Fixing Europe's Law Schools

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To prepare law students for a tougher, rapidly changing legal world, European law schools need to reinvent themselves. This article argues that European legal educators should focus on equipping students with a broader skillset enabling them to become successful advocacy experts, effective legal risk analysts and creative legal problem-solvers. As part of a new, thoroughly interdisciplinary curriculum, legal education should concentrate on the acquisition of rhetorical skills and social-scientific tools allowing students to apprehend legal rules as the product of social dynamics as well as instrument of social planning. To preserve their commitment to free, mass legal education, European law schools should also embrace full-scale digitalisation to free up time and scarce teaching resources for more interactive and more experiential forms of learning.

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I. Introduction

1. Law schools and legal educators have come under growing criticism.[1] This is certainly true for US legal education and its many struggling law schools hit hard by an unprecedented decline in first-year enrolment.[2] But the same increasingly applies for law school education in Europe, too. Prompted by a host of factors, including poor job prospects for law graduates and an alleged surfeit of lawyers[3], the discussion has forced the European legal academy to confront some hard truths about traditional legal training. European law schools have been variously indicted for their formalist approach to law[4]; their lack of interdisciplinarity[5]; their parochial, narrowly-domestic perspective on courts and legislation[6]; their emphasis on abstract doctrines and their failure to engage the law in action[7]; their failure to impart students practical skills such as team work, negotiation, communication and management[8]; and, more generally, their inability to keep

[1] Some of the materials for the present contribution were first developed in ARTHUR DYEVRE, THE FUTURE OF LEGAL THEORY AND THE FUTURE OF LEGAL EDUCATION (2016).

[2] See Danielle DOUGLAS-GABRIEL, "Why Law Schools Are Losing Relevance — and How They're Trying to Win It Back", *Wash. Post* (2015); Daniel LUZER, "Nobody Wants to Go to Law School Anymore", *Wash. Mon*. (2014); Edward RUBIN, "The Future and Legal Education: Are Law Schools Failing And, If So, How?", 39. *Law Soc. Inq.* 2014, 499; "Law Schools: Reform or Go Bust", www.newsweek.com/law-schools-reform-or-go-bust-308339 (last visited July 24, 2015).

[3] Owen BOWCOTT, "Law Graduates Hit by Stiff Competition, Legal Aid Cuts and Falling Crime", www.theguardian.com/law/2014/jun/29/law-graduates-legal-aid-university-lawyers (last visited July 16, 2015); Amanda CARMIGNANI & Silvia GIACOMELLI, *Too Many Lawyers?: Litigation in Italian Civil Courts* (2010), papers.ssrn.com/sol3/papers.cfm?abstract_id=1669988; D. BAERT, "Te veel advocaten in België", deredactie.be/cm/vrtnieuws/binnenland/1.2319052 (last visited July 17, 2015); "Trop D'avocats En France? La Profession Réfléchit À Des Solutions", www.lexpress.fr/actualite/societe/trop-d-avocats-en-france-la-profession-reflechit-a-des-solutions_1305738.html (last visited July 17, 2015); Laura CARBALLO PIÑEIRO, "Legal Education in Spain: Challenges and Risks in Devising Access to the Legal Professions", 19. *Int. J. Leg. Prof.* 2012 = papers.ssrn.com/sol3/papers.cfm?abstract_id=2482027; Klaus WERLE & Eva BUCHHORN, "Juristenschwemme Wohin Nur Mit All Den Anwälten?", *Spiegel* 3 October 2013, www.spiegel.de/karriere/berufsstart/juristenschwemme-zu-viele-juristen-draengen-auf-den-arbeitsmarkt-a-919819.html.

[4] Christophe JAMIN & Mikhail XIFARAS, "De la vocation des facultés de droit (françaises) de notre temps pour la science et l'enseignement", 72. *Rev. Interdiscip. d'études jurid.* 2014, 107.

[5] Mathias REIMANN, "The American Advantage in Global Lawyering", 78. *Rabels Z.*. 2014, 1.

[6] See Sabino CASSESE, "Legal Education under Fire", in the present *ERPL* issue.

[7] C. JAMIN Jamin & Xifaras, *supra* note 4.

[8] J. WEBB et al., *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales* (London: Legal Education and Training Review, 2013)(LETR Report), http://www.letr.org.uk/the-report/. Western European law schools have also been singled out for their reluctance to adopt clinical legal

pace with a rapidly changing profession and legal world.[9] Reformers have advocated a more eclectic curriculum reflecting the increasingly transnational character of large chunks of legal practice and legal transactions across the continent[10]; a greater emphasis on practical skills and legal clinics[11]; a move away from dogmatic, doctrine-only teaching and a more realist approach to law[12]; along with a shorter and more interdisciplinary curriculum[13].

2. Members of the European legal academy and other stakeholders should all welcome this debate, long overdue. It is high time European legal educators had a robust discussion over the value, function, goals and performances of European law schools in the twenty-first century and started thinking hard about the best strategy to tackle the shortcomings that this process of self-examination will inevitably bring to light. That European law schools face tough challenges in other respects, notably on the research side, as many struggle to attract research funding in a context of intensified competition among disciplines,[14] can only add urgency to this necessary debate. Many of the proposals put forward also appear fairly reasonable and aspiring legal education reforms should certainly give them consideration. Now, while I agree with much of what has been said in the European and US debate, I believe that the discussion would benefit from:

- a more systematic assessment of the challenges confronting or likely to confront law graduates and legal practitioners in the decades to come;
- a clearer understanding of the skills successful lawyering requires and that law students should possess upon graduation;
- a clearer vision of the function of a law school as a hybrid organization—half professional school and half academic department—in the broader context of the evolution and transformation of higher education;
- more consideration for teaching methods and the place of new technologies in legal education;

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education, see Richard J. WILSON, "Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education", 10 *Ger. Law J.* 2009, 823.

[9] See M. REIMANN, *supra* note 5 (arguing that European law graduates are less well-equipped to navigate the uncertain, globalised legal world of the twenty-first century than their American counterparts).

[10] See Sabino CASSESE in present issue and A. VON BOGDANDY, "National Legal Scholarship in the European Legal Area--A Manifesto", 10 *Int. J. Const. Law* 2012, 614.

[11] WILSON, *supra* note 8.

[12] Jamin & Xifaras, *supra* note 4; Christophe Jamin, *Le rendez-vous manqué des civilistes français avec le réalisme juridique. Un exercice de lecture comparée*, DROITS 137 (2011); Christophe Jamin & Mikhaïl Xifaras, *Retour sur la "critique intellectuelle" des facultés de droit*, SEM. JURID. 155 (2015).

[13] C. JAMIN & M. XIFARAS, *supra* note 4. (suggesting that French law schools may want to jettison the bachelor in law to give students the incentives to learn the basics of another discipline).

[14] A report of the German Scientific Council points out that law departments in Germany significantly underperform other university departments in research funding received from third-party institutions (as measured by average awarded research funding per tenured professor), see 2012 report available at www.wissenschaftsrat.de/download/archiv/2558-12.pdf (accessed July 22, 2015). See also in the Netherlands Jan SMITS, *Omstreden rechtswetenschap: over aard, methode en organisatie van de juridische discipline* (Den Haag: Boom 2009); Jan VRANKEN, "Exciting Times for Legal Scholarship", 2. *Law Method* 2012, 42. The 2009 report of the evaluation committee is available at www.vu.nl/nl/Images/Evaluatie%20onderzoek%20Rechten_tcm9-169244.pdf (accessed July 23, 2015).

- and, last but not least, more attention to the political economy of European law schools—including the expectations that society and policy-makers have vis-à-vis state-funded legal educators, human resources, and the incentive structure of the law professoriate—and how it should inform reform choices.

3. Sharper appreciation of these aspects should help in determining where European legal education is falling short and which changes are most likely to bring about the desired outcome. In any case, the analysis shall make it clear that calls for the reorientation of scholarship and teaching towards the development of a *Ius Commune* or *Ius Publicum Europaeum*[15]--as valuable as these projects may be as a scholarly endeavour—will go little distance towards reviving Europe's languishing law schools. I shall argue instead that legal educators should focus on equipping students with skills that help them become successful advocacy experts, effective legal risk analysts and creative legal problem-solvers. This vision of legal education is predicated on a thoroughly interdisciplinary curriculum emphasising the acquisition of rhetorical skills and social-scientific tools enabling students to apprehend legal rules as the product of social dynamics as well as as instrument of social organization. To the extent that European law schools, most of which are state-funded, maintain their commitment to free (or nearly so) mass legal education, digitalisation offers the best prospect of implementing this vision in a way that makes optimal use of the schools' available resources. *Ex cathedra* lectures to large groups should be replaced with Massive Open Online Courses (MOOCs) and standardized tests, not to make legal education fully virtual but to free up time and scarce teaching resources for more interactive and more experiential forms of learning. A consistent implementation of this vision would, among other things, invite law schools to recruit a more diverse body of instructors, as have top US law schools, where a growing number of new hires possess both a JD in law and a PhD in another discipline.[16]

4. The remainder of this article is structured as follows. I first consider the emerging challenges facing the legal profession and how these have impacted law schools in Europe and the United States. I then briefly outline my vision of legal education highlighting how two of its main constituent parts relate to legal practice: the law as the art of persuasion and the law as product and instrument of social organization. In light of this vision, I proceed to discuss the skills and disciplines most relevant to legal training and to identify the ones which contemporary legal education fails to provide. In the subsequent section I present some proposals aimed both at bringing the law school curriculum in line with the outlined vision and at addressing the resources conundrum—summarized by the high student-faculty ratio prevailing at most European non-private law schools—that any attempt to reform legal education is bound to run into. Finally, I conclude

[15] See e.g. VON BOGDANDY, *supra* note 10.
[16] See Lynn M. LOPUCKI, "Dawn of the Discipline-Based Law Faculty", 65 *J Leg. Educ* 2015, 506.

with some thoughts on the prospect for implementation in light of the organizational constraints bearing on European law schools.

II. The Challenges of an Evolving Profession

5. As said, pressure on legal educators comes from many corners. Looming largest probably is the pressure coming from the legal job market. As university departments, law schools are part of academia. But because a law school is expected to train future professionals, every law school is also a professional school. This makes it hard for legal educators to ignore the job market and the trajectory of the legal profession.

Recent developments together with economic forecasts indicate that a once cosy and prosperous profession has entered a less gilded age.[17] The legal services industry is in the midst of an unprecedented restructuration and this is adversely affecting the job prospects of law school graduates. The undergoing transformation of the market for legal services has multiple causes. One is heightened competition as a result of more demanding clients combined with the rise of in-house counsels, which, in turn, has accelerated the demise of the billing hour business model—the traditional pricing model of legal services providers. Another is globalization, which has been accompanied by outsourcing and increasing stratification, including within law firms, as illustrated by the recent move of Allen & Overy—one of the world's largest law firms—to create a low-cost lawyering division in Belfast.[18] Moreover, newcomers are entering the legal market. These include the "bean counters", the four giant accountancy firms KPMG, Deloitte, PWC and EY. Not only are these new players several times larger than the world's largest law firms, but they excel at the standardisation and automation of repetitive tasks, which make them serious competitors for second-tier law firms. Accountancy firms already employ thousands of lawyers worldwide.[19]

6. In many European countries, legal professionals are protected by regulations restricting entry into the legal market. An extreme example are notaries in civil law jurisdictions like France, Germany and Italy. True to the traditional image of the law as a "gentleman's profession", notaries have their number set by law and operate in parcelled out notarial districts, guaranteeing them a captive clientele, as real estate sales and succession contracts are typically required to be in notarial form. However, lawyering usually represents a transaction cost on economic

[17] For the US see Craig STALZER, "Careers in Law Firms : Career Outlook" (U.S. Bureau of Labor Statistics: 2014), http://www.bls.gov/careeroutlook/2014/article/careers-in-law-firms.htm (last visited July 17, 2015); for Germany see *DAV-Zukunftsstudie* (Deutscher Anwaltverein 2013), anwaltverein.de/de/service/dav-zukunftsstudie (last visited July 18, 2016).

[18] Marialuisa Taddia, "Support Centres: Our Friends in the North", *Law Society Gazette*, http://www.lawgazette.co.uk/practice/support-centres-our-friends-in-the-north/5046599.fullarticle (last visited 5 August 2016).

[19] "Attack of the Bean-Counters", *The Economist* (2015), http://www.economist.com/news/business/21646741-lawyers-beware-accountants-are-coming-after-your-business-attack-bean-counters.

activity and the interest of the broader economic system is in keeping lawyering costs low to ensure the optimal allocation of economic factors. The economic case for deregulation is thus very strong. While lawyers likely to lose out from stronger competition are bound to oppose deregulation, some policy-makers have already begun to push for liberalization. In the UK, recent deregulation measures intended to facilitate the entry of new players and investors in the legal market were hailed as "Tesco Law".[20] As liberalization makes progress, market analysts predict a wave of disruption that is also likely to affect the low end of the market, even if the likes of Tesco and Carrefour have yet to step into the legal business.

7. Finally, the legal services industry is waking up to the rise of the machines. Emerging new technologies, most prominently artificial intelligence, natural language processing and natural language generation. It is hard not to be impressed by IBM's supercomputer Watson and its ability to parse unstructured natural language sentences to answer simple as well as complex questions. Start-ups are working on applications to the legal field, which promise to boost the productivity of legal practitioners, if not to make wholly lawyers redundant for the most routine aspects of the trade. Just as document-assembly software is changing legal drafting, the impact of new technologies means that some basic legal services, including legal risk assessment for may ultimately become available free of charge on the internet.[21]

8. In sum, legal practice is witnessing the process described by Richard Susskind—the "guru" of the legal services industry—as the unbundling and commodification of law.[22] The restructuration means fewer legal jobs,[23] but also new ones, in the compliance sector for instance, for which law school graduates have not been prepared. Nor are these the only challenges facing young law graduates. Law schools also train future judges. But courts in Europe have become major policy-makers, effectively turning judges into statesmen, with all the responsibilities that the function carries. Judges on top courts are grappling with complex policy issues and it may legitimately be asked whether they possess the right kind of expertise to solve them in optimal fashion. At the lower echelons of the judicial heap, the advent of virtual courts and the spread of Online Dispute Resolution (ODR) constitutes yet another potential source of disruption.

How law schools have responded and should respond to these challenges is the focus of the next two sections.

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[20] See Avrom SHERR & Simon THOMSON, *Tesco Law and Tesco Lawyers: Will Our Needs Change If the Market Develops?* (2013), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2293660.

[21] See J. CROFT, "More than 100,000 Legal Roles to Become Automated", *Financial Times* 15 March 2016., http://www.ft.com/cms/s/0/c8ef3f62-ea9c-11e5-888e-2eadd5fbc4a4.html

[22] Richard SUSSKIND, *The End of Lawyers?: Rethinking the Nature of Legal Services* (Oxford University Press 2010).

[23] For the US see M. LEICHTER, "*The Government's Dismal Job Outlook for Lawyers"*, The American Lawyer 27 January 2016, www.americanlawyer.com/id=1202748112958/The-Governments-Dismal-Job-Outlook-for-Lawyers (last visited July 20, 2016). The report commissioned by the German Lawyers' Association also predicts downsizing, see *DAV-Zukunftsstudie*, *supra* note 17.

III. Reinventing the Law School as a Hybrid Institution

9. That the downward pressure on legal jobs accompanying the restructuration of the legal industry inevitably raises some hard questions about the value of a law degree is perhaps most evident in the United States.

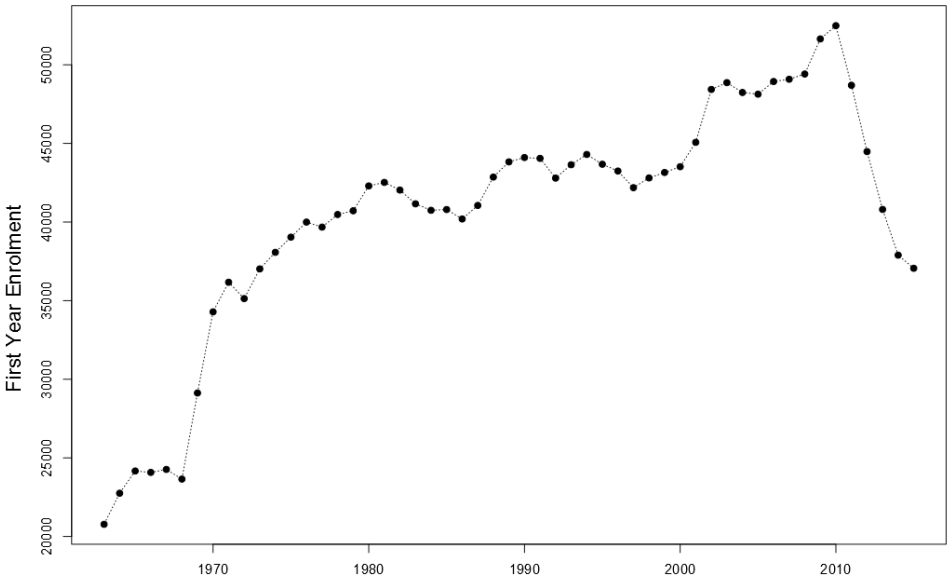

Figure 1. First Year Enrolment at US Law Schools (Source: *American Bar Association*).

As Figure 1 illustrates, first year enrolment at US law schools is in free fall. From its peak in 2010, enrolment is down by a staggering 40 per cent. It is now at a level unseen since the 1970s, when the country counted 50 fewer law schools (151 in 1973 against 201 in 2015).

From a European perspective, it is easy to draw the wrong conclusion from these data and lament that too many bright European students elect to cross the Atlantic to complete an LLM or a JD programme at a US institution with the risk that they bring back the philosophy and practices of a failing model. While the decline in law school enrolment has not been as spectacular in Europe, this should bring no solace to Europeans. In fact, top US law schools, at least for those who can afford it, may still offer the best legal education. Yet a major difference between Europe and the United States is that a US law degree is exceedingly expensive, whereas European state-funded law schools are, when not free, at least significantly cheaper. Most American students take on huge debt to pay for the high tuition fees demanded by US law schools. This makes them eminently responsive to market signals. European students, by contrast, have less incentives to monitor and respond to market fluctuations, as the opportunity cost (in expenses incurred and income potentially foregone) of taking a law degree is much lower in Europe. The result is that a reported 30 per cent fall in enrolment at Italian law schools over the past 10

years may be at least as telling over the failure of Italian legal education as a 40 per cent drop in the US over five years.

10. Not only that. For all the misery US law schools have endured of late, some aspects of the US model may still be worth emulating. Falling enrolment figures notwithstanding, Mathias Reimann's comparative assessment of US and European-style legal education remains valid. The post-realist, pragmatic, flexible and instrumental approach to law characteristic of US legal education is better suited to the twenty first century than the European, civil law brand with its emphasis on coherence and grand doctrinal constructions.[24]

A. Training Tomorrow's Lawyers: The Advocacy Expert and the Legal Analyst

11. The concept of legal education I want to sketch out in the present section borrows to a certain extent from the US model. In the spirit of the great American pragmatists, it might be said that its philosophical mantra is "what is true is what works". Similar to US legal education, it emphasises the instrumental character of law and the rhetorical nature of legal reasoning—a conception of law embodied in the Socratic method of teaching. Consonant with the main tenet of American legal realism, it favours, as Oliver Wendell Holmes put it, a "business-like" understanding of the law.[25] While this conception implies that teaching should focus on the problems facing practitioners of the craft and should strive to impart the skills necessary to solve them, it is by no means intended as an anti-academic conception of legal education. Rather, I believe that it is not only possible but also desirable to reconcile the two sides of the law school's identity, the academic *and* the professional, by creating greater synergies between them.

12. We could, of course, imagine a world in which law would be a purely academic subject. In such a world law schools would cast off their vocational tradition altogether to become research-oriented institutions in which teaching focuses on the acquisition and application of the scientific method to the legal domain. In the purely academic model, though, law schools would lose their proximity to legal practice and would cease to fulfil their mission to train future practitioners. Going in the opposite direction, the professional school model would turn students into apprentices and would have them exclusively taught by practitioners of the legal craft. In such a school, research—at least academic research—would be, at best, a sideshow.[26] The professional school model certainly has merits. Much of the knowledge and know-how essential to effective lawyering is highly context-

[24] REIMANN, *supra* note 5.
[25] Oliver Wendell HOLMES, "The Path of the Law", 10 *Harv. Law Rev.* 1896, 457, at 459.
[26] In England and Wales, many solicitors do not hold a law degree but joined the profession by taking a one-year law conversion course after receiving a non-law degree. In many respects, the system applying in England & Wales can thus be viewed as a close approximation of the professional model. Going one step further is what can be dubbed the "no-school" model. Several US states, including California, Virginia and Washington, allow aspiring lawyers to sit the bar exam without a law degree upon completion of an apprenticeship programme. See Sean Patrick FARRELL, "The lawyer's Apprentice. How to Learn the Law Without Law School", *N. Y. Times* 30 July 2014, www.nytimes.com/2014/08/03/education/edlife/how-to-learn-the-law-without-law-school.html.

dependent. In that sense, law students certainly benefit from exposure to seasoned practitioners. It would be illusory, though, to see the professional school model as the magical cure to the deficiencies of European legal education. For one thing, European law schools in their current shape are not far remote from the professional model. There certainly is significant variability across European countries and institutions, but the typical European law professor may well be the practitioner part-time lecturer rather than the full-time academic.[27] That practitioners are better legal educators is not a self-evident proposition, at least not one backed by empirical evidence. For another, if the mission of a law school is to train tomorrow's—not today's—lawyers, keeping a healthy distance from legal practice makes good sense. The practice of law is changing rapidly; as does the law itself. This suggests that the law school curriculum should focus on skills that are sufficiently general to enable graduates to adapt to a changing environment.

13. The intellectual agility that comes with a sharp analytical mind is a general aptitude that one associates with an academic education, but which is also essential to sophisticated lawyering. That developing and honing such an aptitude must form an important goal of law school training, just as it must for higher education in general, should require little convincing. Nor should the need to teach aspiring lawyers basic communication skills be controversial. Effective communication is critical to virtually all knowledge-intensive jobs, from scientific research to consultancy and management. The same is true to no less extent for legal professionals. Indeed, lawyers often find themselves in situations where they have to present the result of a legal analysis to non-lawyers (clients, parties to a legal case, staff members…).

Another aptitude which is at least as essential to a state-of-the-art law school curriculum is more distinctive of the legal trade. This aptitude is legal rhetoric. Law in action turns, for a significant part, on argumentation and advocacy. Judges (when writing opinions) and litigators (when arguing cases) deal in persuasion and their being successful depends on their ability to use legal discourse instrumentally to persuade audiences to certain beliefs and actions. The skills needed to become an effective legal advocate, though, go beyond simple communication. Effective legal rhetoric involves, among other things, the ability to construct and deconstruct arguments on the spot, an eye for facts and mastery of the fine art of distinguishing. There are different ways in which legal training can help students hone such skills. The list certainly includes moot courts, text-

[27] See the description of the European legal academy on the website of the EUI Academic Career Observatory: www.eui.eu/ProgrammesAndFellowships/AcademicCareersObservatory/CareersbyDiscipline/Law.aspx (accessed July 30, 2015) ("when describing a typical law professor most researchers would portray him as a practitioner and part-time lecturer rather than as a full-time academic"). That the law school curriculum usually makes so little room for skill-oriented, contextualized approaches to law cannot but come as something of a puzzle given that practitioners are well represented in law faculties across the continent. A tentative explanation might point to a combination of path dependency (instructors were taught that way and replicating pre-existing courses is less effortful than designing new ones), psychological bias (the availability heuristic), misaligned incentives (the demands of legal practice means there is little time to rethink one's approach to teaching) and informal norms (that's the way law is taught and ought to be taught).

analysis and use of the Socratic method. The teaching of rhetoric also calls for an interdisciplinary approach. Of particular relevance here is psychology. In his masterful treatise on rhetoric—which also covered forensic rhetoric, i.e. the use of rhetoric in the judicial context—Aristotle already argued that at the heart of the study of rhetoric is the "science of the mind". In the age of neuroscience, this means that a rhetorically powerful argument is one that is tuned to the brains of the audience members. More specifically, there is a treasure trove of psychological findings on human cognition and cognitive heuristics, from framing and anchoring to ego-depletion and availability that are of direct relevance to legal practice[28] and which would greatly enrich the study of legal rhetoric.[29]

14. Law in practice, of course, is not solely about persuasion. Most lawyers at top-tier law firms, for example, rarely, if ever, set foot into a courtroom. *Ditto* for the general counsels running the in-house departments of large businesses. Legal counselling in most areas of law is less about rhetoric and conflict resolution than it is about risk assessment and conflict avoidance. It certainly involves far more than merely reminding clients what the law is. Aside from assessing legal risks, sophisticated lawyering requires lawyers to use the law creatively and instrumentally to anticipate needs and create opportunities for clients. Here the perspective is one that parallels that of the social scientist and the social engineer. Advising clients frequently involves making predictions of some sort of the decisions of judicial bodies, arbitrators or industry regulators. In such circumstances, estimating the risks associated with different courses of action (e.g. to litigate or to settle) presupposes some positive notion of the factors driving the decision-making process under consideration. Equally important to legal practice are the policy analysis and legal engineering skills required to assess and evaluate the impact and efficiency of the rules jurists are called on to design, whether these are contracts, regulations or judicial doctrines. To give but one illustration, when enacting new jurisprudential rules, appellate judges must, by way of necessity, consider the effect they will have on the behaviour of litigants and other public and private decision-makers. The broader point is that this aspect of legal practice suggests that lawyers need to relate the contemplated rules to the preferences, incentives, resources, constraints and cognitive biases of those whose behaviour they purport to govern.

Here too, legal educators may discover that pure doctrinal analysis is not the answer and that there is a lot law students can learn from other disciplines. In a forecasting tournament opposing a panel of 83 law professors to two political scientists, the latter consistently outperformed the former, accurately predicting 75 per cent of US Supreme Court decisions for the 2002 term to the law professors'

[28] See Daniel KAHNEMAN, *Thinking, Fast and Slow* (Farrar, 2011); Chris GUTHRIE et al., "Blinking on the Bench: How Judges Decide Cases", 93 Cornell Law Rev. 2007, 1; Shai DANZIGER et al., "Extraneous Factors in Judicial Decisions", 108 *Proc. Natl. Acad. Sci.* 2011, 6889.

[29] I lack space to elaborate on the contribution that other perspectives might make to the study of legal rhetoric, notably Law & Literature (particularly in its incarnation as Law *as* Literature) and political communication.

mere 59.1 per cent.[30] Here too, an interdisciplinary outlook can help aspiring jurists better to navigate a complex, multi-jurisdictional environment. Rather than explaining the law by starting from the rules and doctrines, it might often be more productive to start from the social problem they purport to address. Contract law is not the same everywhere, but everywhere it addresses the same core bargaining problem. Negotiation and bargaining theory offer useful insights to help students of contract law to understand the effects and implications of different regulatory regimes. Similarly, tort law can be studied as a problem of optimal risk allocation. Likewise, veto player theory, by relating governance structures to the stability of decision outcomes, can serve to illuminate large chunks of a wide range of legal fields, from company law and corporate governance to constitutional and administrative law.[31]

B. What European Law Schools Train Today: Young (Unskilled) Priests of the Law?

15. To what degree do European law schools give priority to the skills identified above? Before turning the attention to what is going wrong at European law schools, I wish to start with what they are doing right. It bears emphasis, though, that European law schools exhibit a certain measure of diversity and that they are not all born equal. Enjoying generous funding as well as the power to select their students, some new schools and law departments have rolled out modernized programmes more in tune with market demands. Founded in 2009, Sciences Po Law School in Paris is leading the reform movement with a shortened (two years) US-style curriculum. A similar initiative was launched in Germany in 2000 with Bucerius Law School. Another interesting development is the emergence of top-ranked business schools in France (HEC, ESSEC, ESCP), Denmark (CBS) and Spain (IE) as high-end legal education providers. These schools now offer programmes in law, often with a focus on the more lucrative areas of business law and business regulation. Common to these new initiatives is an emphasis on interdisciplinary approaches as well as to hands-on, practice-oriented, experiential forms of learning. Some programmes, such as IE University's bachelor of laws[32] or Tilburg's LLB Global Law[33], also adopt a resolutely transnational vision of law, as they purport to detach the study of law from the specifics of a particular legal system and to train students to function multi-jurisdictionally.

Outside these institutions, which remain the preserve of the privileged few, the picture is not all bleak. My law school, the KU Leuven Faculty of Law, is state-funded, does not hold the power to select its students and with tuition fees between 100 and 900 euro can hardly be accused of catering exclusively to wealthy elites. Yet for the more motivated among its students it has introduced new programmes

[30] See Theodore W. RUGER et al., "The Supreme Court Forecasting Project: Legal and Political Science Approaches to Predicting Supreme Court Decisionmaking", 104 *Columbia Law Rev.* 2004, 1150.
[31] See George TSEBELIS, *Veto Players: How Political Institutions Work* (Princeton University Press 2002)..
[32] www.ie.edu/university/studies/academic-programs/bachelor-laws/ (accessed 25 July 2016).
[33] www.tilburguniversity.edu/education/bachelors-programs/global-law/ (accessed 25 July 2016).

promoting more interactive modes of learning, moot courts and the teaching of soft skills such as negotiation. Students are taught in three languages (Dutch, French and English) and the faculty actively encourages clinical forms of learning (through pro-bono legal counselling to start-ups for example).

16. Looking away from these pockets of innovation, though, there is much that appears wanting in the landscape of state-funded legal education in Europe (I take this to include my own institution). Start with the near-uniform focus on doctrines and black-letter law. The—at times slightly depressing—experience of studying law at a European university is usually that of sitting idly in a packed amphitheatre to listen to what is essentially a monolithically doctrinal, one-dimensional reconstruction of legal authorities followed by weeks of cramming for the final exam.[34] Not only does this do little to foster critical thinking and to improve analytical skills, but much of the law the students actually learn is certain to be moot by the time they graduate. Worse still, rather than as an instrument to be used, the law is taught as a self-contained set of dogmas to be observed. The result of a long exposure to this legal theology is that students become young, militant priests of a law in which they believe, rather than rigorous legal analysts or advocacy experts.

Nor do European law schools fare much better when it comes to imparting skills as writing and argumentation, despite their centrality to legal practice. Few instructors have heard of the Socratic method, let alone practice it, and the knowledge of rhetoric of the typical law student is likely to be no better than that of the average layperson. Not only do students write very little (an average of a little over one essay per year at my institution, for example) but they hardly read more (students are not usually expected to prepare for lectures, which do not normally include mandatory reading materials).[35] Similarly, the stress on doctrinal analysis means students fail to develop a taste for facts and facts-patterns, although real-world cases are probably won on facts as often as they are won on law. The picture hardly looks better for such important soft skills as communication and negotiation—subjects which most students never come across in their five years or more of studying law.

IV. Some (Im-)Modest Proposals

17. We may be inclined to put the blame for the shortcomings of European legal education fairly and squarely on the democratisation of higher education. With fewer and better students, the reasoning goes, standards would go up and the classroom would be a more exciting place. But as long as politicians impose it on

[34] I am, of course, aware that this picture generalizes and simplifies a more complex reality. There are significant variations in funding and students to staff ratios across countries and institutions. See discussion *infra*.

[35] Owing to the lack of empirical data, the degree of accuracy of such generalizations is difficult to gauge with exactitude. There are certainly important exceptions to this pattern (think of elite institutions like Oxford and Cambridge). But, having worked and studied in Germany, France, Belgium, the Netherlands, Italy and Spain, my experience suggests that it holds, at least, for law schools in these countries.

legal educators to take in every high school graduate who so wishes European law schools will be condemned to the purgatory of mediocrity.

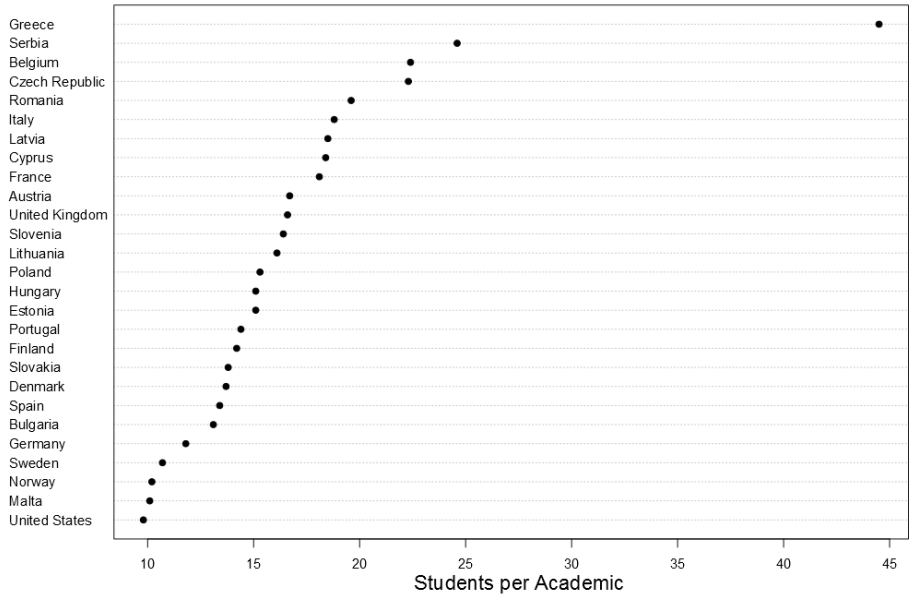

Figure 2. Students per Academic Staff Member Ratios in European Higher Education, 2014 (Source: *Eurostat*)[36]

It is true that matching limited resources with large student populations represents a major challenge for European legal educators. As Figure 2 shows, there are significant cross-country differences in students per instructor ratios at European universities.[37] Save for Nordic countries like Norway and Sweden, which invest heavily in higher education, though, most countries do not come even close to match the ratios seen at US institutions. As one of the most popular subjects among European students—in 2014 nearly 4 per cent of the European Union's bachelor-level students were studying law, according to Eurostat[38]—law also tends to be one of the most severely affected by overcrowding.

Assuredly, it is hard to deny that managing and teaching smaller groups of more able students would make the jobs of Europe's legal educators easier. Some measure of selection is also desirable to ensure that prospective students have at least the capacity to complete their course of study. Still, democratized, affordable higher education is a public good whose value extends beyond the person who

[36] Figures exclude short-cycle tertiary programmes. Figure for Belgium corresponds to 2013.
[37] There are also important cross-country disparities regarding supporting staff and overall funding, see appendix in ALEXANDRA DEN HEIJER & GEORGE TZOVLAS, *The European Campus: Heritage and Challenges* (Delft University of Technology 2014).
[38] See http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Distribution_of_tertiary_graduates_by_sex,_EU-28,_2013_(%C2%B9)_(%25)_ET15.png.

directly benefits from it, to the economic system and broader society. So European universities and, with them, European law schools should not lament but, on the contrary, celebrate their commitment to affordable, mass education.

Such a commitment, however, is at risk of ringing hollow if law schools do not improve their standards. What value does a law degree signal if it does not come with a set of clearly identifiable skills? The solution I present in this section treats the problem as one of resource management. By leveraging new technologies, law schools can make more efficient use of their limited resources to raise the quality of legal training and improve the job prospects of law graduates.

A. Digitalisation

18. The failings of European legal education stem as much from the approach to teaching that dominates it as from its misguided intellectual paradigm (legal theology). In fact, the two are closely associated. Indeed, *ex cathedra* lecturing suits well an intellectual paradigm founded on authority rather than falsifiability and rational scepticism.[39] Measured in contact hours, lectures account for close to 90 per cent of the course offering at my institution; a figure which may well be representative of the situation prevailing at schools of a similar size in other European countries. The perverse effect of such a teaching environment is hard to exaggerate. Supply creates its own demand. Students get used to this passive, authoritarian form of learning; come to expect it and finally to demand it—as the quality of a course come to be judged by the instructor's ability to present the law as an autonomous, monolithic body of gapless rules.

Massive digitalisation looks the most effective way to rebalance the curriculum towards less passive forms of teaching. While producing high-quality MOOCs commonly requires a significant initial investment in time and preparation, it need not be expensive and can yield huge economies of scale. Ideally, universities in the same jurisdiction or linguistic zone should join hands to produce MOOCs that can be used across institutions. Such MOOCs should focus on the basics of a legal field and be sanctioned by a standardized test. Students should be required to have completed and passed the online modules before being able to enrol in more interactive activities for the same learning block. This would make it possible to reallocate precious human resources to courses based on more participative and experiential teaching methods, while ensuring that students come to this sessions with the prerequisite background knowledge.

B. Alternative Forms of Learning: Simulations, Case Method, Peer Assessment…

19. As for alternatives to lecturing, there are plentiful. There is certainly a place in European legal education for the Socratic method, the preferred teaching

[39] On the authority paradigm in Continental legal scholarship see Geoffrey SAMUEL, "Interdisciplinarity and the Authority Paradigm: Should Law Be Taken Seriously by Scientists and Social Scientists?", 36 *J. Law Soc.* 2009, 431.

method of US Law schools. But even more promising is the case method. Contrary to what its name suggests, the case method does not consist in learning the law from court cases. Instead, students are presented with real-world-like situation raising a problem which they are asked to solve. The situation can be a country emerging from a dictatorship for which to write a constitution; a cross-border merger for which a suitable corporate form must be found; a country leaving the European Union with the task to draft a post-exit agreement, etc. The case method has many upsides. It focuses the students' attention on problem-solving with many of the challenges they will encounter in the real world: incomplete information, time constraints, the need to envision how people interact with legal rules, etc. The method can also serve as a useful reminder that, although some answers might be wrong, there usually is no single right solution to real-world legal problems. Moreover, the case method is a proven method, widely used by business schools around the world and for which business educators have written and tested scores of cases compiled in online databases.[40]

20. From the case method, there is only one short step to simulations and role-playing games. The most familiar illustration of this teaching approach to lawyers are moot court contests. Yet it can be easily extended to other areas of law. I have simulated the French constitution-amending by randomly assigning students to different roles—President, Prime Minister, deputy and senator—and tossed a coin to simulate the outcome of the referendum in case the legislative majority failed to secure the President's support. (With students eager to use their veto power, I note that they have failed to pass a single amendment so far.) Other have run simulations of the EU ordinary legislative procedure.[41] Simulations are, among other things, a great tool to make students aware of the strategic character of procedural rules (as well as a powerful illustration of the corrupting effect of power).

21. As providing regular feedback to large classes will remain a challenge—albeit one comprehensive digitalisation would help mitigate—for the foreseeable future, legal educators should introduce peer assessment. Peer assessment involves students or their peers grading assignments based on the instructor's benchmark. There exist ways to correct assessment biases such as over-generosity or over-harshness.[42] Peer assessment can be combined with work in small groups to foster team work. Finally, reading groups, which do not require extensive supervision, would constitute a useful addition to the law school curriculum.

[40] See e.g. www.thecasecentre.org/main/.
[41] See e.g. www.eu-global-dialogue.eu/teaching/eu-simulations/.
[42] Research has demonstrated that peer assessment works for small as well as large classes, see Roy BALLANTYNE et al., "Developing Procedures for Implementing Peer Assessment in Large Classes Using an Action Research Process", 27. *Assess. Eval. High. Educ*. 2002, DOI:10.1080/0260293022000009302..

C. Soft, Hard and Very Hard Skills

22. Ideally, change in the method of teaching would come with a simultaneous change in the content of teaching. I have already hinted above at how a more interdisciplinary curriculum might look like. These are ideas that must be implemented thoughtfully and law schools should be wary of repeating past mistakes. Many schools pay lip service to interdisciplinarity by including economics, philosophy and language courses in their curriculum. But this does not add up to genuine interdisciplinarity as long as these perspectives are not themselves integrated in the study of legal problems. I have myself pleaded for a measure of empirical analysis in legal training.[43] Future judges, because they are likely to assume policy-making functions, need to become intelligent consumers of social-scientific research. Yet some basic number-crunching would benefit all students, not least the weaker ones. Besides familiarity with spreadsheet, finding, compiling, and coding data are common tasks across the whole gamut of knowledge-intensive jobs. Exposure to economics and statistics has the further advantage of nurturing rigorous thinking to an extent that doctrinal scholarship cannot.

These ideas, of course, raise major questions about staffing and the recruitment strategy of European law schools. In the United States, interdisciplinarity is not only reflected on the pages of law reviews but also in the profile of new hires, with many young professors holding a PhD in political science or economics alongside a law degree.[44] Scholars with interdisciplinary profiles are still hard to come by in Europe, but European law schools clearly need to diversify their recruitment.

V. Conclusion

23. As a hybrid organization, simultaneously professional school and academic body, a law school should ideally bring together the best of both. It should be an intellectual hive, bustling with ideas, research and initiatives. But it should also be the place where students acquire the skills to become successful professionals and prepare for the challenges of a rapidly changing, globalised world. The reality in Europe, however, has often fallen far short of this ideal. Research powerhouses, law schools are not. And to their students they have offered teaching that is neither theoretical—in the scientific sense of the term—nor practical.

The good news is that solutions exist to fix Europe's languishing law schools. There are also huge opportunities to attract talents and fame for the law schools that take the lead in the reform movement. The more sobering fact is that there are also potentially many obstacles to change. One perhaps is pride. Some countries (France and Germany, for example) are exceedingly proud of their scholarship and academic tradition. Why should German legal education change if you believe the definition of a good lawyer is a German lawyer? There is also the pride that comes

[43] See A. DYEVRE note 2 above.
[44] LOPUCKI, *supra* note 16.

with wealth. Many law professors have a foot in legal practice, making them significantly more prosperous than the average academic. As Richard Susskind remarked about the difficulty of convincing wealthy legal professionals to change their ways, "it is hard to convince a room full of millionaires that they've got their business model wrong."[45] Pride is a blindfold that can be hard to overcome. Nor can the cure outlined in the present contribution be implemented painlessly. Reform will require investment in new teaching methods and course designs that will mobilise significant resources, in time and brain cells, at least in the short term. Moreover, unless tenured instructors undergo further training, digitalisation along with the turn to interdisciplinarity and away from pure doctrinal analysis are likely to favour some at the expense of others.[46]

Still, change is the law of life. And if it does not come from the legal academy, it will come from outside, from society and from politics. The ultimate principals of European law schools.

[45] "Richard Susskind Q&A: "The Competition That Kills You ... May Not Look like You*", ABA Journal* 28 January 2016, www.abajournal.com/legalrebels/article/richard_susskind_qa/ (last visited July 26, 2016).
[46] In that sense, it is easier to reform legal education starting with a blank slate, as the experience of Sciences Po Law School illustrates.