

Adam Bosiacki
University of Warsaw

GLOBALIZATION OF TEACHING: SOME REMARKS ON METHODS, NEEDS AND POSSIBLE TRENDS FOR THE FUTURE

The aim of the present paper is an attempt to answer the question how globalization of law provokes necessities of changes to legal education and whether it is possible or necessary to construct a single model of educating and training in this field. It refers to prove that changes of the system of legal education, if they are necessary, do not need to be automatically introduced, although some reforms are definitely needed.

I

No doubt, that the change in legal systems and theory of law in recent years was provoked by a new process named **globalization**. It occurred after the collapse of the communist system, and is now a phenomenon in many areas of social life. Globalization of law¹ is a phenomenon that has clearly taken several years. It contributes to the evolution of the scope of certain legal institutions and legal regulations, although it leaves unchanged the fundamental legal principles, existing since the time of Roman law, i.e. for more than two thousand years. Such rules, essentially in private law, but partly also in the criminal law and in what in Europe is referred to as administrative law, are expanding their scope².

¹ In comprehensive publications globalization of law and convergence of two major legal systems is not kept in mind. See e.g. M. B. Steger, *Globalization. A Very Short Introduction*, 2nd ed., Oxford University Press 2013 (contrary to some extent to H. T. Shapiro, *A Large Sense of Purpose. Higher Education and Society*, Princeton U. P., Princeton–Oxford 2005, pp. 111–113).

² See e.g. A. Bosiacki, *Konwergencja systemów prawnych w okresie globalizacji: spostrzeżenia i możliwe perspektywy*, (in:) M. Maciejewski, M. Marszał, M. Sadowski (ed.), *Tendencje rozwojowe myśli politycznej i prawnej*, Wrocław 2014, pp. 279–287 (some thoughts of general aspects of globalization are based on this text); R. David, J. E. C. Brierley, *Major Legal Systems in the World Today. An Introduction to the Comparative Study of Law*, 2nd English ed., New York 1985, apart from common law (English law and the law of the United States of America) and

In the context of globalization, we can talk about the phenomenon of **convergence** of the two major legal systems. Globalization stimulate natural convergence of both of them, which is just the problem of most natural character, broadly existing beyond formal institutional³. There is no indication that the phenomenon of globalization, including the **globalization of law**, had to be reduced, on the contrary: its role constantly is likely to grow⁴. Not only is it applicable to private, administrative (public), but also to criminal law, and a lot of aspects in any other legal field.

II

It is obvious that in the era of globalization, in the era of globalization of law, **globalization of education** becomes a necessity. The aspects of globalization are associated with natural phenomena such as expansion of the internet, travel, business, or international trade, transnational private law institutions (agreements, franchises, factoring methods, etc.), criminal offences with their prosecution and punishment, technology development or functioning of international organizations. The natural consequence of such phenomena is a much wider necessity of exchange of educational, academic, scientific and cultural activities, functioning beyond national legal markets. The modern lawyer must be able to move quickly⁵, not only in the context of national law, but also private and public international law (national law with a foreign element). Much more than previously globalization has provoked a departure of title from the place of its location (*lex rei sitae*). Institutions such as international franchises or implementation of foreign law, including the European Union law (also in the sphere of private law relations)

continental systems (Romano-Germanic Family) distinguished socialist, Indian, far east, African and Madagascar legal systems. In addition, to two basic legal systems contemporarily there can be seen the Chinese, Indian, muslim and perhaps post-communist legal systems. To the present author the Chinese, Indian and muslim legal systems tend to be of much less convergence. See also e.g. H. J. Berman, *Law and the Revolution. The Formation of the Western Legal Tradition*, Harvard U. P., Cambridge Mass. 1983 (Polish ed. 1995); J. M. Kelly, *A Short History Of Western Legal Theory*, Oxford U. P. 1992 (Polish ed. 2006); etc.

³ First of all, globalization modified the idea of government and transnational economic links. See e.g. R. La Porta, F. Lopez-de-Silanes, A. Shleifer, *The Economic Consequences of Legal Origins*, "Journal of Economic Literature" 2008, No. 46:2, pp. 285–332, and R. La Porta, F. Lopez-de-Silanes, A. Shleifer, R. Vishny, *The quality of government*, "The Journal of Law, Economics and Organizations", Oxford 1999, Vol. 15, Issue 1, pp. 222–279.

⁴ *Announcement for Association of American Law Schools Conference on Educating Lawyers for Transnational Challenges*, May 26–29, 2004, cited in S. Bisom-Rapp, "Comp. Lab. L. & Pol'y. J." 2003–2004, No. 25, p. 257.

⁵ Comp. J. Welch Wegner, *Reframing Legal Education's "Wicked Problems"*, "Rutgers Law Review" 2008, pp. 867–868.

are more frequent than before, and the role of international economic agreements between countries is growing. A well-known phenomenon is the modern system of widely-interpreted transnational human rights and civil rights. The exercise of these rights operates here, to considerable extent, on the basis of precedents, i.e. specific cases, typical for *common law*. New institutions are not completely coherent with domestic legal orders and they function in a new shape. Contrary to the concept of political competitiveness of Europe and the United States, they are formed from the bottom up, on the basis of the rulings in particular cases or broad general clauses, which is connected with the typical approach of common law. It is obvious that the model of education must take account of these changes.

An interesting point applies to the rules of international criminal law. Definitely, the trend is to expand a sort of codification of the branch in terms of reaping the rights of any universal norms (*ius gentium*), which are widely accepted but not written standards. On the other hand, many emerging penal institutions and formal cooperation between the countries of the European Union (the European Police Office, Europol, the European Anti-Fraud Office, Olaf, the protection of financial interests of the former communities of the possibility of disclosure of bank secrecy, even by Swiss entities) may on one hand, due to needs based on individual cases, and on the other hand, supported by rigid rules written without any general clauses – which is obvious for each of its national criminal law. The first attempt to create such a system was the so-called Nuremberg law, but of course, the attempt to create a system of international criminal law so far failed (within the EU failed for example, the concept of the European Public Prosecutor's Office and the attempt to create a general part of the so-called European Criminal Code – *Corpus Iuris* has not gone beyond the scientific framework). Currently, within the framework of the European Union, however, numerous supranational institutions of both material and formal criminal law operate. An expanded institution is also the Interpol, the International Criminal Police Office.

III

As indicated above, the evolution of modern legal systems require broad knowledge of both contemporary Anglo-Saxon and continental legal systems. Paradoxically, it is very difficult to find common principles or forecasts permeability of both systems, so, undoubtedly, a modern lawyer's mission is to dynamically adapt his professional expertise to many aspects of the system and the changing legal services market in this respect. New institutions have, or are going to have, more typical *case* character (e.g. the EU competition law). They will also be of more general clauses (e.g. the European Code of Good Administrative Behavior of 2001). Globalization will also increase a tendency of codification at

the international level. This will apply not only to the legal system of the continental Europe, but also to the American system and the British one (English, Scottish). On a similar principle, there could develop the evolution of criminal law in the context of globalization of crime, or increasing number of criminal offenses committed with a political motive. The resulting new system is therefore, far from classical positivism.

It is worth stating, I think, once again that in the era of globalization, from which escape is impossible, the convergence of the two principal legal systems is gaining momentum. The minimization requires adapting to new market needs of education⁶ and legal services, and will be subject of numerous scientific studies and analysis of the phenomena, which can of course, be subject to rapid obsolescence. The main research and practical issues remain, however, always the same: in our case, the education of students, which could respond to the rapid changes in the possession of extensive knowledge in the theory of law.

IV

In the new global circumstances the main question to answer is however, whether we should **reform or transform** legal education, or should it remain the same in the basic way. For about last twenty years, i.e. approximately from the origins of globalization, there has been a discussion on necessity of **transforming** the system of education⁷, but the general trend (at least in the Polish perspective) is that, paradoxically, the level of an average student's education decreased. In the practicing field of law students tend to have better skills or rather technical information than the general legal knowledge⁸. It may refer to knowledge, in comparison to skills in general, although a lot of institutional effort was made to improve the level of education⁹. In general, it is also argued that the phenomenon of mass, or boom education, caused more business – university instead of government – university relations¹⁰.

⁶ L. Menand, *The Marketplace of Ideas. Reform and Resistance in the American University*, New York–London 2010.

⁷ *Ibidem*.

⁸ See e.g. T. Giaro, *Kształcenie, wykształcenie i niedokształcenie polskiego prawnika*, "Pauza Akademicka. Tygodnik Polskiej Akademii Umiejętności" 2014, Vol. 270, p. 2.

⁹ R. Arum, J. Roksa, *Academically Adrift. Limited Learning on College Campuses*, The University of Chicago Press, Chicago–London 2011, p. 122.

¹⁰ This process tend to begun in US already in 1975 (see L. Menand, *The Marketplace of Ideas...*, pp. 64–65). Also, the author does not suggest that government – university relations are to dominate and this is obviously the leading opinion also in post-communist countries.

V

Traditionally, the **process of education** consists of knowledge, learning, information and skills intelligence¹¹. Not all of them are automatically taught within the process of education in law schools. On the other hand, it is quite obvious that in the globalizing world the four factors should be considered in education of both theoretical and practical aspects of a legal studies, but the question arises whether all four of them are possible to be taught within the *academia*¹².

It is not possible to train completely a single abiturient for any kind of occupation based only on academic legal education. Legal schools however, offer quite a wide knowledge useful to perform various professions, also not particularly connected with specific legal knowledge.

There is no argue that academic education of a lawyer should provide with **knowledge**¹³. In the period of globalization it is said it should be quite widely enabling to adapt to various aspects of a changing world. In this context, however, there is always some general knowledge required from any single lawyer that is needed to perform any legal occupation. In the period of reforming legal schools and universities¹⁴ this attitude is widely discussed and it is a basic argument for constant limiting the curricula to very practical legal skills, contrary to the abstract legal knowledge¹⁵. It is concerned that, as it is in America, general education is also provided before beginning legal studies and should be limited in legal schools. However, American students still tend to be better prepared for legal occupation than the European ones¹⁶, whose knowledge is reported to be more narrow, as an impact of reforms in recent years in the European Union's education. On the other hand, a number of scholars alarm, that in America nowadays there are substantial similarities in this field¹⁷.

It seems that the scheme of legal teaching should take into account ensuring knowledge on certain level, allowing students to react to the changing conditions of the legal systems, but not vice versa, as we observe young lawyers are often

¹¹ R. Arum, J. Roksa, *Academically Adrift...*

¹² In the present paper I often use this term, as well as a word *university*, but it is completely applicable to American terminology of *legal schools*, which are obviously of the same character (the differences are not crucially important for the present study).

¹³ As it is widely known, in American system of legal education, non-legal educational background of an initiating student is more developed than in another systems. It does not obviously mean, however, that legal schools do not provide elementary legal knowledge at the beginning of educational process.

¹⁴ L. Menand, *The Marketplace of Ideas...*, p. 14 ff.

¹⁵ See further and compare with *ibidem*, p. 53.

¹⁶ Compare M. Reimann, *The American Advantage in Global Lawyering*, "Rabels Zeitschrift" 2014, No. 78, p. 16, cited in T. Giaro, *Kształcenie, wykształcenie...*

¹⁷ L. Menand, *The Marketplace of Ideas...*; H. T. Shapiro, *A Large Sense of Purpose...*; R. Arum, J. Roksa, *Academically Adrift...*

concerned to have better skills than a possibility to change the field of professional interests¹⁸. Definitely, modern lawyers will have to react dynamically to the widely changing context of their professional actions. Probably the only good feature of the communist system was that it provided the average quantity of knowledge potentially for a wide number of students (and pupils in lower levels). This allowed us to find ourselves in a market economy system. And probably the same will help current students find themselves in the modern, changing world, including legal services or jurisprudence.

In this context, four processes of lawyer's education are useful to be performed, but still not necessarily in a stage of academic education.

Today the core model of education, instead of the distribution model, is reported to be more efficient. The latter provides traditional "departmental" courses contrary to **extra departmental**, and then inter-disciplinary, treated as a flexible source of education, designed also for non-specialists in the field. It is concerned to be taught at Harvard or Columbia schools¹⁹, but under the condition that at least some educational background had been obtained before. *Interdisciplinarity is disciplinarity raised to a higher power*²⁰. Avoiding this condition, we face students who are theoretically flexible without some attitudes to general knowledge (not necessarily directly connected by law); there are sometimes met in various legal faculties around the world.

It has not really been proved that traditionally thought general knowledge is *too narrow or too utilitarian*²¹, or – what is more important – that in fact, limiting it provides more flexibility to a student in the globalizing legal world²². A good legal background, provided by academia, concerning substantive and universal legal knowledge seems to fetch more possibilities to adapt oneself more flexibly to changing needs in the profession, than a lack of this background and teaching more and more subjects (or something like semi-subjects, with increasing number of sub-disciplines) of extra departmental character. The latter is traditionally used at more advanced levels of legal education. Since the nineties in the U.S. education there has been also some return to disciplinary model²³.

¹⁸ This rule refers also to negative implications of limited learning in general as they provoke more limited (narrow) possibilities to react in labour market for graduates in changing circumstances. See e.g., R. Arum, J. Roksa, *Academically Adrift...*, p. 122.

¹⁹ L. Menand, *The Marketplace of Ideas...*, pp. 26–29.

²⁰ *Ibidem*, p. 96.

²¹ Contrary *ibidem*, p. 30.

²² For at least fifty years, discussions on liberal knowledge or liberal education have been introduced, without creating substantive definition in this matter. The question that liberal approach to educative institutions provided better prepared people in contemporary world was probably not faithfully proved. Compare L. Menand, *The Marketplace of Ideas...*, p. 53, and especially H. T. Shapiro, *A Large Sense of Purpose...*, pp. 88–89.

²³ L. Menand, *The Marketplace of Ideas...*, p. 87.

The process of **learning**, deeply connected with knowledge, focuses on acquiring it by common methods provided by the field and by at least some schools or centers of education. In legal learning a process of education concerns various aspects of dogmatic science within branches of law, as well as common methods of acquiring knowledge, connected with other fields of science, such as inference (e.g. deduction), logics or even mathematics, philosophy and ethics, or some knowledge on political science, sociology, history of law and its sub-disciplines, management studies, and some other sciences²⁴. Legal education of both dogmatic and **non-dogmatic areas**, is also hard to be limited as it allows graduates to adapt to a potentially interdisciplinary work, mainly of a legal character²⁵. Learning should not be confused with two other factors of (legal) education which are **information and skills**. The latter is sometimes required by students or practitioners to be taught at universities, as groups of people of primary interests of the system of learning, who are even treated (or called) as *stakeholders*. In this context not only the whole process of education is treated somehow as pure commodity, but the process of learning seems to be a kind of agreement with potentially maximum direct and quick benefits²⁶. Usually, without such a radical approach, these factors provoke commercialization of universities²⁷. The problem arises when the stakeholders – contrary to the contemporary idea of *governance* – are not completely able to realize the needs and requirements of adapting to the market the ideas of education they are being taught²⁸. In individual legal studies it is much more possible to arrange an own students' curriculum (within academic supervision) within his/her predictions which are obviously important but sometimes the goal might be a bit difficult to realize at the early stage.

In the context of **information**, the university education's task seems to be mainly in verifying it, making possible to adapt information to legal needs in practice. It is one of crucial points of legal profession when the amount and scope of information are not possible to be verified by a single person working sometimes in a narrow field. New **skills** are introduced in this matter in legal faculties,

²⁴ L. Menand (p. 56) concerns, e.g., that *future lawyers benefit from learning about the philosophical aspects of the law just as literature majors learn more about poetry by writing poems*. For question of benefit – see also a further part of the presented paper.

²⁵ L. Menand points (p. 57) that in the system of university education *only lawyers get to teach the law for future lawyers. In most liberal arts colleges, students cannot take a course on the law (apart from the occasional legal history course)*.

²⁶ Compare T. Giaro, *Kształcenie, wykształcenie...*

²⁷ H. T. Shapiro, *A Large Sense of Purpose...*, pp. 19, 21.

²⁸ In this context, for instance, in Polish public universities students' representatives have their seats in faculty committees for scientific research. It is an attempt of involving them in the process of education and science although their abilities in these fields tend to be limited. On the other side, the rank of Polish law faculties depends crucially on the figure of graduates who satisfactorily entered further legal training to advocacy, legal counsellor's offices, judges and other legal professions.

where students have to acquire such orientation in information, which is needed in their further work. Most professional skills are really still obtained after graduation and this rule cannot be substantially changed. On the other hand, during university education some questions about necessity of values, morality, or even to some extent the behavior of a lawyer in a further career need to be answered. Such questions are more difficult to be put in the “practicing period”, after graduation.

The mentioned crucial point of economic benefits of legal education corresponds with developing sense of **purpose**. In the last two decades academic and legal standards increased significantly but the purpose of education was sometimes limited to current economic interests as was stated before. Some critics of treating the knowledge or the whole process of education first of all in economic context, point that good education results also from the *soul of university*²⁹ which means community of teachers and those being taught, research and science, disciplinary, sub-disciplinary and interdisciplinary development, and a number of other factors. It also provokes closer partnership between faculties³⁰.

To conclude, we may say that there is a possible disadvantage of automatically innovating legal education in any kind of its four processes, which is linked to reforms or expanding the liberal concept of teaching in American and non-American universities only to some limited extent. In the globalizing world we should probably say about **adapting** instead of transforming legal education at universities. To some extent a good receipt to rapid changes is teaching process on a pattern of case studies as it is the reception of the American model of teaching. An important question is the reception of American educational system in the “older” European Union as well as in post-communist countries. Some reception in new legal institutions approach in globalizing world (e.g. case law) is important to transmit. The other ones which were treated as of a different advantage, are to be avoided resulting American experience. Some of them were stated also in this paper.

Last but not least, as an important factor of legal education would remain legal science due to the fact that – as it was already pointed out – with the process of legal globalization, a substantial figure of legal problems would also be the same.

²⁹ H. T. Shapiro, *A Large Sense of Purpose...*, p. 113.

³⁰ *Ibidem*.

GLOBALIZATION OF TEACHING: SOME REMARKS ON METHODS, NEEDS AND POSSIBLE TRENDS FOR THE FUTURE

Summary

This paper focuses on the analysis of an array of teaching methods and trends in legal education in the time of globalization. Globalization of laws as one of the effects of globalization provokes necessity of applying different legal systems to a lawyer potentially engaged in many branches and legal institutions. It implies comprehensive comparative methods in teaching which are to prepare qualified lawyers ready to dynamic changes of legal systems and to different methods of legal reasoning in their field. In such a process of education wide knowledge and skills are needed. Thus, narrowing legal education only to certain methods and domains makes graduates potentially unprepared for evolution and convergence of legal branches and institutions in contemporary world. It is, then, obviously needed to come back at least to some traditional background of legal education not only in legal dogmatic but in a wider (non-dogmatic) context of a teaching process in the school of law. In addition, however, education of a lawyer requires substantial legal practice, which is still insufficiently present in European university curricula.

GLOBALIZACJA NAUCZANIA. ROZWAŻANIA NA TEMAT METOD, POTRZEB I MOŻLIWYCH KIERUNKÓW NA PRZYSZŁOŚĆ

Streszczenie

Niniejszy artykuł koncentruje się na analizie różnych metod nauczania oraz edukacji prawniczej na świecie. Globalizacja prawa jako jeden z efektów globalizacji na świecie powoduje konieczność wykorzystania wiedzy z różnych systemów prawnych przez prawników, którzy pracują w różnych branżach i instytucjach prawnych. W związku z tym konieczne jest zastosowanie metod komparatystycznych w nauczaniu prawa, które przygotują prawników do dynamicznych zmian w systemach prawnych. W wykorzystaniu takich metod nauczania konieczne są określone umiejętności i wiedza oraz różnorodna metodologia prawnej interpretacji. Ograniczenia edukacji prawnej jedynie do określonych metod nauczania potencjalnie powodują brak przygotowania prawników w obliczu ewolucji i zbliżania się prawnych instytucji w współczesnym świecie. Jest zatem oczywiste, że konieczna jest zmiana tradycyjnego nauczania prawa. Ponadto edukacja prawnicza powinna być powiązana z praktycznymi aspektami wykonywania zawodów, co nadal nie jest szeroko stosowane na uniwersytetach europejskich.

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SŁOWA KLUCZOWE

globalizacja, zbliżanie się systemów prawnych, reforma edukacji prawniczej, nie-dogmatyczne metody nauczania