

Teaching Law in Academia

By:

Aalt Willem Heringa*

Maastricht University Law School, Netherlands

1.

Educating lawyers is the business of law schools and law faculties. We train them to become skilled academics, who are capable to work with the law, to assist clients and advise their companies or ministers, to litigate, and to do so professionally, according to the standards of the profession and with the advancement of fair play and the rule of law in their mind. We generally do not ask our graduates to swear an oath as physicians tend to do with the Oath of Hippocrates. It is not even common to teach courses such as professional ethics, which I submit we should.

Educating lawyers implies many things:

- knowledge of the applicable laws and basic concepts
- (legal) reasoning and drafting
- oral and writing skills
- running a business / law firm
- advising clients, negotiation skills, acting as a policy adviser, client counseling
- professional ethics / rules of conduct
- dispute resolution
- academic approach with regard to reflecting upon the quality of the law, inventing solutions and drafting creative proposals.

Many of this is self evident. And it is easier said than done. How to realize these aspects depends also on the pre-law school history of law school students. And on whether a law school is allowed to select its intake. And on the length of the curriculum. And on the eventuality of a post-law school professional training for attorneys, judges or public prosecutors. That is to say, the academic legal curriculum sits in a context of prior and post education and training and must be adapted to fit the needs of the incoming students and the labour market / postgraduate training. The entry level of the students and the demands of what comes after law school determine, with the length of the (in many cases mandated by law or the profession) curriculum, what it is what law schools can do in a curriculum. And even then, in some cases even the content is prescribed by law or by the professional organizations, so that a school has very little to say about how to set up the curriculum, how to update it to modern needs, or to academic insights and developments. And this is sometimes also impacted by existing situations that some disciplines or professors have vested interest in a specific set-up of the curriculum. In short, in many instances change or independent judgment about a law schools curriculum is indeed not easy.

2.

A curriculum is more than just a few (or many) modules or courses. It is imperative that a curriculum defines precisely what it is the goals are and how, these goals can be achieved. Modules and courses are all building stones contributing towards the overall purposes of the whole curriculum. One has therefore to develop a coherent curriculum design about law, skills, attitude and critical analysis.

* Professor of Comparative Constitutional and Administrative Law; Dean of the Law Faculty; Maastricht University. Member of the IALS Board; President of the Dutch Council of Law Deans and of the Dutch Association of Law Faculties. E-mail: aw.heringa@maastrichtuniversity.nl.

This is all the more relevant because law and lawyers play a fundamental role in society: the stability and sophistication of a legal system contribute to legal certainty and inspire confidence and are major factors in generating economic growth, investment and jobs. The rule of law is not merely a hobby of lawyers or civil rights activist, but is one of the important devices for security, certainty, economic prosperity, growth and stability.

In some sciences the half-life of knowledge is a very short time span. For law we also witness an increasing multitude of new rules, decisions, regulations, contracts, restatements, in multi layered settings, so that lawyers increasingly are incapable to learn them by heart and stay updated. Even half-life of legal knowledge is shortening. This requires new and different skills from our students and graduates. And it by definition has implications for legal curricula.

Another aspect is the growing need for interdisciplinarity: major and many societal problems seem to be so complex and interwoven with other disciplines that they require multidisciplinary solutions. Climate change; issues of crime and terrorism; the multi cultural society; the stability of financial and economic systems and states; the role of hedge funds and investors: these and many others require multi disciplinary approaches and solutions. Lawyers need to understand forensic disciplines, economics, financial markets, computer software, money laundering through real estate, nano technology in order to be able to find appropriate (if necessary) regulation etc. And I am not so sure that we do a good job in law schools in preparing our students for these new challenges. Do we train them enough in working in multidisciplinary groups, such as think tanks, working together towards solutions? Or do we train them sufficiently in those other disciplines so that they can have a meaningful discussion with a psychiatrist about a forensic study of a psychopath killer, or with an investment banker or accountant about money laundering or stability of financial institutions, seeking appropriate regulation and supervisory mechanisms? Do we train our students sufficiently for client counseling or negotiations or problem solving or advising a minister in policies?

I submit that, taking into account the half-life of law(s) and the exponential increase of the multitude of multi level regulations, laws, court decisions, dispute resolution, arbitration, treaties and so forth, we have to address the issue as to how to incorporate attention for lawyering skills and the demands from and in modern day society in a curriculum.

3.

The first element of the solution is to reduce the attention for the black letter law and to focus in our curricula upon solutions and reasoning and analysis. Let's train legal minds and not legal encyclopedia. Let's focus on skills how to handle disputes and problems; how to interact with other disciplines and with clients and employers. And let's focus upon academic skills: training our students to creatively and critically reflect on legal approaches.

The didactical tool in my experience for this is by introducing a substantial focus on comparative law. Comparative law serves as a basic attitude in legal training. We have all been raised in first year courses in contracts, torts, property, company law, constitutional law and criminal law by learning the basic domestic concepts. Why not reversing this approach and teaching in the first year about approaches as to these areas of law. And to do so comparatively: asking general questions, such as what constitutes a contract. Let students research that question by delving into comparative law, researching different methodologies and countries and concepts? Let us use the world as a laboratory. And as a world of reflection and inspiration.

When progressing during law school, after students have acquired the skills to do research, to approach critically what they have found and how they have evaluated their findings, they can eventually learn the workings and precise doctrines of one specific legal system. That will then be a

lot easier and with a critical and evaluative mind, and with a mind open to new solutions and creative new ideas.

The comparative approach also fits in well with skills training and exercises, because when discussing and comparing solutions and variations, one is compelled to define 'best' and to examine the quality of rules and regulations and concepts. It will also assist the students to conduct research, to understand other legal systems and value them, and later, when working in an international environment, to engage in exchanges with foreign lawyers. And that will be assets which will be cherished increasingly.

In Europe, the trend is towards Europeanising the legal domain and the legal professions. The 27 member states are increasingly under the legal influence of European rules, decisions, directives and regulations. And many legal issues are subject of European, or combined European/domestic solutions. And that implies that lawyers from 27 jurisdictions sit together and draft new legal regimes and draft rules. Which by definition means an exchange and a mixture of legal cultures and legal concepts. And an identical process occurs on the global level: maybe less intense and less pervasive, but increasingly so. And lawyers with skills in comparative law; with abilities to understand and switch between legal cultures, and who master (legal) languages, will be much in demand.

4.

The above does not intend to argue that all law schools and all lawyers must be identical. Not all law firms, not all lawyers will operate on a European or global scale. However, the quality of comparative law to enhance the quality of legal education is in my opinion, undisputed. But, the intensity or the scale might certainly differ. I do certainly see the need for a diversified legal education, even within specific countries. Some school aim for the very best, and offer top level education for global lawyers who will indeed operate on a global scale. Others educate lawyers to become public defenders or work in local legal aid clinics. Those jobs require different skills and different capabilities and competences.

The size of the need for advanced legal training, or the size of the need for training grass root basic lawyers, will also differ from country to country and will vary with respect to economic development. We need certainly different kind of lawyers.

5.

Many of the aspects which I have described *supra* have been taken up by the Faculty of Law of Maastricht University. We have designed English taught international, European and transnational legal curriculum, inspired by the European developments of exchanges of students and staff and of a 'common law' of Europe. Special teaching materials¹ and a Journal² have been written and set up. Skills trainings and moot courts were developed and will be developed. The didactic formula is based upon the Maastricht University wide utilized 'Problem Based Learning'. Those who have an interest, I kindly refer to our website: www.maastrichtuniversity.nl/law. I kindly invite those with an interest to pursue similar courses of curriculum reform to contact us, for the exchange of experiences and for networking.

¹ E.g.: Aalt Willem Heringa and Philipp Kiiver, *Constitutions Compared*, Intersentia 2007; Philipp Kiiver and Nicole Kornet, eds, *The Maastricht Collection: Selected National, European and International Provisions from Public and Private Law, Second Edition* (Groningen: Europa Law Publishing, 2010); presently work is undertaken under the supervision of Jaap Hage (editor) of a book about Introduction to Law as well as by the criminal law department, about comparative criminal law and criminal procedure.

² Maastricht Journal of European and Comparative law
(<http://www.maastrichtuniversity.nl/web/Institutes/METRO/MaastrichtJournal.htm>)