

The Future of Hungarian Legal Training and Profession within the European Union

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Attempting to describe the speciality of the Hungarian legal education is perhaps more difficult than doing research about it. This problem refers to the development of legal education from the beginning to the present, and also to the effects of the changing society on the institutions of legal education. Furthermore, an attempt has been made to sketch the future development of this education system.

In the beginning, this kind of research has to reflect on the development of the legal education systems in Europe, England and in the United States. Because without it no comparison could be made between the different education systems. Furthermore elaboration is given of the causes for the current situations of the instruction system, the connection between legal instruction and society, and the legal profession of the different countries. First of all we have to show that the difference among the American, English and Continental legal educations go back to historical, medieval roots.¹

In contrast with the English situation where the legal instruction remained in the hands of the profession (barristers and the so-called BAR) with a practical knowledge, especially the precedents. The European legal instruction first of all served the system of the governmental authority thus their legal education has been conformed to the authoritarian aim. That meant the Continental instruction was made by the different states and these states expected that the universities had to educate their own official norms, statutes etc. they gave to the society. In the United States, legal education has been connected to the economic life of the civil society, and the local legal knowledge has been adapted to this.² Exception was the so called southern strategy (that was the sates of the Confedera-

¹ GAL Roger: *Histoire de l'education*. Presses Universitaires de France (P.U.F.) Paris. 1948.

² See: SHAFFERm L. Thomas L. and REDMOUNT S. Robert: *Lawyers, Law Students and People*. Shephard's Inc. Of Colorado Springs. 1977. 16-17. p.

tion after the Civil War) reflected on the preparation of gentlemen for an intellectual education needed by those who might become politicians, legislators or statesmen.³ After the 1860s these two methodologies of legal instruction has been unified and that is the American way of legal education.

Being aware of the historical facts has made it possible to fully understand why the legal instruction systems in these three different legal cultures vary so much in method, knowledge, practical relevance and practical expertise.

Thus there is one common thing in the English and the American instruction system: these are close to the legal profession distinguishing from the European one. The historical research of the Hungarian legal education has shown the special reasons that led to the conformation of the Hungarian instruction system to the European “*mainstream*”.⁴ However, the Hungarian system had some specialities and as a consequence we have to consider them.

The first university in the Hungarian Kingdom was found in 1667. Before that time the Hungarian education of “lawyers” happened to be either in other countries (especially in Italy) or in the so-called “*patvaria*”. That meant a kind tutor system, an advocate or a judge and a student worked together and the students usually copied different kind of official papers, certifications etc. (*apud viros in jure peritos*)⁵.

In the university the students studied Roman law, Canon law, and the Hungarian Customary law which was the *Tripartitum (Decretum Generale)* in written form including the procedure law. In fact the students attempted to learn only the Customary Law because this subject was relevant in the real legal life of the country. This instruction system has continued more or less until the late 1700s, when the Habsburg Dynasty changed it because the European system was changed as well. This was the time of the European absolute reigns and the kings wanted to have loyal state officials. As the Hungarian king declared the aim of the

³ KOCH Adrienne: *The Philosophy of Thomas Jefferson*. Columbia University Press. New York. 1943. 167. p.

⁴ RINGER Fritz : *The Fields of Knowledge*. Cambridge University Press, Cambridge, Editions de la Maison des Sciences de l'Home. Paris. 1992.; Antoine Prost: *Histoire de l'enseignement en France 1800-1967*. Librairie Armand Colin. Paris. 1968. 226-228. p.

⁵ BÜCHER Karl : *A munkamegosztás típusai*. (The types of division of labour.) In: ZOLTÁN Szántó : *A munkamegosztás gazdaságsszociológiai elmélete*. (The social-economic theory of division of labour.) Szociológiatörténeti szöveggyűjtemény. Budapest. 1990. Aula. 63-69. p.

legal education in the late 1700s: “I want to have good state officials”⁶ (not to have good lawyers).

That was the point in fact and in time that not just changed the legal education but reformed that there would be one way (similar to the European mainstream) in order to educate the so called Codices. Within these codices the emperor gave norms to Hungarian society different from the ancient Hungarian customs. So, as the emperor said, the University and later the universities had to teach only the texture of the laws and the lawyers (state officials) were not able to depart from the words of the laws. The affect of this way of educational system is perceptible nowadays as well.

The above mentioned was a simple and brief history of the Hungarian legal instruction system but there are two sociological facts as to why our institutions and our teaching methods have remained as three hundred years ago.

1. First of all the main cause is the time, because the Hungarian system has worked for a long. These three hundred years look like an eternity and the profession thinks: “that was hundred years ago, two hundred years ago, so that should and will work in the future as well”.
2. The second problem is within the legal profession and the institutions of legal education. Every member of the profession studied at the same universities. There is no question that they would be teachers in turn as members of universities or be judges, lawyers, prosecutors and so on. They went through the same socialization, they studied the same materials.

As a consequence of the above mentioned the members of our legal profession insist on the historical way of instruction so we can see and we can say the historical facts are the most important element resulting in an unchangeable way of thinking and education in spite of a changing of the society.⁷ As a result of the sociological factors some questions come up. Should we change the Hungarian legal education and if “yes”, how

⁶ See: Szabó Imre (szerk.): *A burzsoá állam- és jogbölcselet Magyarországon. Második, javított kiadás.* (The bourgeois theory of state- and legal philosophic in Hungary. Second Edition.) Akadémiai Kiadó, Budapest. 1980. 887. p.

⁷ Ld.: FERGE Zsuzsa: *Az iskolarendszer és az iskolai tudás társadalmi meghatározottsága.* (The educational system and the social determination of the knowledge of schools.) Akadémiai Kiadó, Budapest. 1984.

could it be done? There are some ways and we could show some examples in foreign countries in America (United States, Canada) and in the European Union as well.

1. In the first place, the research has concentrated on the criteria to classify the legal instruction systems, and secondly these ones paid special attention to the dynamics of the different educational systems. Research conducted has shown that there are legal instruction systems based on *one legal tradition*, and there are systems that are grounded on *two or more legal cultures*. Besides these, there is the so called *transsystemic* legal teaching where students are admitted into a single civil and common law program. This research has led to the analysis of the various hypotheses, theories and predictions, for instance the *instrumentalists* and *culturalists*, that reflect on the future development of legal instruction. The studies have also shown that in instructed knowledge, teaching profile and diploma the legal education systems are coming closer to each other almost to the point of compatibility. From the end of the twentieth century, this process will continue into the 21st century.⁸
2. Through analysing the acquired information, this study has dealt in three respects with the actual questions of legal education. Firstly the research has reflected on the empirical studies that provided a comprehensive framework for the backgrounds and characteristics of *those entering law teaching* in the present time. It has been clarified that in the law faculties the greatest effect on the relationship of praxis and academic sphere is tradition. In Hungary there is a moderate contact and discourse between these two spheres.
3. The third element is instead of teaching the positive text of laws it has to be studied in an other way. An attempt has been made to explain what it means "*thinking like a lawyer*" as the most important segment of the knowledge in legal education, and how this way of thinking can be obtained. When an attempt has been made to define what it means "thinking like a lawyer", the research has employed the theories of (for example) *Nancy B.*

⁸ PADILLA GARCIA Antonio : Perspectives on the Internalization of Legal Education. 51. *Journal of Legal Education*. 350. 2001. 350-354. p. Further see: The LSU Law Center-Canada Bijuralism Conference, and Papers from the La Pietra Conference of International Legal Educators. 51, 52. *Journal of Legal Education*. 2001-2002.

Rapoport, Chaterine Valcke. They emphasize that attention must be paid to the professional legal culture to the autonomy of the legal profession and law, while *Rapoport* explicates argumentative questions, and *Coing* suggests interpretation methods.⁹

4. For the questions of instruction method, another hypothesis comes up which is based on the theory of *Basil Bernstein*. This one has highlighted the integration and collection type of education and the necessity of *integration* of the various disciplines and classes in legal education. Within this problem three practical problems have been discussed. First of all, a solution for the problem of the final examinations was put forward. It is suggested that after the examination of the various legal professions, assuring the possibility of professional mobilisation, a second examination would be necessary for the specific legal professionals. Secondly, for the applicability of legal knowledge it is recommended “to build a bridge” between the practical and theoretical instructions. As a third point, the thesis mentioned that because of the effects of legal harmonization in the European Union the role of law faculties in legal education will probably increase, and the faculties have to specialize in the different fields of knowledge.
5. It is necessary to reflect on two challenges for the near future. The first issue is the problem of the multidisciplinary practice which when are discussed say that only the cooperation among lawyers and members of other professions, which has always existed, is to be allowed. The multidisciplinary practice however endangers such core values of the legal profession as independence, confidentiality, and the avoidance of conflicts of interest. The second issue, the thesis proposes that to have an optimal quality in legal instruction strategy, there has to be a balance between the face to face and the electronic teaching methods.

⁹ RAPOPORT B. Nancy : Is “Thinking Like a Lawyer” Really What We Want to Teach? In: PAMELA LYSAGHT, AMY E. SOLAN, BRADLY G. CLARY (ed.): *Erasing Lines. Integrating Law School Curriculum*. Association of Legal Writing Directors. West. 2002. 91-108. 91-108.; ARNOLD I. SIEGEL: Some Thoughts on Dean Nancy B. Rapoport’s “Is Thinking Like a Lawyer Really What We Want to Teach?”; SCOTT H. BICE: Good Vision, Overstated Criticism. In: PAMELA LYSAGHT, AMY E. SOLAN, BRADLY G. CLARY (ed.) *ibid.* 123-126.; 109-112. p.

When we are talking about the near future (considering the above mentioned as well) we could not avoid the following:

Globalization, economic globalization and legal globalization. These words are well-known for us and perhaps for the law society everywhere in the world. Undoubtedly “global law” is becoming an influential and organizing principle for legal instruction, research, jurisprudence and legal theories both in the United States of America and in the European Union as well.¹⁰ Recently, in the European Union much attention has been given to the harmonization and unification of law. We can see that since the Second World War considerable efforts have been made to promote the harmonization of private law and primarily the commercial contract law. Although there are debates on the unification of law in the European Union, debates on the teaching of law are almost entirely missing. As a consequence of the changing law instruction, of course the attitudes of legal profession will change as well. In recent years it has been increasingly necessary to familiarize students both with the rules and the deep structure of more than one legal system. Law students in the European Union are likely to work in an environment where they will have to deal with many legal systems in the context of a single case.¹¹

Business relationships for example are increasingly transnational and the economic relationships within Europe, and in the world, are constantly crossing jurisdictional lines. In the past law society referred to one legal system, while nowadays lawyers in the European Union have to work with more than one legal culture. Despite this the majority of law students still familiarize themselves with only one legal system. As *Xavier Blanc-Jouvan* noted the main feature of legal instruction in all countries, more or less including the common law world, is based only on the national law.¹² The situation is changing today. As students already feel that they are part of a global world, they want to know something about other legal traditions, including the English or American legal system.¹³

¹⁰ See: NAGY Zsolt : *Metzszetek a jogásztársadalomról.* (Details about the Legal Society) A Pólay Elemér Könyvtára. Szeged. 2012. 150-152. p.

¹¹ But we have to see other aspect of the globalization aespecially the legal assimilation. See: *Price v. Mercier Case* (1891. 18. Supreme Court 303. at 324.); and *Monaghan v. Horn* 1882. 7. Supreme Court Reports. 409. About the different view see: *Pierre-Basile Mignault: L'avenir de notre droit civil.* In.: *HOWES David : Maladroit or Not? Learning to Be of Two Minds in the New Bijural Law Curricula.* 52. *Journal of Legal Education.* 55. 2002. 55-57.

¹² *BLANC-JOUVAN Xavier: Bijuralism in Legal Education: A French View.* 52. *Journal of Legal Education.* 61. 2002.

¹³ As an Australian lawyer's promotion said: „Our Lawyers are working while your lawyers are sleeping” *ARTHURS W. Harry: The Political Economy of Canadian Legal Education.* 25. *Journal of Law and Society.* 14. 1998. 31. p.

We know that in recent years some efforts have been made to address this problem. In Europe there are some programs for students to learn about another legal system. In almost every law school there are courses in comparative law, which consists of a general introduction to the major legal systems existing in the world. The law schools invite foreign scholars to teach or co-teach some courses in order to introduce students to another legal world. These courses are excellent, but considering legal relationships it is likely that today these academic courses are not enough. Furthermore, the students are expected to spend an appreciable period of time studying another legal tradition abroad. The Erasmus program is such an inter-university program. I think that in the European Union the most ambitious attempt to address the problem of trans-systemic law teaching is the *Hanse Law School* where students are expected to learn the law system of the Netherlands and Germany. Similarly to this, the *Faculty of Law of the University of Maastricht* introduced the so-called European Law Studies Program where students enter a course focused on the general and common principles used by the member states of the European Union.¹⁴ These approaches of law teaching are focused on the mastery of more than one culture but they remain limited in scope or in vision.

To understand the way of trans-systemic law teaching better I think we have to analyze the legal education at the *Faculty of Law of McGill University* in Quebec, Canada. The result of this brief analysis can have an important message for all legal tutors in Europe.¹⁵

The McGill University Faculty of Law has always had a strong tradition of teaching comparative law but now the McGill teaching program is a real *bisystemic, transsystemic, bijural* curriculum combining the civil law and the common law. It is well-known, that Canada is a federal country where since the seventeenth century two legal systems of private law have coexisted in the provinces. Out of the two, the common law tradition dominates some branches of law such as the commercial and business law, procedural law and so on. After a French heritage, the private law of Quebec has been affected by the English system mainly in the area of commercial and procedure law. In this way the Quebec jurisdiction has a plural character of law using the method of comparison. For

¹⁴ DEc MESTRAL, Armand: Guest Editorial: Bisystemic Law-Teaching – The McGill Programme and the Concept of Law in the EU. 40. *Common Market Law Review*. 799-807. 2003. Netherlands. and European Law Faculties Association. (ELFA) The University of Birmingham. www.elfa.bham.ac.uk.

¹⁵ NAGY Zsolt : *Metszetek a jogászársadalomról*. (Details about the Legal Society) A Pólay Elemér Könyvtára. Szeged. 2012. 160-163. p.

example the *stare decisis* is not part of the Quebec law system but court decisions have been very considerable in judicial analysis or dissenting judicial opinions.¹⁶

Because of the above-mentioned *bijuralism*, legal education in Canada has a special importance. *Catherine Valcke*, a law professor at the University of Toronto, said that “legal players must be capable of playing two games at once”. As a consequence of the particular origins of Canadian law, it was an English-speaking law school, the only one in the early 20th century in Quebec, under the deanship of *Frederick Parker Walton* and *Robert Warden Lee*, which first introduced a *bijural* curriculum. In fact common law courses were offered alongside the traditional civil law program. By the end of the sixties a new so-called National Program was introduced whose philosophy was a “mutual understanding between different regions in Canada”. This program made it possible for the students to complete a civil or common law degree or to complete both degrees in four years. The program provided students with a training that allowed them to qualify as lawyers both in civil and common law jurisdictions. In this way, the McGill University began to produce jurists who could work both in transnational and international environments, and of course increase professional and personal mobility.¹⁷ It is worth mentioning that common and civil law degree graduates at McGill are qualified for practice in a number of states in the USA. Despite further effort to develop a comparative teaching method, the *bijural* curriculum was mainly a cohabitation of two largely autonomous orders of private law. As *Nicholas Kasirer*, a dean at the Faculty of Law at McGill University, noted: the McGill Program meant a peaceful cohabitation rather than active dialogue between the common law and the civil law but gives a ticket for the students and lawyers to have a career in the global market.¹⁸ It has to be mentioned that in the same undergraduate curriculum, this mixed legal education exists at the universities of *Montreal*, *Ottawa*, and *Sherbrooke*.

In 1999, as a response to external and internal pressures, such as the desire to make the Faculty more attractive to the students, a major re-

¹⁶ FERNANDEZ F. Mark : From Chaos to Continuity: The Evolution of Louisiana's Judicial System. 1712-1862. Louisiana State University Press. Baton Rouge. 2001.; Yves-Marie Morissette: McGill's Integrated Civil and Common Law Program. 52. Journal of Legal Education. 12. 2002. 12-14. p. 2002.; továbbá ld.: The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism. Department of Justice. Ottawa. 1997.

¹⁷ BÉDARD Julie : Transsystemic Teaching of Law at McGill: Radical Changes, Old and New Hats. 27. Queen's Law Journal. 237. 2001.

¹⁸ KASIRER Nicholas : Bijuralism in Law's Empire and in Law's Cosmos. 52. Journal of Legal Education. 29. p. 2002.

form came. Before 1999 the two streams were sequential rather than integrated as they are in the new program where students can be admitted to a single integrated program and complete it within three years. In this new *transsystemic* teaching, the fundamental concepts of the common and civil law are taught within a single course where law is learned in function of overarching categories of law. The courses include: Extra-contractual obligations/Torts, Contractual obligations/Contracts, Comparative Federalism, Private International Law and so on. The only course that is not taught in a *transsystemic* way is the Civil Law Property because of its cultural specificity.¹⁹ This teaching method gives students a coherent understanding of fundamental legal principles rather than an understanding of a single law system. This new approach of law teaching invites students and scholars to think about law in a new way. Furthermore, this new intellectual model of education is undoubtedly “an open door on the world” and it can deepen and expand the way of thinking about law. This dialog between legal cultures in the classrooms presented a legal knowledge that can highlight the importance of exchange between legal orders, and it might help to organize a new legal order.²⁰

In Europe and of course in Hungary there are many programs which allow students to get to know more than one legal culture. Excellent programs exist which enable students to study for one or more years in France, The Netherlands, Spain, Germany, or England as a part of the common law world, or to study in any other member state of the European Union. By these inter- and intra-university programs a solid grounding in both the civil and the common law can be acquired. In connection with these issues some questions may come up. Why did I give a brief analysis about the McGill Program? What is the connection between the legal mixture in Canada in the Canadian legal education and the European Union or the legal instruction in the European Union especially in Hungary? What are the advantages of the new McGill Program, should we choose a way of such complexity?

¹⁹ AUDLEY Mc. Michael : On a Theme by René David: Comparative Law as Technique Indispensable. 52. Journal of Legal Education. 42-48. p. 2002.

²⁰ MIGNAULT Pierre-Basile: L'avenir de notre droit civil. In.: DAVIDHOWES: Maladroit or Not? Learning to Be of Two Minds in the New Bijural Law Curricula. 52. Journal of Legal Education. 55. 2002. 55-57. p.; Yves-Marie Morissette: McGill's Integrated Civil and Common Law Program. 52. Journal of Legal Education. 12. 2002. 12-14. p. 2002.; Roderick A. Macdonald: The National Law Programme at McGill: Origins, Establishment, Prospects. 13. Dalhousie Law Journal. 211. 1990.; Julie Bédard: Transsystemic Teaching of Law at McGill: Radical Changes, Old and New Hats. 27. Queen's Law Journal. 237. 2001.

Rene David had the following standpoint on these questions: “Some are tempted to consider Canada as the promised Land for comparative law, but the pilgrims are still in the desert”.²¹ The Canadian legal instruction is based on the coexistence of two legal cultures and something similar, but more complex exists in the European Union. As a consequence, the development of legal education in the European Union may have to adapt to the new reality, and analyzing the legal instruction at McGill will help us to achieve our goals. In the following, in order to help you to think about these questions, there are some arguments for the above-mentioned questions.

1. A *polijural* education structure can provide students with a more complex legal knowledge and identity which can be useful in the multicultural world of Europe or in anywhere in the world.
2. A *polijural* education structure provides both students and scholars with the ability of comparative analysis. Students will not be taught within a unisystemic perspective but learn a more complex cultural context.
3. The comparative analysis will be at the centre of the legal knowledge of students and tutors as well.
4. With a *polijural* education, the general legal principles will become more and more important in the European legal community and common legal knowledge.
5. As a result, the European law society will not think in terms of a national legal system, rather in a perspective of several legal jurisdictions.²²

First of all these points are relevant to the European Union and to Hungary as well, especially to the legal unification process, which can develop modern law, and to the legal rules which will not just be increasingly *bisystemic* but *multisystemic* or multinational. The administrative lawyers in Hungary and everywhere in Europe are already working with the legal principles; legal directives of the European Union and many sources of legal rules allow lawyers to work within transnational frames. Further-

²¹ DAVID René : The International Unification of Private Law. In: DAVID René (ed.) International Encyclopedia of Comparative Law. Volume 2. The Legal Systems of the World. Their Comparison, chapter 5. Tübingen: Mohr. 1971. 208. p.

²² AULEY Mc. Michael : On a Theme by René David: Comparative Law as Technique Indispensable. 52. Journal of Legal Education. 42-48. p. 2002.; Julie Bédard: Transsystemic Teaching of Law at McGill: Radical Changes, Old and New Hats. 27. Queen's Law Journal. 237. 2001.

more, this legal globalization is occurring around the world. The *polijural* education can give students an intellectual enrichment to become global lawyers as well as domestic lawyers.²³ The Hungarian legal profession, especially the law teachers must be aware of that and the social, economic changes and they must break the old tradition in order to look into the near future.

Finally, probably the future is a kind of *transsystemic* legal instruction that has been explicated above, which will be able to contribute to a new European “*ius commune*”, which was based on the Roman law in the past, but today this is a process of coordination of laws within the European Union. This process can be called the re-Europeanization of legal community on the basis of common legal culture and common legal science (a new kind of European *universitas*). Nevertheless, this will be an aspect of harmonization of European legal education, our law society has to be aware of the cultures, legal cultures, traditions, legal traditions and the tradition of legal education structures of each European country.

²³ See: Xavier Blanc-Jouvan: Bijuralism in Legal Education: A French View. 52. *Journal of Legal Education*. 61. 2002.; Daniel Jutras: Two Arguments for Cross-Cultural Legal Education. In: Heinz Dieter Assmann, Gert Brüggermeier, Rolf Sethe (Hrsg.): *Unterschiedliche Rechtskulturen – Konvergenz des Rechtsdenkens: Grundlagen und Schwerpunkte des Privatrechts in europäischer Perspektive*. 75. *Nomos*. Baden-Baden. 2001. 82. p.; Adelle Blackett: Globalization and Its Ambiguities: Implications for Law School Curricular Reform. 37. *Columbian Journal of Transnational Law*. 57. 1998.; John J. Costonis: The Louisiana State University Law Center's Bijural Program. 52. *Journal of Legal Education*. 5. 2002. 6-7. p.