Legal Studies in the Baltic Republic: the Experience of Lithuania

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Contemplation on the concept of *the curriculum of legal studies*, first of all, implies an essentially content-oriented (*what* to study/teach?) and structural (*when* to study/teach?) approach, when we think about the order of the legal studies/education, when and what subjects should be studied, how to arrange them in some sequence to attain the coherence of the study process, leading to a highly qualified specialist as its outcome. However, although the method of legal education (*how* to study/teach?) appears there as being less important, here I would like to demonstrate, in a rather very short manner, that to contemplate on the method of legal education should be our task of an equal importance in parallel with the structural/content-oriented concerns. And I will do that basing it on the example of my pedagogical and academic experience in my institution and also my *alma mater* – Vytautas Magnus University Faculty of Law in Lithuania.

We conducted pure American style legal studies approx. from 1999 until 2005. At that time, the studies in the Faculty (as then called – the School of Law) were really like the studies in some regular American Law School – there were only graduate (post-bachelor) studies; 3 years in length; a lot of American scholars teaching in our institution; etc. Although the degree received by our graduates was called *Master in Law*, we considered their education equivalent to those, having an American JD degree. Nevertheless, beginning from the 2005, we have started to slightly deviate from the model because of some pressures from the national legal academia and politically influential institutions. In 2008, the Constitutional Court of the Republic of Lithuania adopted the ruling, which essentially regulates the possible models of legal education in Lithuania, *excluding* the pure American one as unacceptable in Lithuania. Afterwards, we made the corresponding adaptation of our model, but that was only essentially *structural/formal* reform, i.e. we implemented so-called integrated first and second level legal studies (i.e. one-cycle integral/inseparable bachelor and master studies). In many aspects, the *content* of the studies (as still many of the subjects are taught by American or foreign scholars) and especially the *methodology* of legal education remains essentially unchanged until today.

Speaking about this methodology, we intensively use the so-called Socratic (based on the study cases) method of legal education. It is also noted by the specialists that it is the best model to educate/teach attorneys. But, exactly, attorneys, and not judges! I would generalize that the American model of legal education is more comfortable/adapted to the adversarial mode of thinking, while my country's (or maybe even European, especially having in mind Post-Soviet region) traditional model – to inquisitorial. In those two models, students are confronted with different cognition pressures/vectors – in one instance they learn how to disagree, how to quarrel, how to defend the client; in another instance – how to judge and make the one judgment in every situation. Of course, this is a very general/relative evaluation. In the American model students in one or another form (even while using the Socratic method) learn how to judge/make the one judgment. But what makes it unique is that students are *continuously* confronted with the situations/cases, where the judgment is far from being unambiguous – it is not absolute/definite; there are always arguments against it (or, we may call it, falsifications), and they may be rather strong arguments. Arguably, this approach more adequately corresponds to the contemporary paradigm of epistemology as originating from the Popperian-like approaches in the philosophy of science.

On the other hand, my country's (or maybe, as mentioned, even European) traditional approach to legal education is more of a style of dictation, saying right away, what is right/legal, and what is wrong/illegal, and exactly this mode of education directly/indirectly informs about the judge-style approach to the court process. As related to the court process, students are prepared to logically deduce the decision/judgment from the legal norm (usually, some statute) as the general premise. Once again, these are only generalizations, not absolute theses (in my country case studies are not totally avoided). But my general opinion is that, by their methods of legal education, American model prioritizes the attorney-style/adversarial environment, while my country's traditional model – the judge-style/inquisitorial environment.

On the other hand, it is also obviously a tradition related matter – what is considered to be the law (in one instance it is, at least traditionally, cases, in another – democratic statutes) is also reflected by these methods themselves. But we also very well know that we live in the era of the convergence of those traditions (i.e. that of Common Law and that of Continental Law), and, therefore, it could be also the time

for the convergence of the methodological approaches to legal education. Therefore, at first, I think that the teaching method necessarily should be focused on in the project. And, secondly, we should work on the integration of the positive sides of both methodological approaches (American and, arguably, European) to the teaching of law and avoiding of what could be considered as their problematical features. This is the only way to make something really in advance of what could be considered those two general *traditional* approaches to legal education.

Next I would like to briefly point to a few ideas that, I think, could interesting in this respect. First of all, the Socratic (based on cases) method of legal education, which dominates in my Faculty, is critically approached by the Americans themselves on the aspect of the vagueness of the so-called process of the "finding of the holding of the case", as it was noted by Sanford Levinson as early as in 1982 in his famous article "Law as Literature". There is no firm method of how to do it, i.e. how to find/extract the holding (the main and normative thesis of the case) from the case, how to clearly differentiate holding from, for example, *dicta*. Anyway, it only adds to the already mentioned intrinsic ambiguity of almost any case/situation, selected for studies. Simple cases (having a plain meaning) usually are not studied in academic institutions – those "fat" case-books usually are filled in by cases that have at least some kind of complicacy. Therefore, if we decide to contemplate on this in our project, probably we should think of a more stringent preparation for the processes of holding-extraction and case-briefing (such courses as *legal writing* and/or *legal methodology* then become essential). Although, I should say, we should first start from the contemplation on a more active involvement of the Socratic method itself into European legal education.

Another hint for consideration could be the methods of examination. In our faculty the dominating method of examination is testing, which is also widespread in the US. The model in the ideal form could be called as this – students, at first, learn some legal subject and then are examined by the use of tests (simple or multiple-choice) how they learned it. This model has clear advantage of being very objective and neutral method of examination. But the domination of this method without alternatives (as some written-form examinations) poses some important issue and also the task for the institution of education. This issue may be even more serious if such approach is used in the aforementioned inquisitorially-friendly educational environment. The problem is that in this case students may be insufficiently prepared to legal writing,

which is a very essential skill for a lawyer. Therefore, it becomes very important if a first-learning-afterwards-testing model is supplemented by some other educational tools that also come, as examples, from the American educational practices. First of all, students should not only discuss and analyze cases through the Socratic dialogue, but also brief cases (being the obligatory task for students before the classes) and by that their skills of legal writing are improved. Secondly, the provision and careful consideration of such courses as *legal writing* or *legal methodology* in the curriculum becomes crucial; these courses, once again, are common in the United States, but not so much in my country. And, I think, just the provision for the internship in this case is either not enough, or its not coherent and effective, as before "being thrown" directly into the environment of the real legal practice, a student should be more consistently, scientifically and methodologically prepared for that. This in itself proves that the contemplation on some subjects as the part of the curriculum of legal studies (i.e. legal writing/legal methodology and internship) may imply the contemplation on the coherency between this constituent part of the process of legal education and two other constituent parts – (1) the examination of the students, and, once again, (2) the method of legal education.

To finalize, the inquisitorially-friendly approach to legal education (dictating and learning/cramming of the legal norms and study material; learning to logically deduce the judgments from the norms), if taken alone, confronts students with the wrong image of the contemporary practical environment of lawyers, and, especially, attorneys, the consequence of what is either their ineffective readiness for the contemporary legal practice, or the fostering of the outdated inquisitorial environment in the system of justice. Students should know that contemporary paradigm of the court process is more of the adversarial pattern than inquisitorial, and be more prepared for the former. Students should know that even in the Continental tradition lawyers often consult cases, even though they do not have normative value. Students, as simple as it is, should know that there are difficult cases, *lacunea*, even in applying statutes that in themselves are clear at first sight, and that they will have to defend their clients even if all law appears to be against them. To generalize, they should be very considerably confronted with the attorney-kind, deliberative/adversarial (not inquisitorial) environment, as imitated by the Socratic method/dialogue or, at least, as mentally/cognitively involved in during their studies.