

The letters of the law

Hans Petter Graver, Dean at the University of Oslo, highlights the changing face of studying the law in Norway in an increasingly globalised, specialised and diverse society...

In Norway, legal education has always been an important gateway to government office. Currently, approximately one-third of graduates from law faculties work for central or local government; one-third are involved in the legal profession as lawyers, prosecutors or judges; and one-third work in the private sector.

Throughout the 20th Century, 'law' was defined as positive law, as norms emanating from state institutions – the most important of these, of course, being the legislator and the courts. The main task of legal education was to familiarise students with the central parts of the legal norms perceived as a system of norms, ordered in a hierarchy. Decisions of the Supreme Court were studied as precedents, but even more so to teach students the way of legal reasoning that is applied in the courts. The reasoning was basically pragmatic, taking into account the aims and perceptions of the governmental institutions preparing the legislation, with the aim to contribute to giving effect to the legislative measures. This was the core of the view of law labelled 'Scandinavian legal realism'.

Law was perceived as a subject that could be learned by studying legislation and the preparatory material to it, and court cases applying the legislation. Textbooks were not written specifically for the needs of students, and so, instead, they read books written to accommodate the needs of the legal profession. Lectures and courses were given at the university, but the most important part was self-study. The students could complete their studies more or less in their own time, and pass their exams when ready. Large, written exams completed without access to sources formed the basis for assessing students into a fine-tuned grading system, where marks decided futures for entire careers.

The legacy of this school for public servants is still important for present-day legal education in Norway, but much has changed. Not only has the expectation of what higher education should offer to students altered, but so have the demands and challenges that graduates from legal education face, and even the perception of law itself.

The concept of the law

In the early development of our democratic societies, expectations and faith in national democratic institutions was high. Once universal suffrage was granted, the counting of votes became more important than the weight of arguments to legitimise public policy. With the national

compromises between capital and labour forming the basis for wage-setting and welfare rights, it was generally accepted that the content of legislative and other measures was the result of the balance of the interests of different groups of society. As long as the policies thus enacted were efficient, state measures were deemed legitimate. This formed the basis of equating law with legislation and other decisions enacted by public institutions.

In the latter half of the 20th Century, this all changed. The ambitious state encountered problems of efficiency in the form of economic crisis, unemployment and environmental challenges, etc. Globalisation led to institutions outside the state enacting norms with claims to legal validity, and sometimes also with claims of primacy over national law. At the same time, there has been a tendency towards privatisation, where both the market and civil society challenge the right of the state to determine actions and priorities. All of these trends have made it less plausible to see law as solely grounded in positive legal norms enacted by the national institutions. Neither the institutional set-up, nor the efficiency of state measures is any longer sufficient ground for legitimacy of government action.

This means that the concept of law has changed. Some norms, such as the fundamental human rights, are perceived as universal; their validity is independent of their being enacted by a particular national legislator. The private sphere claims autonomy from state intervention, and this also forms a limit for legal regulation. Public institutions must demonstrate the legitimacy of their programmes and actions, not solely by reference to efficiency, but by argument, showing that they are rational and reasonable.

All this, of course, has consequences for the education of upcoming lawyers. The basis for rationality of the legal order is no longer systemic and formal, but is based on values and argument. Law students must learn how to recognise fundamental values that underpin legal norms in different contexts, both national and international, and how to draw convincing arguments from these. This requires studying topics that are different from the aims and perceptions of governmental bodies preparing national legislation. Different legal institutions, such as national and international courts, argue in different ways, and base their argument on different values and programmes. Increasingly



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students must learn not only the contents of laws, but also the limits of law in different relations.

Challenges for legal graduates

The challenges and possibilities that are open to young graduates today are much more diverse than they were 20 or 30 years ago. Some decades ago, a legal education entailed a choice of having a career within one's own country; now a degree in law qualifies one for an international career. Moreover, knowledge of law from outside the national order is also of increasing importance to lawyers pursuing a national career. This, of course, has created new challenges for the legal education system, which must include within its curriculum the understanding and impact of international legal norms and modes of thought on national law and society.

Globalisation and privatisation have also changed the form and functions of law in society. Sectors that were previously special branches of the government – such as the provision of energy, communications and welfare – are now liberalised. Law is used to create, maintain and regulate markets. Conflicts that were previously decided internally within the government must now be solved by legal means. This had led both to a legalisation of the political sphere and to a politicisation of the law. Lawyers must now have a broader understanding of the relations between law, politics and society than lawyers of the past.

New expectations for higher education

Not only has the function and structure of law changed, but the increasing number of young people seeking higher education has also altered the demands on institutions. New generations arrive at universities with different expectations and demands on the quality and content of the education they receive. Young people no longer accept full responsibility for their own education.

As with other sectors of society that provide public services, expectations have risen.

These rising expectations are supported by the accreditation system established under the Bologna process. Legal education in Norway was accredited by the Norwegian Agency for Quality Assurance in Education in 2007. All three universities that provide degrees in law were encouraged to increase the teacher-student ratio, provide closer tuition in smaller groups and to enhance the international elements of their curriculum. They were also encouraged to develop Bachelor's courses as part of their portfolio and adapt more closely to the Bologna model. Such courses are now offered by several of the regional universities, but not by the three universities with fully fledged legal education systems. The Norwegian Ministry of Higher Education has subsequently established a study group to assess the need for legal education in Norway, including the need for graduates with legal components in their degrees without having a full law degree.

The trend of specialisation will continue, as will those of internationalisation and differentiation of the legal education. However, this development should be a result of academic and professional progression, and should not be forced by political decisions, be they at a national or a European level.



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