

Academic dual life and other misunderstandings – Reflections on law studies in Helsinki

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“For my part, I am not at all as convinced as lawyers in general of the beneficial effect of law studies. On the contrary, I dare to be enough of a heretic to claim that legal science, in the form it is here practised – that is, as only logical-juridical explanation, from which all social viewpoints have carefully been erased as irrelevant – can actually prove to be positively harmful. This is because lawyers, having received such a one-sided education, quite often tend to become strongly enough attached to the letter of the law as to forget the rights, the human needs, that the law is supposed to protect.”¹

Professor Allan Serlachius, 1904

Introduction²

The kind of worldview embedded in university education is a theme of timeless interest and importance. –What conception of law and professional self-understanding is communicated to students? As a process of reforming the law degree in Helsinki is currently underway, we discuss in this paper legal education based on our experiences as law students, with the aim of providing ideas in respect to the coming reform. We think that in order to understand how an average

student experiences law studies, they need to be examined from various angles but in their entirety, for the illusion of coherence is all too easily attained by the experienced.

All lawyers in Finland receive a rigidly structured education leading to the higher university degree of Master of Laws³, which in Helsinki currently comprises 160 credits⁴

3 The Master of Laws degree is a prerequisite for most judicial posts in Finland. Only very few end their studies after earning the Bachelor of Law degree, and all students are admitted straight from the beginning to the Master's programme.

4 The term 'credit' refers to an average input of 40 hours of work by the student, including class hours and private study. A rough equivalency of the Finnish credits with the European Community Course Credit Transfer System (ECTS) is that one Finnish credit equals two ECTS credits.

1 Freely translated from Serlachius, Allan: *Caveant consules*. Lakimies 1904, p. 188.

2 We would like to thank Retfærd's anonymous referee for useful comments and Sari Lindblom-Yläne and Johanna Niemi-Kiesiläinen for their guidance during the whole writing process.

(320 ECTS).⁵ The degree takes an average of 5 to 6 years to complete. The largest part of the degree is the mandatory subject studies phase,⁶ where the emphasis is on independent study of books for examinations, supported mainly by mass lectures.⁷ The previous reforms in 1977 and 1996 introduced the beginning studies as well as the supplementary and advanced studies in their present form. However, these reforms did not affect the mandatory subject studies, save for the inclusion of courses in general jurisprudential studies.⁸ We concentrate mainly on the man-

datory subject studies phase, as it is today clearly the most problematic part of the degree.

1. A General Degree and Specialisation

The current reform process, like its predecessors in the 1970s and 1990s, is surrounded by a debate on whether the law degree ought to be a general degree or allow for specialisation. The general degree approach is understood as a requirement that a graduated lawyer has to have basic knowledge of all areas of the legal system. The underlying argument is that education of judges is the core requirement for legal education, and a judge at her/his work has to be able to adjudicate cases in any area of the law. This consequently imposes restrictions on education. The specialisation approach in turn is supported by the argument that there is a need to educate lawyers for a wide range of positions, while lawyers' actual job descriptions increasingly do not correspond to the traditional focus of the education.

The challenge is then how to guarantee that legal education at the same time produces competent lawyers both for the traditional core areas and for more specialised positions. The nature of the degree as a general degree has traditionally been one of the strengths of Finnish legal education.⁹ In our opinion, the problem here lies not in the aim to provide law students with an understand-

5 The credits within the degree are distributed as follows: introductory studies 14 credits (28 ECTS), language studies 11 credits (22 ECTS), subject studies 105 credits (210 ECTS) – of which 78 credits (156 ECTS) are compulsory courses and 27 credits (54 ECTS) supplementary courses – and advanced studies 30 credits (60 ECTS).

6 Compulsory courses cover the following 19 areas of study: Civil Law, Commercial Law, Property Law, Family and Inheritance Law, Labour Law, Environmental Law, European Law, Legal Theory, History of Law, Law and Economics, Accounting, Sociology of Law, Private International and Comparative Law, Criminal Law, Procedural Law, Constitutional Law, International Law, Administrative Law, and Fiscal Law. Altogether these courses take about three years to complete.

7 The supplementary subject studies also include a number of exercises and seminars. Advanced studies consist of seminars and a Master's thesis of 50–80 pages. University of Helsinki, Degrees offered at the Faculty of Law <http://www.helsinki.fi/oik/tdk/english/faculty/faculty.html>

8 The trend in the previous reforms was towards more elective courses in the degree. In this regard the current reform aims to take one step forward. The advanced studies were introduced in 1977 and the beginning and supplementary studies in the 1996 reform.

9 The general degree approach was also taken by the Faculty's committee for the development of teaching as the basis of the reform proposal.

ing of the whole legal system, but instead in the way that aim has in practice been pursued, namely by placing the emphasis on memorizing normative material instead of promoting deep-level understanding. As the amount of legal norms increases rapidly and they are replaced at an increasing frequency, the key competence of a lawyer has become the ability to master large amounts of information and to constantly update her/his knowledge base. Consequently the educational emphasis should be shifted from memorizing to legal thinking, general principles and slowly changing argumentative structures.

Specialised expertise is best based on an understanding of the legal system as a whole. In this sense, the views of the degree as a general or a specialization degree need not be seen as opposite, but instead complementary. By shifting the educational emphasis to building key competencies, the law degree can both provide an understanding of the legal system as a whole and support specialisation.¹⁰ The question to ask is not *whether* the

degree is a general degree or not, but instead: as it is a general degree, *what does that mean?*

2. Coordinated Support

There is a closer connection between *what* is taught and *how* than is usually perceived. Supporting deep-level understanding sets demands for the teaching approach. The emphasis ought to be shifted from memorizing towards understanding, from transmitting knowledge to constructing knowledge and from a teacher-oriented towards a student-oriented approach.

Studies should be structured to proceed from simple to complex, from basic to advanced and from guidance to independence.¹¹ In the beginning basic *and* guidance, later advanced and independence. The degree structure needs to provide for more guidance while preserving the element of choice. The students should be offered a pedagogically limited palette that enables each student to

10 One tool that can be used for defining the core content of the degree is Core Curriculum Analysis, which aims at finding the core content of the degree. It is based on a model that divides knowledge into different levels, based on its importance for the development of expertise. Core knowledge consists of the intellectual tools and techniques necessary for mastering the growing amount of information, and the contextual understanding that enables independent thinking. The majority of time in a course should be spent on acquiring the core knowledge, all students should have a firm grasp of this level. The next level, supplementary knowledge, could then consist of the central dogmatic aspects of each area of the law. Supplementary knowledge includes details necessary for dis-

cussing theories, principles and structures, but this level of knowledge is not the focus and it should not be taught at the expense of core knowledge. Knowledge required for the degree should be limited to these two levels. Additional levels are possible, but number of levels or the precise criteria are in themselves not decisive – the objective is to analytically examine the content of the degree in order to make it best support the development of key competences and legal expertise.

11 These aspects were also emphasised by the Law panel in their report for the Evaluation of the Quality of Teaching and the Degree Programmes at the University of Helsinki. http://www.helsinki.fi/opintoasiainosasto/opintojen_kehittamisyksikko/panelreport_law.html

arrange her/his studies so as to develop a personal profile of expertise.

In many cases it is easier to support the development of expertise through new teaching methods. Some teachers are already experimenting with new teaching methods, such as problem-based learning.¹² The use of teaching methods that are more student-centred combined with working in smaller groups in general provides more possibilities for student - teacher (and student - student) interaction as well as room for personal feedback. This is not to say that traditional lectures are outdated, the choice of a learning environment should be made, after first deciding on the content of the course, on the basis of what kind of teaching best enhances the learning of the content.

There is also a need for basic-level coordination. It seems that the efforts of individual teachers often do not meet their aims because they do not know what kind of knowledge they can build upon, what is taught and where. Certain basics are assumed to be learned; yet teaching them is not necessarily coordinated in any way. For example, stu-

dents' understanding of the sources of law is often vague.

As coordination takes place mainly inside the subjects, courses of different subjects are not designed to support each other. In reality, students do not proceed from the basic course through to advanced studies inside one subject, but rather first horizontally through the basic courses of many different subjects, after which they then return to some of the subjects in the supplementary and advanced studies. There are many high-quality courses available in the Faculty, but the great majority of these are offered in the context of supplementary and advanced studies and can thus only be taken in very few subjects.

Many teachers think that students first need to learn a certain amount of normative material before they can be given meaningful guidance. This is usually perceived to take place in the supplementary and advanced studies. However, at present the degree rests firmly on a ground of independent study in preparing for mandatory examinations, supported mainly by those lectures that can be taken in place of a part of the required reading. As long as these remain the main channel through which the conception of law is communicated to the students, more attention ought to be paid to their development.

3. Controlling Learning

What is studied should stand in direct relationship to how learning is controlled. It is an almost unanimous view of the students in the Faculty of Law in Helsinki, that the most serious problem in their studies is the examinations. They are perceived as very demand-

12 In problem-based learning a group of students is issued with a problem; the objective however is not to find the correct solution but rather to use the problem as a platform for study. Problem-based learning has much in common with the case-method widely applied in law studies, but the two also differ in many respects, e.g. cases in the case-method are more strictly limited and the process is more directed at finding solutions. See Lindblom-Ylänne, S. & Iivanainen, A. Ongelmalähtöinen oppiminen – teoriasta käytäntöön in Lindblom-Ylänne, S. & Nevgi, A. (eds.) *Yliopisto- ja korkeakouluopettajan käsikirja*. Helsinki: WSOY, 2003, pp. 356-375.

ing, not because they are intellectually challenging but because the majority of the material has to be learned more or less by heart. The students generally lack a clear conception of the aims of particular courses. Examination questions are often formulated to demand the exact repetition of detailed material located on only a single page of, on the average, over a thousand pages of required reading.¹³ Such questions do not promote critical evaluative thinking, nor the understanding of interdependencies between issues explained in different parts of the books. Instead, they lead to a situation where the student discovers that rote memorization is the best way to pass examinations.

It seems that teachers often think that thorough learning is best controlled with detailed questions. This is based on a conception that detailed understanding can only be based on an understanding of the wider basics. In practice, the fact that the majority of questions are so specific steers learning in the opposite direction. In anticipation of detailed questions students only prepare for that kind of questions and the learning result ends up being very fragmented. Discouraged by past experiences, the student's anticipation of details is often even stronger than the teacher's actual willingness to control them. Being

used to detailed questions, the student does not know when s/he is expected to *critically think* about an issue, unless this is expressly stated in the question. And even if this is stated, it takes more than a few words on an exam paper to orientate students to the right mode of studying. In our experience, when a teacher then asks a question that aims to measure the students' ability to discuss the issue, students often answer it so poorly that the teacher returns to controlling details, which s/he mistakenly believes is easier for the students.

The main learning method ought not to be the independent study of books and the corresponding examinations, but if and when it is, "the book is the teacher". When learning is based solely on the books, the questions also have to be based solely on these same books. A common mistake is that, determined to formulate good and inspiring questions, a teacher will draft a question dealing with a scientifically up-to-date-issue, while the students' learning is based on books which are neither written nor selected by her/him and provide no basis for answering the question properly, as the significance of the issue cannot be understood by reading them. This further encourages the students' perceptions that the best way to pass examinations is to memorise a lot of legal trivia.

An examination is not a learning situation; it is a means to control learning. By telling the students at the beginning of the courses how to study and how they are expected to answer the questions in examinations, it is possible to direct their learning in the intended direction. By trying to "surprise" the students by asking questions about detailed issues that are only marginally treated in the required reading, the teacher directs the stu-

13 The recommended minimum amount, out of a total of about a thousand pages of required reading, for a question to be based on is one chapter or about 30 pages. For guidelines on exams, see e.g. Lindblom-Ylänne, S. & Nevgi, A. (eds.) *Yliopisto- ja korkeakouluopettajan käsikirja*. Helsinki: WSOY, 2003 or Brown, G. with Bull, J. & Pendlebury, M. *Assessing Student Learning in Higher Education*. London: Routledge, 1997.

dent, in anticipation of "his next question", to concentrate on the margins instead of the centre. *As examination questions greatly forge studying methods*, it is essential that they be drafted, from the student's point of view, in a consistent manner in regard to other elements of the course.

4. A Hidden Curriculum?

While engaged in research, academics are aware of contextual considerations, but when giving lectures on the issues they so elegantly discuss elsewhere in their work, they tend to concentrate mainly on the *results* of their research. The thinking process is not communicated to the students and the choices inherent in law have been set aside or made invisible. Instead of explaining their considerations they often concentrate on the ready-made answers. The teacher does often emphasise that argumentation is an essential part of law. But this conception rarely influences the teaching methods they employ and is thereby not communicated to the student. In the lecture hall the argument still so often goes "The law says that..." where it should go: "I have come to this conclusion having taken into consideration..." What is transmitted to an average student is an image of a closed normative system that offers answers to most, if not all, situations in which legal norms are applied. Consequently, students may learn that it is not relevant for the lawyer to consider what effects the legal solutions have on people's lives and interests.

We are naturally aware that these concerns can also have implications for research, but in this article we concentrate only on teaching.

As the conception of law and legal science communicated to the average student is limited, also the professional self-image of the lawyer is communicated to the average student in a limited manner. It often seems that the greatest problems are related to identifying the legal problems that involve choices. –The law dictates the outcome, I just apply the law. A similar worry, we understand, also troubled Professor Serlachius in 1904.

One factor that making choices essentially involves, is the question of ethics. The teaching of professional ethics has so far concentrated mainly on normative ethics – that is, professional codes of conduct understood as ethical norms.¹⁴ Even though codes of conduct have important functions, they cannot in a notable manner give answers to difficult and complex ethical questions. They also cannot solve contradictions between the norms themselves. As a pedagogical approach, concentrating on the norms easily leads the student to the conception that ethical issues are only seldom at hand, or that when they are, they are easy to deal with – as long as one follows the professional code of conduct.

The contradictory situations the legal expert faces in her/his work have however taken on new shapes in tune with the changing society. Increasingly, problems evolve out of the obscurity and ambiguity of the situations. The professional does not easily know which (moral or other) code to follow or where the

¹⁴ There are also some new courses in the supplementary subject studies, which, although based on a highly advanced approach, for the moment only reach a limited audience. E.g. "Laboratory on Lawyers' Ethics" and "Justice in Legal Science" by Professor Ari Hirvonen.

limits to her/his responsibilities are. In addition to shared values, be they then those captured in the codes, s/he needs reflective ethics, the ability to continually evaluate her/his actions from an ethical point of view. While also normative ethics can have implications on teaching, the main emphasis should be laid on provoking ethical thinking. Rather than say, "This issue also involves an interesting ethical question, which is..." the teacher should lay the problems out to the students as open and problematic.

As academic lawyers widely acknowledge the meaning of legal education in shaping the image of the legal profession, they should stop more often to consider what kind of an overview and what kind of a conception of the legal world is communicated to future lawyers. It is a common misconception that somewhere in the degree, "outside my lectures", students will find a forum where this image is passed on. It is imperative to bridge the gap between what the teachers think is communicated to the students, and what actually *is* communicated. While coordination has its place here, the most important task would be to bring the different *approaches* to research and teaching – "the academic dual life" – closer to each other.

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