

## The teaching of law post Bologna

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### Abstract

The Bologna process aims to harmonize European Higher Education. This implies serious changes and challenges for the Legal Higher education institutions and scholars, as this realm of knowledge should now provide skills for the exercise of a legal profession at a transnational level. Law teaching in most institutions simply tried to cope up with the Europeanization process by introducing pale cosmetic changes and therefore not adapting to the European reality and needs. The main objectives are to summarize Bologna's objectives applied to the teaching/learning of law, assessing various solutions and cases and trying to deliver a 'best practice' draft. After a comprehensive study on the implementation of the Bologna process and its results, we will be able to make a critical judgment on the teaching of law. Matter 'de iure condendo' proposes education policies that enable a holistic view of the law.

**Keywords:** Teaching, law, university, educational, political.

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## 1. Introduction

The choice of this theme relates to the need to rethink the teaching of law in Bologna. The asymmetries provided by great scepticism to the Bologna process potentiated the nonalignment of the states involved to face outlined educational policies.

We intend to reflect on the various obstacles to the implementation of the European Higher Education Area (EHEA), contributing only with our university's education teacher's experience. Issues such as the internationalization of law and the law education cannot fail to be exalted, because only through this university awareness, maximum by law schools, it will be able to achieve the challenging goals of Bologna.

## 2. The democratization of higher education

Historically, since the middle ages, higher education found itself directed to the elites, whose training was based on the scientific production of high quality, the development of critical and scientific thinking and serious contribution to science.

In the 20th century, due to the sharp capitalist development, urged new needs, combined with knowledge of technical, are indispensable for the creation of labour-skilled workers. The introduction of vocational education strand culminated in a hegemonic crisis of the same. The traditional skills of the University were replaced.

The University teaching abandons its 'elitists' competences transiting for the production of medium teaching standards. The policy of democratization of universities, which took place in the 1970s, expanded access to higher education for students from lower socio-cultural strata, in favour of the principle of equal opportunities. The goals and values inherent to the University are now subject to the requirements of speed, efficiency and effectiveness imposed by the labour market.

Faced with this situation, the '*numerus clausus*' was introduced as a mechanism limiting access to higher education, responding thus to the needs of labour, skilled labour training. Consequently, higher education is subdivided into two routes, one long-term, which would correspond to undergraduate and post graduate, taught in universities and the other short-term, professional, giving undergraduate degrees obtained in upper and polytechnics schools. This dualistic solution helped to maintain the traditional design of the University, although the democratization of higher education implies its massification (SEESIC, 1975).

In addition to this, the outbreak of a financial crisis was diagnosed. Universities had a marked economic and financial dependence of the State, which was reflected undoubtedly in its scientific autonomy. There was a clear reduction in the financing of higher education, in fact inspired by the neo-liberal conceptions. These, as we know, based on the market of free competition replaced the role of the state by the 'private' management education. The capitalization of universities starts with the opening of higher education to privatization. It should be stressed that this, in Portugal, grew haphazardly, precariously self-sufficient, surviving the migration of human resources from public education to private.

The socio-economic context experienced by the old continent gave birth, within education, to the creation of new educational policies, which should be uniformly adopted by OECD countries, thus focusing on education in a competitive and increasingly global environment.

Behold the accomplishment of the dream, creating an EHEA. We speak of the Bologna process.

### 3. The teaching law achievement in the Bologna process

As already known, the Bologna process had its origin in the Bologna Declaration signed on 19 June 1999 by the Education Ministers of 29 European countries. However, it began informally in May 1998, with the Sorbonne declaration.

The Bologna Declaration emphasizes the importance of education in the development of modern societies, opened to globalization. This statement was intended to introduce a change in policies related to higher education in the countries concerned, creating an EHEA.

It became necessary to involve the signatory countries to implement reforms in their national education systems. The compatibility of higher education at European level wants, once and for all, to promote mobility and employability of human resources. With respect to national circumstances, conditions must be created so that any student can start their education, continue their studies, complete their higher education and obtain a European diploma recognised in any university of any Member State (DGES, 2016).

Therefore, it is required that the higher education institutions operate integrated and articulately. It is intended to be guided by the same criteria, either on the training itself or the recognition of academic degrees. It is then imperative that higher education systems are provided with an identical structure. They must be conceived courses and similar specializations, comparable in terms of content and duration, providing equivalent degrees in academics and professionals (DGES, 2016).

The creation of a European area of science and knowledge is aimed at the attraction/catchment stakeholders. The Bologna process aims to enhance the competitiveness of the European system of higher education and the mobility of their agents. This not only has an impact on the mobility of the student class but also on the graduates to the level of a wider employment market. Fulfilling these purposes requires a system of comparable degrees, based in two cycles of studies, the first of which will have a duration of six to eight semesters and the second three or four semesters.

Several Ministerial Conferences took place—Prague (May 2001), Berlin (September 2003), Bergen (May 2005), London (May 2007) and Louvain (April 2009)—having focused on development and implementation of key commitments once made. To promote mobility a system ‘cross’ of credits was created [European Credit Transfer System (ECTS)], providing the mobility of students, teachers and researchers, thereby ensuring a European quality. We underline the importance of the learning methodology, more active and participatory, rooting on a new motto: ‘learning to think, learning to learn, and learning to teach’ (RIPE, 2011).

Created the ideological conditions for the European scenario of higher education, it was imposed, to the majority of states involved, the national adoption of such policies. On this track, countries, such as Portugal, did not escape, where education, especially of law, has become a real ‘puzzle’.

Most law schools have seen programmes in certain areas of annual subjects going to half-yearly courses, focusing on each of these topics previously taught in annual subjects or dismembering up programmes so that they can be taught in two semesters. The criterion that guided the ‘housekeeping’ of the first study cycles in law also became a selection of subjects, considered common core curriculum, structuring of legal thought and needed to build a new paradigm post a Bologna degree. Unfortunately, they forgot that the law student should be prepared to exercise their profession across borders, coming up at the end of his academic career, as a true European citizen. The objective is that lawyers are prepared to pursue legal professions at a European level, which requires the taught skills that enable them both to work in domestic and international practices.

In addition to the content that wanted transversal in the European sense, the methodologies should be rethought—‘how to teach is as important as what is taught’ (RIPE, 2011). We cannot say that the two study cycles implemented by the Bologna process is adaptable to a ‘dual legal training’ (RIPE, 2011). This does not seem credible to us.

It is unthinkable to teach courses of national law, influenced in its contents by the law of the European Union without the necessary approach to their natural sources. It must reconsider the selection of structural materials forming any jurist. That said, 'the law that is taught should be another' (RIPE, 2011). The second cycle, of course, will be presented as a sector deepening, according to the individual options, segmenting expertise. This operation must be necessarily done in extra context and supra European.

#### **4. Internationalization in teaching law**

The teaching of law must be rethought in order to overcome national contexts, providing students with learning in European and international environment.

Law schools should present themselves as truly international institutions. This shall establish their respective plans and programmes to exhibit in its faculty members from other universities, able to help implement methodologies and assimilate materials that will evidence the natural Europeanization of law. Let us not forget that more than half of the legislation applicable in the Member States emerges from the European Union. All this will not be strange to an increase, before state courts, cases related to European law, not to speak of the increase of preliminary rulings to the Court of Justice.

Europeanize the law and consequently we have to Europeanize its teaching. The emergence of new areas of European law is evident, e.g., competition and international trade. Even the so-called traditional areas now appear with implications at the European law level, particularly with the Constitutional law of the European Union. It denotes an interpenetration between the national law and the European Union law. This reality makes it necessary to 'Europeanize' teaching in certain branches of the law (RIPE, 2011).

Increasingly, law agents are required for cases involving knowledge of the European law and its real implications, whether it is at the level of legal solutions, either in terms of own judgments or in terms of foreign recognition of decisions issued by the various courts of the States Member. The law is no longer exercised at a national level. Law firms emerge as well as extensions to subsidiaries based in other countries.

Often the same companies establish partnerships with their European counterparts and seek to extend to emerging markets such as China and the USA. This reality requires the recruitment of young lawyers with abroad expertise in order to enable them to further knowledge and other realities. Increasingly, we feel the need to sediment the law school of the market (RIPE, 2011).

Consequently, the courses of law study must include courses taught in a foreign language in order to enable future law professionals, as professionals of a global market. To achieve the purposes of Bologna, the ERASMUS program has contributed a lot. It should be stressed that the obstacle of linguistic diversity has not been successfully overcome, providing approval for courses only by means of written work. This issue deserves special attention facing the numbers of students in mobility. This cannot be also limited to simple tourist stays in host countries.

#### **5. De iure condendo**

Given the hegemonic crisis afflicting the university after Bologna, it becomes imperative that an assertive reform of education is adapted to its current features. The university reform will necessarily be underlying the idea of transnational knowledge globalized. We need synergy between universities globally, seeking to achieve, increasingly, standardization of programme content, the respective methodology for transmission, the course load and ECTS associated with each course.

The Bologna process will never reach its objective if various courses continue to structure differently, with completely disparate content in various countries. This situation will inevitably

disrupt one of the major goals of the Bologna Declaration, the increase of exchanges between students and teachers. Another problem that today's universities face is the resistance by the institutions to adapt to the new reality of Bologna. The notion of scientific research was the subject of a radical mutation. Today, scientific research is not carried out at local, regional or even national level.

In the scientific field of law lies, for decades, the idea that national research would be self-sufficient. Therefore, researchers have been creating too many antibodies in adapting to new research methodologies, resisting the publication in international indexed journals, which seriously compromises the rescue of the university's identity. There is a strong conservative and almost exclusive dedication to legal research in the national context. The university has not been able to assimilate the concept of multidisciplinary knowledge and multiple universities, interactive and combined with new technologies.

Consequently, such an attitude obstructs the much desired homogenization of higher education at a European level. For the recovery of university hegemony, reform 'must start from the assumption that in the 21st century, there is only a university when there is a graduation and post-graduation education system, research and extension. Without these, there is higher education, not a University' (de Sousa Santos, 2005). Such features are absent in polytechnics, tending to a more professionalized teaching method. It should be noted that this presents itself, nowadays, and from our point of view, completely incorrectly. Teaching courses equivalent to degrees of the first cycle, but do not have (or cannot have and shouldn't have) a degree of scientific theoretical development comparable to universities. There must be a clear distinction between the types of higher education, distinguishing the various degrees awarded by each institution.

We cannot forget, on the one hand, the role attributed to polytechnics in the labour market context, and second, the desire is that this training, which is wanted shorter, is equated with the training provided in universities. The most serious is undoubtedly the recognition of degrees for mobility, here the overwhelming most, enhancing the graduates in polytechnics to finish later, a second degree in universities and to this effect obtain crediting curriculum units that have similar academic programs but whose degree of deepening and learning, not speaking of the teaching methodologies and evaluation, is shown as absolutely precarious.

We believe that the much desired internal and international mobility should be enhanced and developed only within rational parameters able to measure the actual content of the binomial teaching/learning. The almost blind Crediting through ECTS cannot continue, otherwise we will see a reversal of educational policies that the Bologna process intended and intends to drive. Let's refine once and for all the role of the various stakeholders. Reset the objectives and competencies of polytechnics, directing them to an eminently practical teaching. To all this, it cannot be odd the necessary diversification and, in parallel, the existence of a specialized monitoring enables all those who complete compulsory education a real career choice.

Finally, a word for the internationalization of law teaching is due to the internationalization of law. It requires that the curriculum and its content structures be rethought in view of the dynamics of the legal profession. We cannot relegate to the second cycle of studies the internationalization of education when we know that today all branches of national law are influenced by European sources. The programmes must obligatorily contain this part. To expedite this internationalization and its operation it should be able to allow mobility of teachers more often, and this at two levels in the shed of on going and in need of a longer stay in the host countries.

## 6. Conclusions

The abandonment of 'elitists' skills by the university led to its democratization and its consequent massification. In Portugal, this stem requires a new approach post political conjuncture of the

New State, as in the case of the accession to the European Economic Community, now the European Union.

The financial crisis felt in the majority of European countries caused a mutation in the policies of states reflected in the higher education funding. There has been a decapitalization of universities and the need to rethink higher education.

There was a need for new educational policies, which should be adopted by OECD countries, aiming at a competitive and global education.

The Bologna Declaration has underlined the importance of education in the development of modern societies, introducing a change in policies related to higher education fostering the creation of the EHEA.

They were thus gathered ideological conditions for the realization of the ideals of Bologna. The curriculum plans of the various faculties of law were subject to changes, although these have not always been very insightful. The results should be subject to a further consideration.

In addition to the subject's content that wanted to be transversal in the European sense, the methodologies should be rethought. We should Europeanize the law and consequently we have to Europeanize the teaching. There must therefore be a prolific university reform with the idea of transnational and globalized knowledge.

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