

NECESSITY OF AXIOLOGICAL EDUCATION OF LAWYERS

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Abstract. *Education is a bridge that provides continuity of values. The task of legal education must be focused on the construction and protection of human values. Education should instruct us that it is necessary not only to acquire knowledge but also to live in compliance with it. Human judgment depends on education which must lead to sublimation. Education of lawyers must liberate its reality from “distorted lines”, non-values and “the princes of this world”. It must provide a safe climate for the action of both legal and other professionals. Can the entire legal education really be reduced to the following postulation: “We are studying what we need in order to appear before judges or to advise people in such a way as to keep them out of court.” The reason why it is a profession, why people will pay lawyers to argue for them or to advise them, is that in societies like ours the command of the public force is entrusted to the judges in certain case, and the power of the state will be put forth, if necessary, to carry out their judgments and decrees.*

Key words: *law, moral values, education.*

INTRODUCTION

People want to know under what circumstances and how far they will run the risk of coming against what is so much stronger than them; hence, it becomes a business to find out when this danger is to be removed. The object of our study, then, is prediction, the prediction of the incidence of the public force through the instrumentality of the courts.¹

Immaturity and a rush to acquire knowledge, which are prominent in the education of lawyers today, are an impediment in addressing the burning issues of our reality. These issues are usually addressed by axiology, which necessarily generated the idea of including it in legal education. Axiology may help restore lawyer's awareness which is “injured” by pure positivism. In legal education, we should reject the literary world of jurisprudence and grasp the reality imbued with values.

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¹ O. W. Holmes, Jr, *The Path of Law*, in: C. Johnson, *Philosophy of Law*, 45.

Numerous unfounded legal modifications, which are part of our reality, have generated confusion in the education of lawyers which is pretentiously declared to be modern, whereas it is actually reduced to strays and drifts from the sublime reason for the existence of the legal profession. The sublime reason for the existence of the legal profession is man as a value by himself and without any conditioning (for there are no trade-offs, negotiations and agreements with man), while moral relativism and legal positivism are prone to it.

Therefore, we should expect a general renewal, revival and cleansing of legal education in order to regain the real reason for education of lawyers – man as a value. If man as a value becomes the guiding principle of the revival of lawyers' education, law will become a mainstay on the path of value realization.² The revival would have to be oriented towards the truth manifested in Jesus Christ's ethics which is blended with his life, and which represents a guideline for the education process. Education postulated in such a manner will not be divided from life, as it is today, by the help of Christian thought which bestows lawyers with a lunge in order not to get lost in the rational defining of what is allowed and what is not. This Christian thought reaches us via "the basic ethical question": Why am I doing what I do? No one is allowed to speak about the future of legal education unless he associates it with the concern for human life, as a value that is in reality given to us by Christianity.

Our effort in this area is not to create a tabular program for the education of lawyers. This is left to follow, only after the resolution of the initial assumption which is the return of the basic value (i.e. man) into the legal education. It is our general intention to point out to mashes of pure positivistic legal education which excludes philosophy, legal philosophy, and axiology. We do not promise new curricula, and we are not heading towards tabular illustrations; we rather strive to remain free and impartially observe everything from the heights of general conclusions.

We find the reason for dealing with this subject in the belief that time comes for the creation of an entirely value-renewed and cleansed legal education, where properly educated people will become the legislators of a new life, and, thus, of education. Thereby, this confirms the opinion of St. Thomas Aquinas that law cannot cover the entire sphere of morality.

2. INTENTION AND OUTCOME OF CONTEMPORARY LEGAL EDUCATION

Nowadays, we have two quite opposite and, in terms of their effect, equally fatal intentions of legal education unified in their outcome. Above all, they are manifested in the intention to increase the number of lawyers, to reduce legal education in terms of its content and, thus, naturally derogate it. According to the first tendency, the legal community should be expanded by increasing the number of lawyers who graduate from law schools. At the same time, this excessive number of lawyers is exposed to rapid, incomplete and immature education, deprived of the axiological approach to law, which does not equip them with necessary knowledge and skills to provide proper solutions for problems necessarily imposed by our reality. We may perhaps discuss the issue of cutting

² Pontificio Consiglio per la Famiglia, *Enciridion della Famiglia, Documenti magisteriali e pstorali su Famiglia e Vita 1965-2004*, Giovanni Paolo pp. II, *Evalgelium vitae (Lettera enciclica sul valore e l'inviolabilità della vita umana 25.3.1995)*, Centro editoriale dehonimo, Bologna, 2004, 367-494.

down the number of lawyers but not the issue of narrowing down the scope of the knowledge that lawyers should be exposed to.

Of course, there is a tendency that knowledge should not be in the service of values but in the service of the state, which has become the framework of contemporary education. Legal positivism regards man as being subordinate to his highest authority – the state, and its major value – legal certainty.

Regarding the education of lawyers, it is disturbing that we have deviated from the supreme principle (man as the ultimate value) towards legal certainty as a typical value of legal positivism. Such an education of lawyers which is aimed at legal certainty pleases only those spirits that are impious enough not to pursue values themselves but frequently act otherwise. In this way, people want to escape the demanding obligation of axiological education; thus, instead of education of values, a mere education of profit is being created. What is the motive for such an instant education? Nothing else but to gain profit. We do not deny that profit is a valuable asset but we emphasize that it is not crucial or vital; we wish to underscore the union of intelligence and values rather than the union of intelligence and ownership.

The foundation of legal education should be widely and firmly established to the extent that it represents the counterpoise to the positivistic tendencies of a state to control education. The efforts of the state to reduce legal education in terms of the quality and quantity of the subject matter offered to students is derived from its egoism and its desire to ensure human obedience by restricting knowledge as the key element of non-conformity and one of the highest human values. Thus, comprehensive legal education becomes a mere coincidence and an extreme, which is easily discarded by the state and substituted with notably narrowed vocational education. Thereby, a narrowly specialized lawyer, even a university professor of law, resembles a factory worker who has been producing an engine spare part his entire life. However, we must understand that there is no sharp contrast or distinction between general and vocational education, which are mutually complementary given that man's particular role in a comprehensively developed social community requires equally solid overall educational basis. This inappropriate condition of destitute vocational education is largely worshipped today as a moral and educational phenomenon. The state praises such a condition of education, which also called the minor education and the condition of genuine remoteness from man. Then, the lack of education in somewhat atypical legal matters beyond the very border of legal positivism is considered as a sign of lawyer's noble humility. It gives rise to the distortion of all legal aspirations in lawyer education and to selective education of future people's tribunes who disregard the question whether the truth may be the subject matter of voting. The problem lies in the postulation of legal education which emphasizes the education of the governing authorities as its outcome via the process of voting, overruling, inappropriate compromises and strange coalitions (at least). Does truth need a quorum, and is the truth which is unanimously reached different from the one which is reached by majority? What do we teach law students: truth or modules of overruling in order to govern? Is truth substituted with interest today?

LEGAL EDUCATION WE SHALL PURSUE

The only genuine aspiration of legal education is the absolute protection of values in human life. If it is excluded from the education of lawyers, the impact of pre-legal cause of education, which is contained within the valuation of human life, disappears. Moreover, the cogent lawyer autonomy is not acquired via the apologetic tunes of positive legal education, for a lawyer must primarily be a philosopher who emphasizes the value of man, and studies and questions the positive legal solutions. Thus, education becomes a barrier which protects man from the autocracy of government, and it relieves the suffering and agony of the people. This is an indispensable natural law of education, which opposes all popular tendencies.

As opposed to the formal, pure positive legal education whose aim is “a body of reports of treatises, and statutes”³, there is the so-called traditional education of lawyers. It is clear that it is extremely difficult to accomplish traditional legal education since it literally requires an overall talent. Nevertheless, this is no reason to accept the formal positive legal education which embodies the crude non-philosophical phraseology which we should get rid of as it is not even close to the major task of education and legal practice, “prophecies more precise, and to generalize them into a thoroughly connected system”⁴. Man educated in such a way does not care for “axioms or deductions, but he does want to know what the Massachusetts or English courts are likely to do in fact.”⁵ That is why we cannot agree with Holmes who argues: “The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law.”⁶ Only then is it possible to talk about lawyers who bravely walked alone and defended human life, the ones in relation to whom all future legal generations of a people will be judged. Today, such an education, supported by axiology, offers vigilance in all matters, and it will become what Hegel describes as an absolutely perfect ethical organism, which is attainable solely by means of an absolute recognition of significance of axiology for the preservation of humans.

What is achieved by the traditional education of lawyers? Its result is a state founded on humanity and the versatile personality of a lawyer within the framework of firm common humane and moral convictions, which is offered by Christianity. However, this will not come true if we “expel” Christianity, Philosophy, Philosophy of Law and Ethics from law schools. What kind of ladder shall we use then to ascend to the perfect lawyer?

The education which we shall pursue contains the following imperative: No rush, please! This education is intended for persistent, thorough and calm souls who are not involved in unsubstantiated legal discussions and in the vortex of modern age. It is intended for those who have not found new ephemeral idols of legal positivism, who do not praise legal certainty and suitability as opposed to justice, who value life and do not focus on saving and loss of time, and who still have time for education. Therefore, they continuously educate themselves on a daily basis, and they do not aspire to attain the legal education of people’s tribunes who demonstrate a lack of a sober ethics and disregard for real life.

Traditional education of lawyers, supported by axiology, becomes a value-based image of law, which then changes the direction of legal education. A new goal is set: a man who is willing to set aside his own interest and perpetual quest for material comfort

³ O. W. Holmes, Jr, *The Path of the Law*, in: C. Johnson, *Philosophy of Law*, 46.

⁴ *Ibid.*

⁵ *Ibid.* 47.

⁶ O. W. Holmes, Jr, *The Path of the Law*, in: C. Johnson, *Philosophy of Law*, 47.

and glory that cause conflict and embark on exploring the possibilities for developing the value of man, which enables the establishment of rules based on values. In that respect, axiology which is involved in the process of legal education we shall pursue also contributes to the development of value-based mentality of a lawyer. It promotes clear recognition and acknowledgement that good is always a route towards a higher value whereas evil is a route to a lower value; it helps values enter the legal substance and become ideal forces⁷ that penetrate our reality. That extraneous energy, which law is in needs of, can be found in values by means of which it can overcome the resistance of the real and promote its development.

By questioning reality and by assuming the attitude *bene vivere et bene operari*⁸, we prevent the justification of any positivistic attempt and action. All this should contribute that lawyers, who occupy political bodies, explore the application and consequences of ethical principles in their overall activities.

CONCLUSION

Given that education entails management, formation of character and personality, it cannot be neutral. It is undoubtedly suggested by both Christianity and axiology, which only confirms that the ultimate goal of education (i.e. man as a value) is self-imposed. Therefore, regarding the education of lawyers, it is necessary to establish a proper relation towards values because education implies a transformation of an individual in the course of developing his physical and mental powers, and adopting the empirical contents in continuous touch with the natural, social and cultural reality. In the course of transformation, we should create a proper bond with the value of human life, which is the subject matter of axiology. The value of human life is one of the values that can evolve through lawyer education and training, supported by axiology; moreover, the development of these values can be controlled, which is where we see the purpose of involving axiology into lawyers' education.

Law is a product made by man, for which reason we emphasize the need to involve axiology into legal education. As it is a product made by an imperfect man, it might also be entirely contradictory to the basic value (i.e. man as the highest value). Therefore, in order to understand the real task of legal education, we need to understand that value is the basic premise of legal education. Proper legal education cannot be blind to values; it can only be embodied in the idea of a man as a value because law can be understood only within the framework of value-driven behavior. As indicated by axiology, values are perpetual standards of conduct which may serve as governing principles that we must aspire to in the education of lawyers. Thus, man as the ultimate value becomes the cornerstone of legal education, which serves as a bridge between reality and values, giving legal education a creative trust and power.

Only values can provide a legal norm with a binding force. Due to numerous dilemmas underlying our reality which has to be shaped and modified into a legal norm, we have to "quote" values. In such a situation, it is clear that law becomes meaningful and purposeful only if it is focused on values and their realization.

Therefore, the importance of involving axiology in legal education is apparent. The absence of axiological perspective of legal education certainly leads to a pure positivistic

⁷ N. Hartmann, *Kleinere Schriften*, Berlin, 1955, 293.

⁸ B. Häring, *Das Gesetz Christi*, I, München-Freiburg, 1976.

view of the binding force of a legal norm, which is not based on values but on the will of the governing authorities. It must first become impersonal and associated with the objective value (i.e. man) instead of being related to the interest of an individual or a governing group. If man were not involved in the pursuit of values, he would not be able to exercise his humanity, which Christianity insists on. Only when values are included in the education process can man's activities acquire all attributes of an unquenchable desire to establish the bond between reality and values. Only then may it be associated with law, which is also a value-based spiritual asset. Thus, in the course of legal education, it is first necessary to point out to the axiological aspects of the world and, only then, to the value-driven aspect of law. Jurisprudence may rely on the most genuine support from axiology in terms of promoting the conception of man as a value.

If law were deprived of values, which are prerequisite for its existence, law would turn into a set of purely formal legal norms. Then, we would not be able to dispose of numerous principles of legal positivism which contain something unnatural and introduce the most severe drawbacks in the contemporary education of lawyers. We particularly emphasize the popular rejection of the conception of man as the highest value.

Despite the continual emphasis on concern for man, the value of life is still rather murky and obscure in a number of positive-law disciplines, and especially in the subject matter of public law, civil law and critical thinking. In reality, the value of human life is often subject to ample attacks reflected in suicides (more or less justifiable), homicides committed for various reasons, legal homicides (manslaughter), abortions, positive euthanasia involving the alleged freedom of choice (the right to die), wars, arrests, tortures, etc. Therefore, such a chaotic legal situation is a result of ethic relativism and juridical positivism, which transformed the theory which clearly distinguished law from morality into a theory advocating radical differentiation between the two notions. In addition to reinstating ethics into jurisprudence, we urge for the involvement of axiology, which will eliminate moral relativism and legal positivism that currently constitute the foundation of positive education of lawyers today. Actually, it will eliminate the ambiguity in relation to the value of human life. Within jurisprudence, we find the following antipodes: the value of human life and a constant legal obstruction of the value of human life, which is often documented by numerous legal norms whose essence is not in man's valuation and protection but rather in the degradation of man as the highest value.

Such an ambiguity in the education of lawyers and certainly in understanding the concept of law may be removed only by a consistent legal education which is reflected in an absolute valuation of man. We emphasize two options for overcoming this ambiguity: first, justification and acceptance of the value of human life at its core, and an absolute consistency in presenting the value of human life in the education of lawyers at universities. These two options should be incorporated as qualities of legal education in terms of contents and methodology, and they are supposed to help the legal education (which often twists and turns on the path of man valuation) to return to values. Actually, the education of lawyers shall be a natural continuation of the tendency to value and protect man. Thus, legal education should focus on man from whom it has been detached for so long.

Therefore, the confusion in the application of legal provisions occurs first as a result of an incomplete education of lawyers and then it emerges as an immediate problem in the activities of such lawyers in legislative and executive bodies, when they are involved in the legislative process or when they participate in the process of implementing the enacted

legislation. The bad results of these activities receive immediate public attention, particularly given the fact that the public is not particularly interested in a “preliminary issue” (legally speaking) which is deeply rooted in lawyers’ education.

How do we imagine the professional activities of a lawyer who is educated in the spirit of pure positivism and assumes the role of a legislator? The result might be quite fatal basically because a positivist lawyer, who is very distant from values, is not educated in the spirit of axiology. He might have had some contact with values in the course of his legal education but it is quite certain that on those occasions his spirit was “implanted” with the idea of value-based and moral relativism.

Such relativism is disastrous for the creation of proper regulations which should provide a safe environment simply because the right of the stronger shall not prevail and the power of value shall be above all. However, in order to discuss the issues pertaining to a proper legislator and proper law which is above power, we must first discuss the proper education of a future legislator. In this respect, the following questions arise: how is law created, and how should it be applied in order to remain in the service of value rather than become a privilege of the governing power? Today, the discussion on the origins of this problem is largely avoided because the public is more concerned with analyzing the consequences. Yet, without changing the fundamental postulates, the discussion will remain quite basic, constrained and futile as it will not yield relevant solutions.

The solution lies in the axiological education of lawyers. It must reflect the basic values, which are embodied and actually exercised in legal activities and practice. Man as the ultimate value must become the major driving force and the ultimate outcome of such education.

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O NEOPHODNOSTI AKSILOŠKOG OBRAZOVANJA PRAVNIKA

Obrazovanje je „most“ koji omogućava kontinuitet vrednosti. Zadatak pravničkog obrazovanja, mora da bude usmeren na izgradnju i zaštitu vrednosti čoveka. Obrazovanje valja da nas uputi na činjenicu, da nije bitno samo primati znanje, već i živeti u skladu s njim. Prosuđivanje čoveka, zavisi od obrazovanja, koje mora voditi oplemenjivanju.

Obrazovanje pravnika, mora da svoju stvarnost oslobodi od „iskrivljenih linija“, od nevrednosti i „knezova ovoga sveta“. Ono mora, da stvori „sigurnu klimu“ za delanje ne samo pravničke profesije, već i drugih, unutar bioetičkog obrazovanja.

Žurba u sticanju znanja i nesazrevanje, koji su prisutni u obrazovanju pravnika, onemogućavaju da se odgovori na „bolne“ tačke naše stvarnosti. Na te tačke, najčešće ukazuje bioetika, te se zato javlja ideja o neophodnosti uključivanja aksilogije u obrazovanje pravnika. Aksilogija može da pomogne u obnovi svesti pravnika, koja je „ranjena“ čistim pozitivizmom. Obrazovanjem pravnika, valja odbaciti „papirnati svet“ pravne nauke, a „prigrabiti“ stvarnost ispunjenu vrednostima.

Ključne reči: pravo, moral, vrednosti, obrazovanje.