

THE FUTURE OF LEGAL EDUCATION – LEGAL EDUCATION FOR THE FUTURE

LECTIO MAGISTRALIS - AN EDITED VERSION

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INTRODUCTION

It is an honor for me to be able to accept the prestigious title of honorary doctorate from the University of Oradea – it is a special pleasure for me to be able to receive this award on the 30th anniversary of the renewed existence of the Faculty of Law.

In addition to hearing about me, we have had the opportunity to hear quite a bit today about European criminal law and its important issues, which for me is not merely an area of research full of exciting challenges, but an opportunity to meaningfully connect to the international fabric of the legal community– just as to the Faculty of Law of the University of Oradea. Nevertheless, this is not what I will be discussing in today’s *lectio magistralis*. And although there is no doubt that I have written a great deal on various topics of European criminal law, and what’s more, this is the topic I lecture on the most, please forgive me for deviating a bit today, as here and now, I would rather touch on another subject matter. Although this is a topic where I do not have a vast amount of works cited to my name, but as a university leader and implementer of educational projects, and of course, as an “everyday” professor, has preoccupied my thoughts. This is the future of legal education, or the legal education for the future.

Well, this is what I would like to discuss. That is, I want to talk about what can be predicted or presumed based on our CURRENT knowledge, and what I envision concerning all of this. The future is happening now.

We all feel, know, visualize the changes that affect our lives – globalization, digitalization, and the depletion of Earth’s resources has brought significant transitions to our “methodology of living”: how we live (lower winter temperatures, hotter summers), how we work (online, from abroad, etc.), how we learn (autonomously). For us, the question that arises is what changes these effects will bring to the field of legal education, and in close connection with this, to legal practice and the legal profession in the 21st century – or at least in the 30 years remaining of its first half.

The valid questions are:

1. What (will) be the task of legal professionals in the future?
2. Will legal education be connected to this? What will be the role (task) of legal education?
3. How will we implement this? Who are our students?

Before we get into the thick of it, a brief status quo summary is necessary, in order to visualize what kind of present we are looking toward the future from.

A Brief Status Quo Summary

Globalization has brought global markets, consumption, and competition – as well as the global expansion of the English language and communication channels spanning

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the entire Earth. These affect the lives of all of us, just as cultural diversity, the marked rise of minority groups, the opportunities of accessible world tourism and international migration, and of course, global pop culture have all changed our lives.

The **depletion of Earth's resources** and the shadow of the global climate catastrophe demand not only thinking about the future and acting in the present but also call for visible changes in everyday life.

Digitalization and the digital revolution are the quantum leap in the development of humankind. And although several decades of development precede our present, the rise of algorithms capable of learning, the possibilities of nearly infinite connections of big data and automated data processing now not only represent a paradigm shift in a technological sense, but also brings about fundamental changes at the level of societies and human communities.

The same applies to legal practice and legal education as well. Legal professionals face new challenges based on these trends, therefore new **tasks** for legal educators arise as well. Additionally, digitalization demands methodological reincarnation.

The Future of Work of Law Professionals

In our modern societies, lawyers essentially carry out two types of activities – on the one hand, they solve the legal problems and conflicts of others, provide (legal) assistance and handle cases. On the other hand, through norm-setting activities lawyers develop concepts to solve colliding values important to people and communities and set directions for public life.

Neither globalization, nor the decline of the health of our environment brings about ontological change in lawyers' activities – sure, of course, the need for new types of contracts arises, as do new types of legal issues, and creative legislative solutions, but these are only matters of content. Not the same for digitalization. And, as a result of this, law is undergoing global transformation, **the engine of which is technology and the ever-expanding potential it provides**. Legal professionals are increasingly adopting the use of available and transformative technologies, with which they can achieve better results, and which, through data analysis, accessible knowledge bases, and with the aid of better efficiency and productivity offer increasingly greater added value.¹ After all, market competition dictates in legal services – if the efficiency of work can somehow be improved, then their choice will also reflect that. *Motto: So let the algorithms step in.* Based on current trends and technical developments, it can already be seen that algorithms will surely replace people in carrying out repetitive processing, client management of large law firms, or in establishing cases of tort law with hundreds of claimants.

What – if anything – will algorithms **not be capable of**, based on our present knowledge? Regarding norm-setting functions, algorithms cannot interpret justice, humanitarianism, non-discrimination and other values, or ethical **contexts**. The ethics of legal order and its ideological framework cannot be mathematized. So long as our societies need these values, algorithms will rise only to the glass ceiling of these values. In the problem-solving professions, context will be their greatest enemy – as we all know,

¹ A jövő jogásza. A jogi szakma globális jövője, Wolters Kluwer 2019. [The lawyer of the future] <https://www.wolterskluwer.com/hu-hu/news/a-jogi-szektor-atalakulasaval-a-technologia-kulcsfontossagu-les-z-a-jovo-jogasz-szamara>

it plays a central role in the determination of facts, as well as in the process of evaluation, and also in subsumption.

If we consider legal activities in **criminal law subsystems**, it can be said that there is currently a “lack of supply” in the legal software market. In addition to the previously mentioned arguments, I would like to discuss three more. First, the cases to be decided here are related to criminal liability, which represent a negligible number of cases compared to the total volume of legal cases to be solved in any given society. In other words, it is not worthwhile from a business perspective to aid, simplify, or support the work of lawyers in this field. Second – especially in smaller countries – criminal cases represent a rather small amount of data, so the learning success of the algorithms can be questioned. The third reason is that the actors are mostly representatives of the state, so, at most, if the state aims to make the work of its officials easier, it will initiate such developments itself (or perhaps procure the market products available and adapt them to its needs).

Of course, I do not rule out the possibility that a new philosophy or new kind of criminal justice emerges for humanity or some of its societies, or perhaps in certain criminal cases, in which the decision-making weaknesses of the human judge can be eliminated (error, psychological factors, covert racism, corruption, etc.), and algorithms will (be able to) calculate the probability of guilt/innocence or the extent of the punishment. If humanity will move more in the direction of human-neutral decision-making systems, even in law – instead of undoubtedly humane, but human-smelling judicial conviction, it may find statistical probability and the avoidance of individual misuse to be more important.

And I am also certain, that scientific research in this direction is already underway and will show tangible results in the first half of the century. Then we will decide if we wish to take advantage of these, or not. Actually, in this regard, law has to be proactive (instead of being – as traditionally – reactive).

This is **why it is important** that we think about the law of the future today, and what guidance we, as today’s legal educators who guide the legal practitioners of the future, give them. Because as *David Collingridge* aptly formulated the dilemma named after him:

„[A]ttempting to control a technology is difficult...because during its early stages, when it can be controlled, not enough can be known about its harmful social consequences to warrant controlling its development; but by the time these consequences are apparent, control has become costly and slow.”¹

This means that legal professionals must become “beast master” and supervisor of algorithms in this changed environment. They have to be able to “tame” the algorithms. In fact, they have to become midwives at their birth. Digital decision-making, or at least decision-supporting systems, requires their intelligent development and supervision; not necessarily in a technological sense, but rather, compliance must be ensured in terms of legal values, which will remain the task of legal professionals.

¹ „[A]ttempting to control a technology is difficult...because during its early stages, when it can be controlled, not enough can be known about its harmful social consequences to warrant controlling its development; but by the time these consequences are apparent, control has become costly and slow.” DAVID COLLINGRIDGE: *The social control of technology*. Frances Pinter 1980, 19

Legal Education of the Future

In my opinion, three game changers can be identified, which will fundamentally determine the future of legal education. Two of these have arisen from today's challenges, while the third is the reformulation of an older problem.

Content Retuning

Traditionally, in countries operating a formal and institutionalized legal system, on the one hand, legal education teaches the activities of legal professionals – in other words, law school produces the professionals capable of independently solving legal problems of societies and their members. In more ordinary terms, one of the tasks of legal education is the training of legal “artisans” and “industrialists”. In this sense, legal education is very practical, in reality, it produces the “human material” of legal professions in a constant and continuous manner. On the other hand, however, legal education is extremely abstract and theoretical, because it concerns legal order, branches of law, and the theoretical models of individual legal institutions. *William Twining* described this duality in 1997 as “Pericles and the Plumber.¹ Legal education therefore produces Pericles, who are brilliant in working with “legal wrenches”. That is, if we do our job well. Legal education also nurtures the formation of intellectuals. Although we know that this is not entirely true for Anglo-Saxon legal education, bearing in mind that the purpose of the particular “high school” system is general intellectual training, therefore legal education based on this, but institutionally separate equips the already intellectual Pericles with industrial skills. But even with that, modern legal education almost everywhere and always must deal with the eternal criticism of recent graduates: “I learned more in my first two months at the law firm than I did in the last 5 years”. Meanwhile, we know exactly that such criticism is much more typical of less-aware graduates, since a person of similar age and with similar abilities, but without a law degree, would not only not be able to acquire this knowledge, nor be able to understand it even approximately. Or, as a former head of the prosecution aptly put it, during his meetings with new law school graduates, he has never witnessed someone's absence of practical knowledge causing serious problems. However, deficiencies in theoretical and dogmatic terms can give rise to critical situations.²

Martha C. Nussbaum took it even further, stating that in actuality, the task of legal professionals is “cultivating humanity”, therefore, it is necessary to begin “growing cultivated law professionals” at the universities.³

There is a new responsibility that we – legal educators of today – should bearing today. So in fact, we can already begin to shape the law of the future through molding law students of the present and near future. So, while the globalization and environmental survival do not functionally affect the legal world, digitalization does. We can already begin to shape the law of the future through molding law students of the present and near future, thus the legal professionals of the future will be provided with redefined learning outcomes linked to the four-fold principles of appropriate knowledge and skills, attitude

¹ Twining, William, 'Pericles and the Plumber', *Law in Context: Enlarging a Discipline* (Oxford, 1997; online edn, Oxford Academic, 22 Mar. 2012)

² Varga Zs. András: *Jogászképzés pedagógiai dilemmák*. In: Fazekas Marianna (szerk.) *Gazdaság és közigazgatás: Tanulmányok Ficzere Lajos tiszteletére*. Budapest, ELTE Eötvös Kiadó, 2015. 229.p. [Legal Education and Pedagogical Dilemmas]

³ Martha C. Nussbaum: *Martha C. Nussbaum, Cultivating Humanity: A Classical Defense of Reform in Liberal Education*. Harvard University Press 1997, 50-84; Martha C Nussbaum: *Cultivating Humanity in Legal Education*. *The University of Chicago Law Review* 70, 2003. 265-279.

and responsibility. Only in this way will they be able to perform new, fundamental tasks that impact society as a whole. Within legal education, all of these **require content retuning** – so this is the first game changer.

Of course, it is also possible that humanity will move more in the direction of human-neutral decision-making systems, even in law – instead of undoubtedly humane, but “human-smelling” judicial conviction, it may find statistical probability and the avoidance of individual abuse and misuse of power to be more important. Goldsworthy’s example more closely resembles sci-fi than anything else, but if the technology would be available today – our task, but even more so the task of legal professionals of the future would be to decide if we should in fact allow such a thing. “Imagine for instance, the benefit to a barrister who has access to information on those aspects of their pleadings or legal arguments that most resonated with the judge (or indeed with various judges), those arguments that were carefully considered, and those dismissed without hesitation. This will come to revolutionise legal education, as this enables consumers of content and information to be rendered ‘prosumers’, inadvertently or even unknowingly contributing to the design, customisation and production of goods and services for their own needs.”¹

With globalization, the coexistence of people from different cultures, and the necessary fulfillment of human-freedom concepts (the freedom of opinion, attitude and emotions, and of course, the protection of these with different intensity), the Periclesian task of cultivating humanity is supplemented by sensitization. Legal professionals / lawyers must also understand the social impact of digitalization challenges, therefore curriculum elements must be included in the content of legal education that on the one hand, reflect the theoretical problems of digital legal practice, so appropriate regulatory directions can be developed (ethics of algorithms, data science foundations), but on the other hand, be aware of the possibilities of the new tools of “legal craftsmanship”, in other words, truly grasp the main directions of so-called legal-tech (what natural language processing, deep learning, or statistical/probabilistic decision-making mean).

Generation Z – New Methodology – Digital World

With the digitalization of existing knowledge, knowledge is a click away for everyone, knowledge is essentially available, and we have access to a greater mass of knowledge that’s exceedingly more accurate than we have ever had before. This is also true for knowledge about law. However, just as learning the texts and laws of written materials was not enough for legal knowledge (in the past), downloading the digitally accessible materials will not be enough to understand and apply the knowledge (in the future). Accessibility and evaluation must be taught, so on the one hand, the logical construct must be learned, on the basis of which the search for information can be successful (“good questions must be asked”), while on the other hand, the information must be approached critically (authenticity, correctness). Consequently, digitalization does not alter the Periclesian approach, if the abstract system of law is lodged in our brains.

¹ Daniel Goldsworthy: *The Future of Legal Education in the 21st Century*. (2020) 41(1) *Adelaide Law* There is a new responsibility that we – legal educators of today – should bearing today. So in fact, we can already begin to shape the law of the future through molding law students of the present and near future. So, while the globalization and environmental survival do not functionally affect the legal world, digitalization does. Within legal education, all of these require content retuning – so this is the first game changer. *Review*, 259