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The Spirit of Modern Academic Legal Education: Towards Governing Principles

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Abstract

The contribution promotes the idea of principles in academic legal education. Principles are taken to be abstract notions that can offer a certain direction of things in academic legal education. The paper posits that such principles should be taken into account both in the designing and the implementation of programmes of legal study and law degrees in the academic environment. Law is, of course, to this day, a largely divided discipline, especially considering that law has traditionally been in the hands of nation-states. By extension, legal education around the world may be perceived as largely divided too, because the discipline of law has been divided in the first place. However, the proposed principles are ones that ought to come with certain universal characteristics to them. Equally, they should also make allowance for certain local variation where possible, albeit not always and not necessarily. Recognition is also given to the fact that such a degree of local variation could be more significant where such could be justifiably supported by a domestic academic legal community and/or a domestic professional class of legal practitioners. Furthermore, the contribution offers specific examples of principles which can function as overall guiding principles for university law degrees around the world. The paper concludes with an overview of its main findings.

Keywords: Legal Education, Legal Pedagogy, Principles, Universities, Law, Doctrinalism, Contextualism, Critical Analytical Skills, Academic Citizenship, Practical Skills, Academic Freedom

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Introduction

Law, whilst a largely divided discipline, due to apparent divergences from legal system to legal system, can at the very least, proceed with certain common principles in the area of academic legal education. This exposition proposes a number of principles for the strengthening of legal education. These are principles that operate over and above the national characteristics that the different legal educational models around the world come with. The purpose of these principles is for them to act as guiding notions with certain universal characteristics to them, these principles being adaptable at the local level.

Principles in Legal Education

As the author has maintained elsewhere, principles, together with values, constitute the apex of human existence and endeavours (Platsas 2021: 18). Principles are not practices. Principles are not just common beliefs or ideological artifices. Principles are not doctrines either, as doctrines are not normally open to adaptation. For the purposes of academic education, however, principles could be perceived as starting points, one's initial compass in the world of pedagogic ontology (Platsas 2021: 18). These are abstract notions that can offer certain direction in the way academic legal education is formulated and delivered. In practical terms, principles can be helpful in the design and the implementation of programmes of legal study and law degrees in the academic environment. It would be important for designers of law programmes (as in law degrees) and law modules (as in law subjects) to actually agree between themselves certain core principles when it comes to the design and running of law degrees and subjects. If the right to education is a combination of positive and negative rights (Pasvenskienė and Astromskis 2020: 197), it is posited that the right to proper legal education is also a combination of such rights, academic instructors of law and legal scholars having a positive obligation to enable the learning of their students through positive action, ideally through following a principled approach in the designing and the implementation of degrees and subjects. More interestingly, the seven principles put forward in this paper are ones that should enhance the cognitive, transferable and interpersonal skills of future law graduates. Our future law students must therefore be allowed the great opportunity to rediscover law as well as themselves in the law school in order for them to acquire skills and abilities that would make them stand out in society and the global economic and professional environment.

Synopsis of Proposed Principles

The proposed principles of this contribution in brief are as follows (see also figure 1 below):

1. Legal doctrine
2. Context(ualisation) of legal knowledge
3. Critical analytical skills
4. Extrovert academic ethos (not just national law; not just law)
5. Academic citizenship
6. Practical skills
7. Academic freedom (principle of flexibility)



Figure 1: Principles of Modern Academic Legal Education

The above will be briefly explained in turn. It should be remembered that the above are proposed as governing, as in guiding, principles that modern legal education ought to follow. Adaptation, on the idea of national variation of education and, of course, on the principle of academic freedom could still be the case. Nevertheless, the more one departs from the core of the first six principles above, the greater the justification one ought to offer, when it comes to such departure in the building of law degrees and in the running of academic legal courses. Thus, as an example here, if local variation would allow for the offering of law degrees that would not cultivate an extrovert academic ethos amongst law students and future law graduates, such a choice would not be easily justifiable or defensible in the face of an interconnected world, where degrees, indeed modern law degrees, are and act as international professional passports. Reader would, thus, be reminded that the proposed principles herein are ones that come with certain universal characteristics, making the departure from such principles on local variation arguments an onerous task. Indeed, the proposed principles in this analysis are effectively minima that ought to be met by modern academic legal environments in one way or another. So too, the proposed principles are perceived as ones that should not hinder pedagogic innovation close to the tenets of academic freedom in the university learning environment. Nevertheless, in the pedagogic dilemma whether the proposed principles ought to be complied with or not to be complied with, the author would most certainly favour compliance with such principles, as these are rather common and intelligible ideas in the face of modern legal education. Let us now offer an overview of the proposed principles in turn.

Proposed Principle 1: Legal Doctrine

The first principle that ought to define law degrees and law subjects in the academic environment would be the one that recognises legal doctrine as a central aspect of modern legal academic education. Law is, in epistemic terms, a rather conservative and peculiar discipline. Indeed, to this day, law tends to be a highly nation-oriented and nation-driven subject, despite considerable legal harmonisation efforts in such continents as Europe. It is the case, however, because of the rather conservative nature of our subject as an epistemic field, that as academic instructors in law one of our main concerns is to teach certain legal doctrine(s) to student body. The conservative and peculiar nature of the subject of law in the academic environment can be further exacerbated by the fact that multiple external actors and institutions to the academic

legal environment affect such environment. Our colleagues from other theoretical disciplines find it challenging to comprehend why so many external actors and institutions ranging from professional legal associations, ministries of justice, ministries of education to parliaments and constitutional courts can have such a great say in the way academic law degrees are designed and, by extension, delivered. Of course, academic legal education is a crucial element of theoretical education in modern universities but, to make things more interesting or complicated (depending on one's perspective), the doctrines taught in academic legal environment may actually be ones that come with national characteristics to them and so on. However, despite the established and conservative character of doctrine in our teaching and learning in the modern law school, it is proposed that the teaching and learning of doctrine ought to remain a key principle of modern legal education. The choice in favour of this has to do with practicality: doctrine forms the core of our teaching in law and, as such, students of law would have to receive relevant cognitive skills prior to graduation. By extension, law graduates that would become masters of doctrine could upon further training readily use such in legal practice and/or other sectors of the economy.

Proposed Principle 2: Context (ualisation) of Legal Knowledge

Recognition is also given to the fact that a degree of local variation in legal education terms could be more significant where such could be justifiably supported by a domestic academic legal community and/or a domestic professional class of legal practitioners. Due to the fact that law tends to come with a strong national flavour as a subject, one takes it for granted that legal knowledge ought to be contextualised for the benefit of student body. However, the academic educator and instructor ought to be particularly careful in this respect: if, for instance, foreign legal material would be taught in the domestic environment, such contextualisation ought to be one that does not distort original cognitive essence of the matter to be delivered. Thus, contextualisation is acceptable as an exercise, when it retains original meanings, whilst allowing student body to immerse itself more gradually in 'foreign' legal matter and so on. However, it goes without saying that the presence of such subjects as comparative law, legal sociology and legal theory in the modern law curriculum would be particularly beneficial to student body in the contextualisation of legal learning. In any case, law, in its academic delivery, should be contextualised to a certain extent; after all, law remains a largely national subject to this day. Law, properly understood, is not just about the learning of substantive and procedural rules and techniques of litigation:

Law is a facet of culture, economics and politics, a manifestation of power and a device for channeling and restraining it; law is one means for organizing society; it is a complex sociological phenomenon, a pervasive feature of organized society, and destined to grow in diverseness and complexity as societies change and as knowledge about human behavior grows (International Legal Center & Scandinavian Institute of African Studies 1975, para. 84).

However, over-contextualisation of the law is nowhere near ideal and would have to be avoided, as it could disconnect a domestic legal subject from world developments in its area. Finally, it would be important to state here that contextualisation of legal knowledge does not relate to the domestic legal sphere only. Indeed, the exercise of contextualising legal knowledge may also relate to the global context of political, economic and social developments, which the domestic study of law ought to follow to a certain extent. Thus, contextualisation of legal learning ought to be one that pays due recognition both to domestic and international legal, economic and social contexts.

Proposed Principle 3: Critical Analytical Skills

If there is one thing, one must cultivate in the modern law school, that would be the critical analytical skills of future lawyers. Law students must, therefore, straddle both doctrine and ‘out of the box’ type of thinking. Excellent critical skills are ones that would allow students to appreciate ‘the uncertainty, ambiguity and limits of knowledge’ (e.g. UK Quality Code for Higher Education – Part A 2014, 26). They must also approach the same matter by addressing it through more than one angle, i.e. if there are more angles than one. Above all, law students, as researchers, must offer more perceptions of the world than one, especially if there are more perceptions than one. *Ratio legis est anima legis* (‘the reason of the law is its soul’): our students must learn to reason more and better. Analytical choices must be clear, to the point and would have to be justified. Our future law graduates must acquire these skills in the law school already for them to deploy such skills in the job market, whether in the legal profession or in other sectors of the economy.

Proposed Principle 4: Extrovert Academic Ethos

Lawyers ought to be operating in an extrovert fashion for the benefit of society rather than merely act as professionals educated and trained in law. Rather than producing monolithic law graduates with a narrow set of skills and a limited degree of understanding of real world issues, one must strive to inspire to our law students and future law graduates an ethos that would set them apart, an academic ethos that would distinguish them as professionals in the real world. Law graduates are in particularly high demand in so many different sectors of the economy in so many countries around the world. One must not be complacent, however. Simply because lawyers are in high demand in the job market, one must not sit on the laurels of the discipline’s leading position amongst theoretical disciplines. As one might appreciate, law is still a divided discipline in epistemic terms. The classic quote is, of course, the one from Zweigert and Kötz, which act as a reminder to jurists, practitioners and all operating in law that theirs is a discipline which is still largely or mostly nation-oriented (Zweigert and Kötz, 1998, 75). This being the case, a more global, a more cosmopolitan type of ethos would be key for the future generations of lawyers and law graduates (Platsas, 2015). As such, the ethos of our future lawyers must be one that is extrovert and global, an ethos that transcends national frontiers and limitations. So too, it would be of the essence to remind our law students, many of whom might follow the legal profession that:

law is not [just] a “job”; it is a way of life. Deficiencies in legal education, therefore, might affect the ability of future lawyers to develop relationships with the outside world to a very significant degree and create serious difficulties for them in terms of earning their living, with obvious repercussions on the enjoyment of their private lives (Pasvenskienė and Astromskis, 2020, 195).

This being the case, it would be quite important to create law graduates that would be fully equipped for the real world. Such graduates would have to have a clear set of interpersonal skills, cultivated in the university environment already; these would be skills that would be falling under the wider idea of an extrovert academic ethos that we ought to instil in our law students, an ethos that should eventually result in an extrovert professional ethos upon employment and so on.

Proposed Principle 5: World-Class Academic Citizenship

One would have failed as a law academic if one did not at least strive to create law graduates of a world-class ethos. To do so, one must first inspire law student body to the idea of academic citizenship that goes beyond the domestic (e.g. Coryell, Spencer & Sehin, 2014, 145-164). This is an idea that allows us to see students together with their instructors as major stakeholders in the academic environment. Even then, an excellent type of academic citizenship should not be one that remains in the academic environment *stricto sensu*; rather one must inspire law student body to the idea that their discipline, their subject, their school and their university are part and parcel of modern society. A world-class academic citizenship allows students to observe their learning environment as an integrated whole within wider domestic and global society. So too, this type of citizenship is about a world-class ethos and a perception of law that would eventually move beyond the domestic sphere. As stated, whilst law is a subject with a powerful national dimension, our future lawyers would have to be ones that would be distinguished by a world-class type of academic citizenship. Such a citizenship is about global interpersonal skills, world-class transferable skills and exemplary cognitive skills. It is about enhancing and developing “human abilities, consciousness, identity, integrity, potential [...]” (Lee, 2019, 761-762). These skills and abilities combined would create lawyers that would be ready for world markets, the professional environment and multiple sectors of the economy; such lawyers could operate at a global level (rather than being ones confined in a domestic market or in a provincial type of legal ethos). Academic citizenship would then signify a type of legal education that would eventually move beyond mere legal instruction and classic legal devices. Such an approach would move the law school from *ekpaideusis* or *Ausbildung* (instruction) to *paideia* or *Bildung* (education), thereby creating a legal educational model that would reinforce “the intellectual, spiritual, and emotional development of the human being, of his or her intellectual, spiritual, and emotional potential” (Delbrück, 1992, 94). Accordingly, academic citizenship in the modern academic law school would not just be about cognitive skills in law but also about the very development of law students as intellectual, spiritual and emotional creatures.

Proposed Principle 6: Practical Skills

Law in the academic environment happens to be one of the most cultivated, learned but also most complex theoretical subjects. The subject’s wide-ranging connotations to so many aspects of modern life are beyond doubt. Nonetheless, close to theory, our law students and graduates must be equipped with cutting-edge practical skills in law and beyond. Perhaps the academic law school ought not to be the place where practical skills are offered more than theoretical knowledge. However, practical skills must be offered in the modern law school, and these should be significant in qualitative and quantitative terms. Assessments with practical elements e.g. tackling legal scenarios through problem solving, cultivating advocacy skills, addressing potential clients in an appropriate fashion and obvious things such as running legal clinics on a pro bono basis for the community are a must for the law schools of the future. Naturally, there might be law schools and faculties that will choose a more theory-based approach for their graduates. However, it would be an omission, to state the least, if considerable practical skills were not offered in the law schools that would otherwise choose a more theory-based approach in their teaching and learning strategy. Thus, the question is not whether a law school or a faculty of law will offer practical skills to its students but at what degree, at what level and under which subjects it would do so. Also, for the benefit of reader, practical skills that law students ought to be equipped with upon graduation could include problem-solving skills, “decision making [skills] in complex and unpredictable situations” (UK Quality Assurance Agency for Higher Education, 2014, 28), advocacy skills, business and commercial skills,

negotiation skills and formal legal writing skills (such a list not being exhaustive).

Proposed Principle 7: Academic Freedom (Principle of Flexibility)

Furthermore, one must allow colleagues in the various legal systems and, by extension, in the academic legal environments thereof, the degree of freedom expected in the academic environment, to build, adapt and develop law degrees as they see fit (ideally in certain consultation with student body, relevant professional bodies and/or official authorities). All pedagogy, all research, all operations in Academia ultimately succumb to the principle of academic freedom. If we removed the spirit of academic freedom from higher education institutions all that one would be left with would be centres of mere indoctrination. By extension, the modern law school, must recognise that aside from its traditional adherence to doctrine, it must move beyond its classic pedagogic devices after a certain point. Doctrine is key but doctrine should not be the only thing. For instance, there is clearly great need to prepare our law graduates and curriculum to a technology driven future (Pasvenskienė and Astromskis, 2020). This can be achieved by adopting a more flexible type of teaching and learning strategies in legal education, such strategies being ones that would enable and offer interdisciplinary understandings of the law amongst other things. This idea, the principle of academic freedom (or flexibility), is one that comes in agreement with the UN's position vis- à-vis "adaptability" under Art 13 of the International Covenant on Economic, Social and Cultural Rights. Thus,

education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings (UN Committee on Economic, Social and Cultural Rights, 1999, 3).

Colleagues in the modern law school must, therefore, be afforded from their school, their institution, relevant regulatory bodies and their governments a sufficient degree of freedom and flexibility to offer an educational product that would be both principled and enabling; an educational product that would offer both classic law as well as more modern subjects within the legal curriculum (e.g. subjects that would be taken to be more interdisciplinary such as history, technology, economics, political science and so on).

Comparative Perspectives

The proposed principles are offered against a background of considerable fragmentation in world legal education. Legal education around the world tends to follow very different models. Additionally, it is the case that approaches with regard to admission to the law school around the world are also quite fragmented. Furthermore, considering the well-known fragmentation of law into national laws with the advent of the Westphalian paradigm, there is clearly no such thing as a single approach to legal education around the world. The length of academic legal studies can vary significantly from country to country, whilst in the USA a law degree is considered to be a postgraduate qualification, admission to the American law school being generally granted upon completion of a previous undergraduate degree (e.g. Martinez, 2015, 275-276). When it comes to legal training and qualifying as a practitioner, one observes also considerable fragmentation in the way practitioners train and qualify around the world. In Europe, academic legal education tends to respect professional legal requirements but there is considerable fragmentation in Europe too, when it comes to legal education and training. In other countries such as Saudi Arabia legal education is perceived as "another facet of [the] national legal system" (e.g. Alanzi, 2020, 72). Furthermore, unlike most continental European systems of legal education, the approach in the US law schools is one that is more training-

oriented, it being one in pursuit of preparing future practitioners. The approach in the English law school is one that could be perceived as somewhat less systematic to the traditionally systematic and highly doctrinal approach which one encounters in the teaching and learning of law in the continental European law schools but in England too legal education tends to follow a theoretical approach based on the “exegetical lecture and the inquisitorial tutorial” (Flood, 2011, 18), albeit with a certain emphasis on practicals and, of course, the common law technique. Practically, the approach of the English law school tends to be hybrid, combining both theoretical knowledge and practical skills.

Conclusion – A Few Final Thoughts

In any case, due to the centrality of the legal subject as an academic field for society and the economy, it would be important for legal education to be followed by abstract yet relatively solid principles that would act as useful reminders as to how law degrees and subjects should be formulated, implemented and delivered. By extension, such principles could certainly offer considerable guidance as to what sort of legal education one must strive for in the modern academic environment. It was the purpose of this paper to offer seven principles with universal characteristics for modern academic legal education. These principles would otherwise be open to certain justifiable adaptation based on local context and close to the universal principle of academic freedom in modern universities and, of course, in modern law schools and faculties around the world. Nevertheless, a more streamlined, a more principled approach would be key for the modern academic legal environment, as it would enable itself and its law students and future law graduates towards more fitting models of education with considerable benefit for society, law and economy.

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