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Transnational Curriculum for Tomorrow's Lawyers? An Eastern European view

The issue of extra-jurisdictional input (generally from outside of a given normative national system) into the law degree curriculum is old as the university law studies. The presence of 'stranger' legal data in the national legal order was always built in the teaching process. Suffice to remember the importance of the Roman law courses at two European universities in the previous centuries. The expansion of the exchange of goods and persons that followed the discovery of the Americas and the formation of the colonies has sparked off the growing interest for the distant customs and the juridical regulations in the formerly so-called non-civilized world. A little diminished interest for the alien elements appeared only during the formative years of nation-state building processes on the both sides of Atlantic Ocean in the past two or three centuries ago. Accordingly, the most isolationist period in the law teaching in the North-Atlantic civilization was in the nineteenth century. Today, this stage belongs to the past. What is more, we confront now the opposite process of the withering away of the national states.

The present-day legal studies curricula are, by definition, transnational, for the law is an accumulation of many centuries development of legal cultures which reflect also the foreign legal concepts and rules. It is impossible to teach any matter without referring to the many external connections of the applied regulations and norms. When even during our classes we pass over these profound and substantial normative components, they are implied in our lectures and textbooks. When we look into any branch of law, we cannot say that it is purely domestic. What is more, we are unable to name a single law lecture that would be read without foreign or transnational links and contents. These alien, cross-border 'ingredients' give a lot of titles of nobility and legitimacy to the binding local legal regulations and provisions. One should add that the account of these mutual interrelations and feedback are a permanent part of our academic activities and research.

At my Faculty, there is already some kind of transnational teaching in the form of the so-called European law. The emergence of the supranational law on our continent had produced a massive study of this legal order as a separate subject of instruction within the set of mandatory and/or optional courses. There is an on-going heated discussion, at least in my

country, if we should to teach the European law as a distinct course or in the framework of each individual course as vowed in the relevant material of comparison. The dilemma: the European community law expounded as a separate class or as a fragment of every law course reflects the uncertain status of this so-called supranational legal order in our continent. There is a lot of theoretical discussion if the supranational legal system does really exist or we have to do only with a kind of or a variety of the traditional international public and/or private law. Consequently, in the European law faculties function concurrently the independent (autonomous) lectures on the European law and the classical juridical specialized areas of teaching.

The giving to the transnational law a status of a separate teaching course is more complicated. Some theorists see in it a kind of a go-between the international public law and the international private law, the other the international trade law or the so-called international economic law. Up to now, the transnational law as an autonomous major is yet not offered in the Polish law faculties. The main difficulty to do it lies in the fact that this subject matter is lacking of an independent range of relatively homogenous themes enough to stand apart in order to be a new course. As one French author (P. Weil) said, we have more to do with a description (term-resume) of the transnational law than with it's specialized concept. All this makes the setting apart (the isolation) of the transnational law, especially from the public international law very difficult.

Any academic major requires the solid corpus of principles, a developed body of literature, without saying of an institutional and personal support. We have to do, until now, with the accidental samples of that novelty. Whoever is acquainted with the resistance with which is confronted the formation of the European law (see the transformation doctrine) – on a considerably lesser scale – will easily admit that we have a long way before the introduction of the transnational curriculum as a coherent and a valuable field of study at the law faculties. At present, the transnational law can more serve as an illustration of a number of autonomous legal courses than a major at a Law Faculty.

As an expert in constitutional law, I cannot ignore the possibility of taking into account of the transnational law in my classes the transnational contribution. Or, my field of teaching is the most serious stumbling block to the transnational educating at the law faculties. The constitutional law epitomizes what is local, inward-looking, and nationalistic. With the exception of the Dutch basic law, all other national constitution provides for the barriers to the “alien”. Any constitutional openness to the external world is always forced and imposed. Let see the story of the constitutional changes connected with every individual expansion of

the European Union construction. In other words, the enrichment of my major with the transnational law elements will be arduous to put into practice.

To sum up, I am of the opinion that in the European context, especially in the Eastern European countries, the transnational educating of the lawyers is not for tomorrow. For the time being, the main objective at the law university teaching should be the developing of the European oriented curricula. Within their scopes, one can imagine a place for the remarks – more or less developed – on that sprawling transnational legal order. The transnational curricula are – in that part of the world – for the day after tomorrow, if not for a more remote future.