personal voice. Conditioned by a violent disciplinarizing process, most of the students will learn to love and love to learn law, that is positivist law. If this is so it is because they will have realized that their coming of age, intellectually speaking, depends on their unreserved acceptance of the prevalent disciplinary codes. Professor PETER GOODRICH describes his experience thus: «Law school stole my hopes of change and robbed me of any surviving sense of the relevance of my inner world, of poetry, desire, or dream, to the life of the institution. My experience of law school was of the denial of the relevance of my experience of law school. The irony of that paradox (…) is the secret of the school's success as a rite of reproduction: an institutionally managed trauma gives birth to a confirming soul or believing soul».[15] BARACK OBAMA, former president of the USA, also speaks about his moments of disappointment while a law student at Harvard, though in less bitter terms: «The study of law can be disappointing at times, a matter of applying narrow rules and arcane procedure to an uncooperative reality».[16]

Indeed, legal positivism tries to stop the plurality of the text by suppressing all the irritant aspects that might be relevant from a socio-legal point of view, but which legal doctrine is happy to do away with in the name of law's conceptual purity.[17] Lawyers inscribe themselves in a 'particular textual and linguistic tradition' that disregards the myriad of political, economic, philosophical, ethical or historical considerations lying under the surface of any given legal discourse.[18] Therefore, legal texts are commonly read by jurists with a legal eye, in order for them to delineate different layers of juridicity (legislative, judicial or scholarly). Any other potentially heuristic element gets relegated to the periphery of reasoning, not necessarily as unimportant for knowledge but rather as not being a *legal* argument. In Romania, as well

14 STEINMETZ GEORGE, Introduction, in: The Politics of Method in the Human Sciences, Steinmetz, G. (coord.), Durham (NC), Duke University Press, 2005.

15 GOODRICH PETER, Twining's Tower: Metaphors of Distance and Histories of the English Law School, in: 49 U. Miami L. Rev., 1995, p. 901.

16 OBAMA BARACK, Dreams from My Father, New York, Three Rivers Press, 2004, p. 437.

17 MERTZ ELIZABETH, The Language of Law School, Oxford, Oxford University Press, 2007, p. 214.

18 MERTZ (Fn. 17).

as in France by example of a Western country, first-year law students are taught the distinction between law and the so-called «ancillary disciplines», such as sociology, political science, economics or anthropology from their very first lessons. This distinction, despite its appearance of friendly *voisinage,* institutes and thus authorizes the definitive split between law and other knowledge. This constitutes a rather curious epistemic gesture to the extent that «the question of whether law and the other sciences need one another […] seems superfluous: they clearly do».[19] Nonetheless, the kind of theory that law schools promote is in fact guided by the very pragmatic purposes of legal practice, the fact that many law professors are practitioners as well, being, for sure, more than sheer coincidence.

Insofar as students are more or less explicitly encouraged to leave to one side such «foreign» disciplines in the understanding of law as social phenomenon (as more than just written rules), they are in fact authorized to avert responsibility for their choices as would-be-lawyers. Alternatively, as many studies have showed, law can be studied from numerous valuable, non-dogmatic, perspectives: feminist, Marxist, post-analytical, sociological, economic, comparative, etc. none of which is innocent. Positivism calls for the student and the scholar to retract in a comforting space of description and self-effacement, where everyone is supposed to act following a judge's reasoning and therefore impartially. By contrast, critical thinking celebrates law's polyvocality and enjoins the researcher or the professor to take responsibility for the ideas he or she advances, as these will ultimately inevitably express a value-laden assessment of the world in which we live.

The monetary costs and time incurred during university and professional legal education compared to the level of educational services obtained, leads to the conclusion that this education should not be viewed from an economic (as an educational service adequate to the fee paid) or anthropological (as a process of socialization and admission to the group of professional lawyers) perspective. To students, by contrast, the aim of legal education resides in enabling them to take up a classical legal employment, usually that of an attorney. Legal education can therefore be seen as a «ritual of passage», which, according to ARNOLD VAN GENNEP's definition, consists of «ritual sequences that accompany the transition from one state to another, from one world (in space or social terms) to another».[20] Rituals of passage integrate the group and organize the categories through the lenses of which the individual will perceive reality. Through the repetition of specific patterns of behavior in a given group, individuals come to shape their own conduct and expectations. In this sense, the boring and tiresome necessity described by us has a significant social function in education. The fatigue and repetition experienced by students and trainees creates habits and schemes allowing for an efficient functioning in the environment of professional praxis.[21] Showing submission to the hierarchy or dedication to social advancement are the main attitudes that seem necessary to be cultivated in the process of educating apprentices in law, for instance. This is not to say that throughout their educational path there will be no exciting classes conducted by outstanding personalities. However, they are not prevalent, and their impact usually remains marginal.

19 STOLKER CAREL, Rethinking the Law School, Cambridge, Cambridge University Press, 2014, p. 111.

20 VAN GENNEP ARNOLD, Les rites de passage, Paris, Éditions Picard, 2011 [1909]. See also ELKINS JAMES, Rites de Passage: Law Students Telling Their Lives, in: 35 Journal of Legal Education 27 (1985).

21 See, for instance, BOURDIEU PIERRE, Les juristes, gardiens de l'hypocrisie colle- ctive, in: Normes juridiques et régulation sociale, François Chazel and Jacques Commaille (coord.), Paris, L.G.D.J., 1991.

The stakeholders themselves perceive this burdensome process as constituting a required stage in climbing the social ladder, which results from the prestige of being a lawyer and the domination of the classical legal professions often viewed as a «natural» career for law graduates, an image constantly supported by popular culture. Therefore, education ends up being configured in accordance with elements that are not substantial but rather symbolic, the aim being not only (sometimes not even) to acquire knowledge, but to be recognized as a professional proxy, and, as a result, as someone worthy of a specific, high, social status. «Being recognized» requires that one assimilates the behavior of a legal professional in the daily interactions with the gatekeepers. This explains why students and trainees – despite a critical assessment of the education itself – devote their time and resources to completing the education and are willing to take it up again in order to obtain the desired professional qualifications. At the same time, this may explain why students and trainees are not taking any action to reform legal education. Their «transitional» status means that, on the one hand, universities and local governments or bars do not treat them as equal partners. On the other hand, once they are recognized and part of the establishment, they no longer have an incentive to articulate a long-term initiative of legal education. The vision of becoming a professional lawyer in the near future disciplines and hinders any actions that could lead to an improvement in the students'/applicants' situation and the quality of their education.

Given this state of affairs, it is difficult to expect that change in the model of legal education will come from below. In any case, a debate on the desirable profile of the law graduate is needed. This would take into account, on one side, the justified economic needs of society, and, on the other side, the civic dimension of education. Researchers at the *Centre for Legal Education and Social Theory* believe that knowledge about social reality of legal education should be combined with a high level of reflection on the ethical and political dimensions of the law and the processes of its transfer.

V. Legal education, reimagined

A. Empirical/educational knowledge

In order to make the right reforms, it is necessary to know first what students think. Therefore, universities should strive to communicate better with students. The title of professor is not tantamount to having knowledge about the needs of students or about the best way of educating them. Empirical studies, either confirming or rebutting what we know from theory/our intuitions, are crucial for well-informed reforms.

Secondly, if policy makers seem to resist adapting legal education to present challenges, solutions might lie at a micro-level. We are aware that higher education and pedagogy techniques represent a vast field of research. Therefore, we do not suggest that every single law professor should be acquainted with this broad literature, but we insist that they take educational issues seriously by also reading relevant contributions in this rather «exotic» field. Routledge, to name a reputed publisher, provides its readers with a series entitled *Emerging Legal Education*. It would be interesting to find out how many law professors on the continent know this series, in particular, or similar ones. Our feeling tells us that very few.

B. More practice

For too long, professors of law dismissed pedagogy as a matter of style or form that can be more or less attractive but as something that ultimately has nothing to do with content. We believe this to be a mistake, which inscribes itself in the long litany of dualist thinking separating thought (the signified) from language (the signifier). Alternatively, methods of teaching (the form) do create reality (the content). Thus, we argue that an accrued content can be transmitted in a practical manner, one that has the advantage of also promoting specific soft competences such as negotiating or speaking

skills. Moreover, for a discipline that engages extensively with texts, it is nothing less than shocking how little law schools train their students to acquire fully-fledged writing skills. Of course, law schools should not transform themselves in corporations readily responding to the ever-growing marketization of knowledge. Undoubtedly, many skills should and will only be apprehended on the job. What is more, recent theories point to the fact that almost all schools fail to equip their students with practicable knowledge and that as a consequence the function of a diploma in today's world is more that of signaling that one has the necessary capacity to acquire whatever is needed on the various and more and more dynamic jobs.[22] By using this argument, we could make the case for an altogether humanistic law school. However, since law schools seem unprepared to give up on their vocational aspiration, one should do better and urge them to enhance the part of practice in legal education.

C. More theory

Today, in many law schools across Europe, theory is understood as what presents to students, in a systematized manner, the content of legal rules. This, however, while it can be called theory, is not the kind of theory that generates «broad humanistic knowledge», confers «a set of skills to efficiently deal with the changing social reality» or facilitates «the acquisition of knowledge about the foundations of democracy and the rule of law» – as students think law schools do or wish they would do. Indeed, it is legitimate that students wish for a school transmitting durable knowledge that does not fade away when the codes and the laws will no longer be in force. Their intuition goes in the right direction: «the classically dogmatic task of doctrine, that of rationalizing and systematizing the law, no longer captures the substance and domains of practice that constitute modern governance».[23] For the above-mentioned purposes to be fulfilled, we believe it is necessary to introduce «high theory» in the field of law, meaning sustained discussions on such fundamental questions as the role of law in society and its impact, topics that in no way can be answered by only resorting to the traditional legal materials. «High theory» calls for the intervention of philosophy, sociology, economics, political science etc. This does not mean changing the curriculum to the effect of simply adding these disciplines, one next to each other so to say, or complicating the courses beyond comprehensibility. In effect, it is doubtful to what extent students would benefit from yet again such a compartmentalization of knowledge. By contrast, a more useful approach would be to infuse every single traditional discipline with «foreign» elements. To put it metaphorically, instead of starring at the neighbor's house from within one's own yard, one should invite the neighbor in one's home. Our pleading for more theory should not be taken to mean an abandonment of law schools' utility. Counterintuitively perhaps, we argue that, to a certain extent, such an interdisciplinary theory will turn out to have a more practical yield than classical dogmatic knowledge for it empowers students to act in broader contexts (not insignificantly in a context in which small percentages of law graduates do end up practicing law). Indeed, «[n]othing is more practical than a good theory».[24] It is worth noting that even the stakeholders from the professional world, contrary to what one may think, do understand the stakes of theory and are very much interested in recruiting people trained in «high theory».[25]

Thus, as paradoxically as it might seem, we argue that legal education should become at

22 CAPLAN BRYAN, The Case against Edu- cation: Why the Education System Is a Waste of Time and Money, Princeton, Princeton University Press, 2018.

23 GOODRICH PETER, Law-Induced Anxiety: Legists, Anti-Lawyers and the Boredom of Legality, 9 Social and Legal Studies 143 (2000), p. 153.

24 LEWIN K., Field Theory in Social Science: Selected Theoretical Papers (New York: Harper & Row, 1951), p. 169.

25 JAMIN CHRISTOPHE, La cuisine du droit,Paris, L.G.D.J., 2012.

the same time more practical and more theoretical. We do not claim that striking a balance between the two equally legitimate objectives poses no challenge to educators, but we do believe that it is a better option than the current mid-way, which proposes, in fact, contrary to what it officially maintains, botched versions of both theory and practice.

D. Revisiting academic freedom

Academic lawyers mostly operate with a notion of academic freedom that gives more credit to the community of lawyers as a group (and thus the knowledge they authorize) than to the individuals who reflect and write on law. This inevitably stultifies knowledge, especially when, like in law, the group exerts an important power on the newcomers and is tied to interests not primarily driven by the pursuit of knowledge. Indeed, «[t]he strict policing of borders becomes crucial in a context in which, like in law, the definition of the field itself is tightly connected to the exclusion of other discourses».[26]

Moreover, academic freedom among professors of law is largely understood in good positivist tradition as only defending «purely» legal and not political speech. Alternatively, the kind of interdisciplinary knowledge that we advocate for is rarely apolitical in the sense in which it implies choices among equally valid theories/perspectives/values.[27] A reconceptualization of academic freedom would help scholars dare stepping outside law for the benefit of law.[28]

E. Understanding critique

Empirical studies have shown that students in law know little about what critical thinking virtually means. In order for students to be able to understand their respective law schools' failures and possibly act upon that understanding they need to be exposed to at least some minimal critical topics such as: the relationship between law and ideology, critical theories of interpretation in law, what effectively happens when judges adjudicate or the economic consequences of the law.[29] Such courses entail already an openness and changes in the curriculum that many law schools are probably unprepared to undertake. Therefore, an alternative solution, relatively easy to implement, is to compel law students to choose throughout their law studies from a list of disciplines pertaining to other faculties. Erasmus programs ensure a physical deterritorialization. A disciplinary peregrination among the various faculties of one's university would ensure, additionally, an intellectual deterritorialization, which is likely to open up the toolbox of critique (as evidenced by our empirical studies as well). Once students so travel «abroad», their educational experience is enriched with perspectives enabling them to correct and refine the blind spots of their own discipline. Comparison is always a source of knowledge not only about the other but also about us. The more comparative experiences we have, the better placed we are to reimagine our own sphere of (professional) existence.

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26 MERCESCU ALEXANDRA, Interdisciplinarity as Resilience in Legal Education», in the Proceedings Volume of the 2nd World Congress on Resilience, ed. by Ionescu, S. Bologna, Medimond, 2014.

27 We understand the political in the sense of MOUFFE CHANTAL, On the Political, London, Routledge, 2009.

28 For an inventory of academic freedom conceptions, see FISH STANLEY, Versions of Academic Freedom, Chicago, University of Chicago Press, 2014.

29 See, for instance, MANKO R., CERCEL C., SULIKOWSKI A. (coord.), Law and Critique in Central Europe, Oxford, Counterpress, 2016.