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Value-based education of lawyers: Challenges to the maintenance of justice

Jolanta Bieliauskaitė *

Mykolas Romeris University, Ateities 20, Vilnius 08303, Lithuania

Abstract

The value-based approach to professional activities is stressed in the documents of the United Nations and the European Union, which regulate the training and conduct of lawyers. Nevertheless, the aspects of value-based education heavily make the way to the study programs of lawyers’ training. The purpose of this paper is to emphasize the necessity of value-based education of future lawyers and examine the issues and opportunities of the value of justice education. The results of the research support the assumption that in order to ensure the rule of law and social sustainability, law cannot be taught separately from the education of justice and other values. In training future lawyers, not only the value of justice should be theoretically explored in the ethical and legal context, but also the attitudes and daily practices of the lawyer, which can lead to the implementation of justice, should be trained.

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1. Introduction

In the Charter of the United Nations (1945, preamble) the people of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained. The lawyers are “essential agents of the administration of justice” (Office of the United Nations High Commissioner for Human Rights, 1990, art. 12), who help to implement rights and guarantees established in the international and national legal documents on human rights. According to Cicero, good lawyer is no less a master of law than of justice. Thus, even from very early days, a true lawyer was seen not only as one who is always in command of the learning of the law, but also as one who is striving “to make the law fit the equality of justice and the ethical demand of righteousness” (Zane, 1998, p. 122). The the necessity of value-based approach to professional activities is also stressed in the documents of the United Nations and the European Union regulating the training and conduct of lawyers. As the Council of Bars and Law Societies of Europe (CCBE, 2007) has stated, the future lawyers should view their tasks in “a wider ethical context, taking into account that the functions which lawyers perform are not only for the benefit of their clients but also for society at large” (p. 4). Nevertheless, the aspects of value-based education still heavily make the way to the study programs of lawyers’ training, which are now dominated by the instrumental approach to law and legal education. Lithuanian experience suggests that this disadvantage of the lawyers’ training system may be one of the factors shaping the negative public opinion of the professional activities of lawyers and determining the lack of trust in legal
institutions (e.g. according to a public opinion poll by “Baltijos tyrimai”, only 20% of Lithuania’s citizens trust the courts and 71% do not (BTI, 2012, p. 8)).

The purpose of this paper is to emphasize the necessity of value-based education of future lawyers and examine the issues and opportunities of the value of justice education. In order to achieve this purpose, the concept of justice as a virtue and as moral, legal and professional value is analysed. The specific aspects of the concept of justice as professional value are identified. The issues and opportunities of value-based education of future lawyers in Lithuania are examined. The methods of the research are document analysis, systematic analysis, philosophical, comparative, logical analysis, as well as survey, descriptive and generalization methods.

2. The complexity of the concept of justice: Some notes for legal education

The determination of society not only to declare, but actually maintain justice reflects in its institutions. In order to formulate the principles of justice “as the first virtue of social institutions” Rawls (2000, p. 3) constructs a hypothetical situation – an “original position”, the main component of which is a “veil of ignorance”. Under this veil, people negotiating these principles do not know anything about themselves but, according to Rawls, they have two main moral powers. One of them is an ability to have a sense of justice, i.e. the ability to “understand and apply the principles of justice as fair conditions of social cooperation and wish to follow them (not only to conform to them)” (Rawls, 2002, p. 321). Thus, for the establishment of the principles of justice as the foundations of social institutions, the people in an “original position” should have the personal virtue of justice. These philosophical ideas are significant for the research because of several reasons.

First of all, Rawls reminds us that from ancient times justice was understood as a virtue. In the context of classical ethics a virtue is defined as an acquired quality of mentality and action which enables certain valuable modes of activity (Anzenbacher, 1998, p. 132). Then the development of virtues requires not only to demonstrate knowledge of particular virtue and virtuous inner attitude but also to act virtuously.

A value can be defined as some object of attractiveness, a valuable good or a guiding principle in lives of people and (or) societies. Values carry an attribute as to what is right, good or desirable and thus influence personal and institutional decision-making (Parashar et al., 2004, p. 143-144), i.e. they are guidelines for mentality and action.

Therefore, the virtues include deontological, internal dimensions and values – teleological, external dimensions. These dimensions are interrelated and in some aspects inseparable (e.g. Hartmann (2001) identifies moral values as virtues (p. 194)), therefore they are equally important for the education of future lawyers: the justice can be maintained while not only appreciating the value of justice, but also while thinking and acting justly. Integrated education of values and virtues not only affects the legal consciousness of future lawyers by providing them with knowledge of what is valuable for particular society and its members. It also makes possibilities to encourage their legitimate behaviour and thus is essential for the formation of a high level of legal culture of future lawyers.

Second of all, in the works of Rawls and other scholars justice is understood as institutional (objective) as well as personal (subjective) quality. Objective justice is considered as the main political and legal principle, and subjective justice reveals itself through virtuousness of persons, their moral attitudes and actions (Baublys, 2005; Danilyan et al., 2005).

Llewellyn (1951) made a remark for law students: “The hardest job of the first year is to lop off your common sense, to knock your ethics into temporary anesthesia. Your view of social policy, your sense of justice—to knock these out of you along with woozy thinking <…>” (as cited in Fredricks, 2006, p. 140). The implication is that a lawyer should be morally impartial and do not appeal on personal attitude. Then the education of lawyers should be based on knowledge of the objective, namely legal justice. However other scientists warn about the dangers of moral relativism in legal practice, because it easily shifts into cynicism, “tolerance for other views becomes quite naturally the belief that all views are equally wrong, and that “truth” and “justice”, the supposed aims of the legal process, are empty words” (Fredricks, 2006, p. 140). Thus it becomes unclear what kind of justice has to be developed while training future lawyers.

Although in contemporary literature justice as the legal value has various definitions, their common point is the concept of human rights: justice reveals itself through mutual recognition of these rights and freedoms. This recognition is often supported not only by legal means (sanctions), but also by moral attitude of particular person and society. According to Danilyan et al. (2005), “Without justice as personal quality, without appropriate value
The main purpose of training lawyers is the preparation for professional activities, mostly provision of legal services. In the ancient times, proper accomplishment of one’s professional function was considered as a virtue (Baublys, 2005, p. 102). These days we have another concept—“professional skills”. Even though these concepts are equally important for performance of professional functions, they are not interchangeable. A. MacIntyre (1984) states, that virtue distinct from professional skill has non-situational character: “What are spoken of as the virtues of a good committee man or of a good administrator <…> are professional skills professionally deployed in those situations where they can be effective, not virtues. Someone who genuinely possesses a virtue can be expected to manifest it in very different types of situations, many of them are situations where the practice of a virtue cannot be expected to be effective in the way that we expect a professional skill to be” (p. 205). Therefore the virtue of justice does not necessary ensure that the person will become a good lawyer. However, this does not mean that moral aspects should not be developed while training the future lawyers. According to Carr (2006), professional conduct is not wholly reducible to the technical aspects of good practice, as for Aristotle “the key difference between techne and phronesis is that whereas the former is concerned mainly with determining the most efficient and effective means to achieve a given end, the latter is also concerned with reflection on the moral worth as such of those ends as goals of human flourishing” (p. 172). Taking into account that the functions performed by lawyers can affect not only the life of the client but also the society at large, it is hard to negate Carr’s proposition that a person “who conspicuously fell short of certain fundamental moral standards and aspirations” cannot be considered a good lawyer (p. 172). Thus, justice (commitment to justice) as legal as well as moral principle also has to be considered as the guiding principle for the provision of legal services, i.e. as an important professional value of lawyer (Gerst & Hess, 2009).

Legal scholars agree that the concept of justice in the legal context is mainly determined by the nature of a human being. They treat human beings as capable of self-improvement and autonomous (rational and able to limit themselves). Therefore, the most appropriate is the principle of justice, which provides the best conditions for self-realization and personal autonomy of every member of society, a measure of interaction of freedom and equality (Danilyan et al., 2005). Still the problem how to develop justice in training of future lawyers remains.

According to Kravcov (2006), children have more enhanced sense of justice than adolescents and adults, therefore in training the latters it is better to use the legal values of lower rank, derived from the value of justice. The main professional values of a lawyer can be detected in the codes of professional ethics and conduct (CCBE, 2008). Taking into account the abovementioned, it is reasonable to believe that their rules have some moral background and are essential for maintenance of justice in the society. Therefore, the law students should understand and be able to act in pursuance of: (a) respectfulness towards oneself, others and the rule of law. Self-respect presupposes “acquired sense of justice and gives meaning to our activities” (Rawls, 2002, p. 335-336). Respect for the other person reveals itself through recognition of one’s rights and freedoms (legitimate interests), non-discrimination, non-humiliation of other regardless of whether he or she is a colleague, client, a family member or stranger. The lawyer should also respect the law and act in accordance with legal principles; (b) fairness, impartiality. i.e. treatment of people as equals, without favouritism, discrimination or partiality, objective evaluation of situation, non-expression of partial subjective opinion etc.; (c) truthfulness. It is associated with respect for the rule of law and fair administration of justice: “A lawyer must never knowingly give false or misleading information to the court, nor should a lawyer ever lie to third parties in the course of his or her professional activities” (CCBE, 2010, p. 9, 18); (d) conscientiousness and absence of legal abuse. The service of a lawyer is significant not only to the particular person
(the client), but also to society as a whole. Therefore the lawyers performing their duties have to respect equally every member of the society. Accordingly, neither should they take advantage of the infirmity of the other person themselves, nor to help their clients to do so. Lawyers have a duty to act reasonably, not to misuse their official positions for influencing the decisions of other people, not to use another person’s mistakes or ignorance.

This list of professional values of a lawyer is not completed, yet it is possible to notice the interdependence of these values and the value of justice. Therefore they have to be developed while training future lawyers in order to lay base for maintaining justice in the society.

4. The issues and opportunities of value-based education of future lawyers in Lithuania

The value-based approach to the professional activity of a lawyer follows from the very essence of conception of law and justice, which reveals its’ normative, as well as value-based character. Thus for the maintaining justice and its’ administration, the future lawyers are required to have not only particular knowledge or skills, but also the promotion of values. CCBE (2007) states that “Adherence to the principles and values of the profession allows lawyers to serve, in the best possible way, both the interest of their clients and the public interest in the promotion of justice and the upholding of rule of law at the same time” (p. 4). This document does not specifically state to what values the lawyers should adhere. Yet it refers to national codes of conduct and leaves the specification of values to the national legislators.

The Constitutional Court of the Republic of Lithuania (2008) held that “In a democratic state under the rule of law big requirements are raised to this profession, because it is possible to ensure such fundamental legal values as the rule of law, justice, rights and freedoms of persons, legal security and legal certainty, the right to a fair trial, legal assistance etc. only in a legal system, where lawyers have the necessary professional competence” (para. II.1). Lawyers have to acquire competence basics during studies at the higher school (college or university). The main requirements for the legal studies are regulated by The Description of the Course of Legal Studies approved by the order of the Minister of Education and Science of the Republic of Lithuania (2010). Herein inter alia are established the common goals of legal studies. Among them is the development of ethical qualities necessary for the legal practice. Then the acquired knowledge, cognitive, practical and transferable skills are listed. Here the practical skill of ethical professional conduct and transferable skill to be impartial, sensitive for influence of other individuals and environment, ability to reconcile divergent interests are enrolled (para. 6.1, 12.5, 13.5, 16.4, 17.5). However, there is no direct approach to value-based education in this document. This fact also reflects on descriptions of subjects of higher schools. Still it does not mean that higher schools ignore value-based education of future lawyers.

In order to explore the situation and the need of value-based education in training future lawyers, 136 third year students of law programme of Mykolas Romeris University were surveyed in spring 2012. The students indicated that they acquire some value-based approaches while studying general and speciality subjects. Eleven percent of respondents think that the value of justice is developed during every subject of law study programme. The vast majority (89%) of students also believe that legal or professional ethics subject is essential in training future lawyers. Many higher schools (e.g. Mykolas Romeris University, Vytautas Magnus University, colleges) of Lithuania include legal studies on ethics and responsibility of lawyers in the programme. However the analysis of subject descriptions shows their content is often narrowed to the analysis of codes of professional ethics and conduct without making any effort to provide deeper value-based approach. Nevertheless, it can be stated that there is an appropriate basis for comprehensive value-based education of future lawyers, which involves moral (subjects of ethics, philosophy, etc.), legal and professional (speciality subjects, particularly the subject of professional ethics and responsibility) aspects of conception of value. However, in terms of content of value-based education of future lawyers, there is a lack of clarity, unity and expedience. This is also evident from the results of the survey. For instance, describing a good lawyer in 5-10 words, 136 respondents noted 129 various and sometimes quite different features. Good lawyer is mostly characterized by rationality (34%), conscientiousness (34%), fluency (31%), commitment to justice (26%) and responsibility (21%). Still there are some students who think that a good lawyer is the one who is deceitful (4%), liar (1%) and who is able to manipulate emotions (1%).

Without the value-based approach to legal practice the law becomes only an instrument to achieve one’s purposes. This violates human rights, the principles of rule of law and justice and can cause a serious threat to sustainable coexistence in society. Development of values, if it is fragmentary and not unified, can debase the
important values or determine their misunderstanding. This should be a great concern of higher schools and the government.

5. Conclusions

1. For the training of lawyers, the education of justice as a virtue (deontological dimension) and as a value (teleological dimension) is equally important. In order to develop a high level of legal culture of future lawyers, not only the concept of justice should be theoretically explored in ethical and legal context, but also the attitudes and daily practices of the lawyer, which can lead to the implementation of justice, should be trained.

Justice as quality of social institutions is significant for the development of justice in training future lawyers and vice versa: justice as personal quality impacts on the development of legitimate social order. Therefore, the legal education of future lawyers should go along with moral education.

2. Whereas justice is a fundamental principle of law and the condition of sustainable coexistence in society, other values are subordinated to it in the context of jurisprudence. Therefore, while developing justice as professional value at higher law school, the educators should provide students with the broader understanding and encourage them to act in pursuance of respectfulness towards themselves, others and the rule of law, fairness, impartiality, truthfulness, conscientiousness, absence of legal abuse and other values.

3. Although the legal acts of the Republic of Lithuania do not require the value-based education of future lawyers, the promotion of values in law studies is taking place in the various subjects. However, this education is fragmentary, its goals and their achievements are obscure. Therefore it is necessary to include coherent value-based approach into the list of requirements for legal studies.

References


