

Prompting the Rule of Law and Legal Education around the globe
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Introduction

Not long ago I delivered a project-proposal to the Ministry of Foreign Affairs of The Netherlands in the framework of their Matra-programme¹. The proposal aims at strengthening the Law School of Tirana University, especially in developing its relationship with the surrounding Albanian society: the legal professions and institutions and companies, employing lawyers; the civil society, organisations promoting the Rule of Law in Albania; as well as society in general through street law programmes and legal clinics.

In the taxi to The Hague (the delivery of the proposal was a last-minute event as usual) I had the time to think back to september 1993. Albania was still in relative chaos. The country was just trying to cope with the dramatic changes after the collapse of the Hoxha-dictatorship. In those years of complete isolation the Rule of Law, legal professions and legal education were non existent; everything had to be build up from zero. That september a group of young Albanian students came into the Utrecht Law School building to start their studies in The Netherlands. Their studies were funded by a Dutch Foundation, cooperating with the Open Society Intsitute² in Tirana.

That group of students has moved back to Albania in the course of time or is working in the interests of Albania from positions outside Albania. One of them serves a major Law Firm in their business with South East Europe, one of the works for Vodafone Albania; one of them serves the organisation Terre des Hommes, and one is working for the Albanian Constitutional Court; one of them is writing a dissertation on European Law in London; one is a member of Parliament and one is the current Foreign Minister in the Albanian Government.

Sometimes it is not easy to see and understand what it actually means for a country, an institution, an individual, what one is doing when one tries to bring about change. But sometimes, when examples like these come to mind, it is not difficult at all.

The Mission of Universities

In the Magna Charta Universitatum³, signed in Bologna by the Rectors of European Universities in 1988, it is stated that *the universities' task of spreading knowledge among the younger generations implies that, in today's world, they must also serve society as a whole.*

¹ Matra stands for 'Maatschappelijke Transformatie' (Transformation in Society). It is a programme of the Dutch Foreign Ministry for the development and strengthening of civil society in the accession-countries to the European Union, see www.minbuza.nl.

² Open Society Institute is part of the Soros Foundations Network, and aims to build vibrant and tolerant democracies, whose governments are accountable to their citizens, see www.soros.org.

³ The Magna Charta Universitatum is a statement signed in Bologna on September 18th, 1988 by the Rectors of European Universities, gathered to celebrate the 9th centenary of the oldest University in Europe.

And in the Bologna Declaration of 1999 the Ministers of Education of 29 European countries stated: *A Europe of Knowledge is now widely recognised as an irreplaceable factor for social and human growth and as an indispensable component to consolidate and enrich the European citizenship, capable of giving its citizens the necessary competencies to face the challenges of the new millennium, together with an awareness of shared values and belonging to a common social and cultural space.*¹

The Mission Statement of my own University (Utrecht)², states five objectives, which – I imagine – are not that different from those of other universities:

- *Educate young people;*
- *Train new generations of researchers;*
- *Produce academics who have both specialist knowledge and professional skills;*
- *Conduct groundbreaking research;*
- *Address social issues and work towards solving them.*

It is not uncommon for universities to recognize their role in society, nor is it uncommon for society to recognize that universities have a role to play in that respect. Sometimes it is problematic to put that role into practice, since universities are financed (and staffed) according to their two other (primary) roles: education and research. It is, however, my strong belief that 1) it is through education and research that the role is implemented, and 2) working on change in society at home and abroad has vice versa a direct impact on (the enhancement of) one's own education and research. The contradiction between education and research on the one hand (as the so-called 'core-business' of universities) and their role in society, is a false one. Education and research are the tools, and they are the beneficiaries of the universities' social responsibility.

The role of Law Schools in society

An active participation in the solution of different issues and problems in society can very well be an aspect in all university disciplines. It has, however, a special place within the context of the Law School, since Law is a discipline with a clear normative connotation. Law is by definition not a value-free subject-area. Not in the sense – of course – that one solution to a specific legal problem is the 'right' solution and the other one is the 'wrong' solution, but in the sense that 'Law as a discipline' requires a common understanding of the fundamental values that uphold the Rule of Law in a given society, and in international society for that matter.

Definitions of the rule of law fall into two categories: (1) those that emphasize the ends that the rule of law is intended to serve within society (such as upholding law and order, or providing predictable and efficient judgments), and (2) those that highlight the institutional attributes believed necessary to actuate the rule of law (such as comprehensive laws, well-functioning courts, and trained law enforcement agencies). For practical and historical reasons, legal

¹ The Bologna Declaration was signed on June 19th 1999 by 29 European Ministers of Education, following the Sorbonne-declaration, signed a year earlier by the the Education-ministers of France, Italy, Germany and the United Kingdom

² See Utrecht University website: www.uu.nl.

*scholars and philosophers have favored the first type of definition. Practitioners of rule-of-law development programs tend to use the second type of definition*¹. This second way of defining the Rule of Law dates back – amongst others – to John Locke, who included in his definition of ‘legitimate governments’ that they are bound to govern according to *standing laws* and by *indifferent and upright judges who are to decide controversies by those laws*² Translated to the current time one aspect of this way of defining the Rule of Law is the existence of *a Judiciary schooled in legal reasoning, knowledgeable about the law, reasonably efficient, and independent of political manipulation or corruption.*³

It is there that Law Schools have to play their role in society. They should be engaged in creating this “class of lawyers” around the globe, who by their knowledge, skills and professional integrity are capable of contributing to notions as justice, non-violence, human rights and human development.

The Utrecht-practice

In the Utrecht School of Law an experience of many years has been established in participating in, as well as in initiating and coordinating these types of international activities.

First of all – naturally – the Law School is open for students, PhD-candidates and scholars from all over the world: those coming from exchange-partners, and those coming on scholarships. Not only accepts the School candidates who have already obtained a scholarship, but it also actively seeks scholarships through its Utrecht Law Stipend Foundation, which has been successful in receiving funds from law-firms and companies, as well as private foundations, such as Oxfam-Novib. In this respect the Utrecht School of Law has started a promising cooperation with five Indonesian partners, through which students, PhD-candidates and staff studies and works in Utrecht on the basis of funding of the Indonesian Ministry for Research.

Secondly the Law School is actively engaged in activities related to Central and Eastern Europe and the former Soviet Union. In the 90-ies through the EU Tempus Programme a lot of work has been done in countries which have now acceded the EU, like Poland, the Czech Republic, Hungary and Slovakia. In Kazakhstan the Law School has participated in a Tempus-project aimed at creating a Centre for European Law at the Kazakh Humanities and Law University in Almaty. The activities in Albania have already been mentioned. Finally the Dutch Ministry of Foreign Affairs subsidized the training of Prosecutors in Human Rights Law in Bulgaria, and of Candidate Judges at the Justice Academy in Ankara, Turkey. Through a project of the Public Interest Law Institute (PILI)⁴, called ‘Promoting sustainable Reform of Legal Education’ the Law School has been working with colleagues in the Ukraine, Georgia, Moldova, Armenia and Kirgistan.

¹ Rachel Kleinfeld Belton, ‘Competing definitions of the Rule of Law; implications for practitioners’ Carnegie Papers, Rule of Law series, nr. 55, January 2005, p. 3.

² John Locke, Treatise II, p. 131, quoted in Rachel Kleinfeld Belton ‘Competing definitions of the Rule of Law; implications for practitioners’ Carnegie Papers, Rule of Law series, nr. 55, January 2005, p.16

³ Rachel Kleinfeld Belton, ‘Competing definitions of the Rule of Law; implications for practitioners’ Carnegie Papers, Rule of Law series, nr. 55, January 2005, p.16

⁴ PILI, the Public Interest Law Institute, is an international NGO that advances Human Rights around the world by stimulating public interest advocacy and developing the institutions necessary to sustain it, see www.pili.org.

In the framework of the development cooperation policy of the Dutch government the Utrecht School of Law is carrying out two projects and participates in a third, all aiming at upgrading the curriculum, the human resources and in some case the material conditions at partner Law Schools in Guatemala (CUNOC in Quetzalte-nango), in Rwanda (the National University of Rwanda in Butare, and the Free University of Kigali) and in Ethiopia (the Law Schools in Bahir Dar and Jimma). The Netherlands Embassy in Kigali (Rwanda) supported the establishment of a Human Rights Information and Documentation Centre for the Great Lakes District (Rwanda, Burundi and the Congo). With private funding Human Rights education has been implemented for the South Sudanese Civil Society (in Nairobi) and for those in the North in Khartoum. Finally the Law School is engaged in two major European Projects. One is funded by the EU Alfa-programme within the framework of a large consortium with five European partners and seven partners from different Latin American countries with a focus again on Human Rights Law. The other one is funded by the EU Asia Link Programme and aims at upgrading Human Rights and Good Governance Education at the partner Law Schools of Ulaan Baator, Mongolia, and the University of Indonesia in Jakarta.

The role of the International Association of Law Schools

The International Association of Law Schools (IALS) has – in my opinion – three possible roles to play in this respect.

First of all it can serve as a platform of debate between law schools and legal scholars from many different legal systems, from diverse social and cultural backgrounds, from behind political lines of division, from countries with different levels of economic development and material conditions, and from different traditions in teaching and research. A debate on the fundamental questions around (the promotion of) the Rule of Law, on what we have in common, on the values, knowledge and professional skills which are necessary in a lawyer working in an international environment, and on the teaching methodologies to bring about those values, knowledge and skills.

Secondly the IALS is the natural meeting place for law schools amongst each other and between law schools and other players in the field. In that respect the ‘universal’ character of the organisation is essential. Law schools can be in contact, not only in meetings but also in between meetings through the internet and through the services of the organisation offered. Through these contacts arrangements and agreements can be reached on bilateral and multilateral forms of cooperation and exchange. In particular it can serve as a clearinghouse for international projects in finding partner-faculties as well as individuals to participate in those projects.

Thirdly the IALS could build up a database of organisations and funds related to the promotion of the Rule of Law ranging from programmes of intergovernmental organisations (the United Nations system, the European Union and the Council of Europe, other regional organisations) to specific non-governmental organisations and foundations (such as the Carnegie Foundation, the Ford Foundation, the Open Society Foundation etc.). And it could open up channels to those organisations by representing its membership.