Comparative Law Review

VOLUME 12/1 – 2021

ISSN: 2038-8993

COMPARATIVE LAW REVIEW
The Comparative Law Review is a biannual journal published by the
I. A. C. L. under the auspices and the hosting of the University of Perugia Department of Law.

Office address and contact details:
Department of Law - University of Perugia
Via Pascoli, 33 - 06123 Perugia (PG) - Telephone 075.5852437
Email: complawreview@gmail.com

Comparative Law Review is registered at the Courthouse of Monza (Italy) - Nr. 1988 - May, 10th 2010.

COMPARATIVE LAW REVIEW

VOL. 12 /1

LEGAL EDUCATION IN EUROPE: A CASE OF DENIED HARMONISATION BETWEEN CIVIL LAW AND COMMON LAW TRADITIONS?

Laura Bugatti

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Legal education across Europe is constantly under fire, and pleading to reform legal studies has been persistent across the centuries. Despite the multifaced picture which seems at first glance to characterise the different national educational models (1), this paper argues that through an historical comparative analysis, it is possible to infer some common trends in the evolution of legal educational systems. Although the starting points of the different traditions are very distant, it has been possible since the end of the 20th century to glimpse a harmonisation in the field of legal education across Europe; common aims are ensuring both academic studies and professional training and combining theoretical knowledge with practical aspects (2). This trend is affected by some fundamental initiatives at the European level, including the Bologna Process as well as the call for better regulation in the professional sector sought by the EU Commission (3). Nevertheless, the current sense of dissatisfaction with the way in which legal education is structured and delivered and the new pressure for change coming from the market and the professional world are about to reshape these moorings once again. This paper argues that the actual opposite responses from the common law and the civil law traditions may take legal education back to its earliest origins, reviving once again the rift between civil law and common law systems (4).

The examination of legal education in a society provides a window on its legal system. Here one sees the expression of basic attitudes about the law: what law is, what lawyers do, how the system operates or how it should operate. Through legal education the legal culture is transferred from generation to generation. Legal education allows us to glimpse the future of the society.
John Henry Merryman, 'Legal Education There and Here: A Comparison' (1975) 27 Stanford Law Review 3, 859

I. LEGAL EDUCATION IN EUROPE: A FRAGMENTED PICTURE

Qualification and entry requirements (encompassing academic education and training as well as professional examinations) are a basic component of the regulation of lawyers. This is not unexpected since the legal profession is classified as a regulated profession in almost all member states (MSs).[1] Notwithstanding this common core, a closer look at

[1] As it is stated in Article 3.1., lett. a, 2005/36/CE, the regulated profession is a 'professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications; in particular, the use of a professional title limited by legislative, regulatory or administrative provisions to holders of a given professional qualification shall

the national legal educational systems across Europe reveals a kaleidoscope of experiences. MSs have the right to regulate professional services and have the primary responsibility of defining the framework in which professionals operate; therefore, the regulation of legal education is also, first and foremost, a national matter. For this reason, it is not surprising to find many differences among the national legal educational models in Europe: each MS has its own educational and training pathway to be followed to become a lawyer, and this pathway varies from one country to another. This heterogeneous situation can turn into a potential obstacle to a common level of quality for legal services that are offered in the internal market.

Among the main criteria which differ from MS to MS are, first of all, the duration of the entire licencing procedure, which ranges from around six to almost nine years; in particular, university studies are articulated in pathways that can last between three and five years (also as a result of the 'Bologna Process'), while professional experience varies in terms of duration with traineeships ranging from eighteen months to five years[2].

Second, the structure and content of the vocational training may vary from MS to MS. Depending on the national legal educational model, the traineeship may take place in a lawyer's office, a court, with a notary public, an administrative authority and/or a company[3]. In some other MSs, either before or during the professional traineeship, additional training and vocational courses are required; these are notably on matters not covered at all in the university curriculum, such as professional ethics and professional skills[4]. In most MSs, the responsibility for this training is delegated to bar associations and law offices or sometimes to the courts or to the Ministry of Justice. In some jurisdictions, universities are also potentially involved in the post-graduate training

constitute a mode of pursuit. Where the first sentence of this definition does not apply, a profession referred to in paragraph 2 shall be treated as a regulated profession' (Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the Recognition of Professional Qualifications, in *Official Journal of the European Union*, L 255, 30.9.2005, pp 22–142).

[2] 18 months: Italy, Greece; 2 years: Germany, Lithuania, Luxembourg, Portugal, Romania; 3 years: Czech Republic, Belgium, Denmark, Estonia, Croatia, Hungary; Netherlands, Sweden; 4 years: Slovenia, Finland; 5 years: Latvia, Austria, Slovakia. In Spain, practical experience is reduced to six months and accompanied by a specialised post-graduate training course, namely European E-Justice, *Lawyers' training systems*, https://e-justice.europa.eu/407/EN/lawyers__training_systems

[3] Generally, MSs – even if they provide for a particularly long or articulated traineeship – require that at least part of the traineeship be carried out with a lawyer; see, as an example, the Austrian experience (art. 2 – Rechtsanwaltsordung (RAO), in RGBl. Nr. 96/as amended by the statute Änderung des Rechtspraktikantengesetzes, des Richter- und Staatsanwaltschaftsdienstgesetzes, des Beamten-Dienstrechtsgesetzes 1979, der Rechtsanwaltsordnung, des Rechtsanwaltsprüfungsgesetzes und der Notariatsordnung, BGBl. I Nr. 39/2016); or the German experience: Deutsches Richtergesetz (DriG), 8 September 1961, § 5b, regulating the practice period, leaving it up to the Länder the possibility to dictate detailed rules. Among scholars, see V. P. Krause, *Geschichte der Justiz- und Verwaltungsausbildung in Preußen und Deutschland*, in C. Baldus, T. Finkenauer e T. Rüfner, *Juristenausbildung in Europa zwischen Tradition und Reform* 95 (Mohr Siebeck, Tübingen, 2008); A. Von Preuschen, *La formazione dell'avvocato in Germania: qualità professionale, deontologia e mercato*, in G. Alpa and A. Mariani Marini (eds.), *La formazione dell'avvocato in Europa,* 110 ff. (Plus, Pisa, 2009); R. Caponi, *La Formazione del giurista in Germania*, in V. Cerulli Irelli e O. Roselli (eds.), L*a riforma degli studi giuridici,* 331 (Edizioni Scientifiche Italiane, Napoli 2005); J. Riedel, *The Reform of Legal Education in Germany*, in European Journal of Legal Education, 3, 3 (2001).

[4] For example, in the Czech Republic, induction training is composed of the 'Apprenticeship supervised by a private practice; Training on non-legal professional skills and Training on legal professional skills' (European E-Justice: Lawyers training systems in the EU, Czech Republic, 2014; ACT No. 85/1996 Sb. of 13th March 1996 on the Legal Profession); in Denmark, the law provides for an 'Apprenticeship supervised by a private practice, Law training with specific curriculum common to all trainee lawyers, Training on legal professional skills': Chapter 12, Bekendtgørelse af lov om rettens pleje, in LBK nr 1008 of 24/10/2012; European E-Justice: Lawyers training systems in the EU, Denmark (2014).

process, with competence, for instance, in the activation of 'master courses' or in the establishment of 'Schools for Legal Specialisation'.

Another of the peculiar traits concerning the entry requirements might be envisaged in the intensity of the entry controls: some MSs impose an 'incoming and outgoing' selection to become a lawyer. In particular, graduates may be required to pass an exam at the end of their university studies in order to start vocational training in law and then must pass a second exam at the end of the traineeship to become a lawyer. This is the case in German regulation[5] as well as in Poland[6] where dual bar exams are required. Other MSs, like Italy, impose one single entry selection, that is, an exam at the end of the traineeship. In some cases, the examination is taken before the end of the training period (this is, for example, the case with Belgian regulation[7]). In addition, some jurisdictions have compulsory, periodic exams during the training period (as in Poland[8]).

The connection between the entry requirements provided for lawyers and the educational system imposed for other legal professions is not the same in all MSs: the English and the German systems might be seen as the two extremes – on the one hand, the UK imposes separate educational and professional paths for the two branches of the legal profession, that is, barrister and solicitors[9]; on the other hand, the German model requires a common education for all the traditional juridical professions in order to create the so-called *Einheitsjurist*, a jurist who is able to work as a judge as well as a lawyer[10].

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[5] For more information concerning the licencing procedure in Germany, see *Bundesrechtsanwaltsordnung* (BRAO), arts. 4–17; see also the *Gesetz zur Reform der Juristenausbildung vom 11.07.2002*, Bundesgesetzblatt 2002 Teil I Nr. 48, 2592; J. Riedel, *The Reform of Legal Education in Germany*, in Eur. J. Legal Educ., 3, spec. at 3–10 (2001); A. Keilmann, *The Einheitsjurist: A German Phenomenon*, in Germ. Law jour., 7, 293, at 297–298 (2006).

[6] For more information concerning the Polish formal requirements to be admitted to the Bar, see A. Bodnar & D. Bychawska, *The Legal Profession in Poland*, 2009, available at https://www.osce.org/odihr/36308?download=true

[7] With regard to French- and German-speaking lawyers, for whom the representative institution is the Ordre des Barreaux Francophones et Germanophones (OBFG), see Art. 434 Belgian Judicial Code and Code of conduct for lawyers, Title 3 'stage et formation' (Code de déontologie de l'avocat); as far as Dutch-speaking Belgium is concerned, where the Order of reference is the Orde van Vlaamse Balies (OVB), see, in addition to the Belgian Judicial Code (art. 434), the Reglement betreffende de stage (OVB Regulation on the Training [internship] of trainee-lawyers of 7 May 2008) and the Reglement betreffende de beroepsopleiding (OVB Regulation on the professional training system for law interns of 25 March 2009). For more details, see European E-Justice, *Training Systems for lawyers in the Member States*, Belgium, 2014.

[8] European E-Justice, *Training Systems for lawyers in the Member States*, Poland, 2014.

[9] For an in-depth look at legal education in the UK and its evolution prior to the recent reforms, see A. Boon and J. Webb, *Legal Education and Training in England and Wales: Back to the Future?* in Journal of Legal Education, 58, 79 (2008); D. Nitti, *La professione forense in Inghilterra*, in A. Berlinguer, *La professione forense. Modelli a Confronto*, 97 ff.(Giuffrè, Milano, 2008); C. Gilligan, La *formazione dell'avvocato in Inghilterra e Galles: qualità professionale, deontologia e mercato*, in G. Alpa and A. Mariani Marini (eds.), *La formazione dell'avvocato in Europa*, 113 ff. (Plus, Pisa, 2009); B. Nascimbene, *La professione forense nell'unione europea*, 233 ff. (Ipsoa, Milano, 2010); R. M. Stein, *The Path of Legal Education from Edward I to Langdell: a History of Insular Reaction*, in Chi. Kent L. Rev., 42, (1981); D. Nitti, *Come cambia la professione forense inglese: spunti per una comparazione*, in Contratto e Impresa/Europa, 280 ff. (2006).; R. Crespi, *Le professioni legali in Inghilterra e Galles da Edoardo I al Court and Legal Service Act*, in Le carte e la Storia, 126 (2005); P. Purpidge, *La formazione professionale in Inghilterra e nel Galles*, in Rass. Forense, 399 (1995). On the reforms of the legal education systems in the UK, see further on, at § 4.

[10] J. Riedel, *The Reform of Legal Education in Germany*, cit.; H. A. Wolff, *Bar Examinations and Cram Schools in Germany*, in Wisc. Int'l L .J., 24, 110 (2006); E. Kern, *Gerichtsverfassungsrecht*, 105 ff. (C.H. Beck, München-Berlin, 1954); W. Kohleiss and K. Henn, *Verordnung über die Ausbildung der Juristen (JAO) für Baden-Württenberg*, 13 (Kohlhammer, Stuttgart, 1956).

Finally, even after becoming a lawyer, inconsistency remains across Europe in regard to the importance reserved to continuous professional development; although it is mandatory in the majority of MSs, it remains on a voluntary basis in some of them.[11]
This brief *excursus* on the main traits of the actual national educational models leads us to the conclusion that it is not possible to infer the existence of a common European model for delivering legal education and training. However, an historical comparative analysis can offer a different point of view on this topic which allows us to see an increasing convergence in legal education in Europe, especially with respect to the continental civil law tradition.

II. THE ROOM FOR HARMONISATION UP TO THE 20TH CENTURY: AN HISTORICAL COMPARATIVE ANALYSIS

Legal education in Italy (at first) and then all-over Western Continental Europe has long been associated with university education.[12] Legal education has its origin in the Middle Ages at the time the first university was founded in Bologna (1088), gathering students from Western Europe and all over Italy. The didactic method forged by the School of Bologna was designed for legal scholars who needed to find and teach the 'right' solutions[13]: in the 12th century, legal education was based on the transmission of knowledge contained in ancient Roman legal texts (especially the *Corpus Iuris*) as well as on the analysis and resolution of legal cases through the application of a mixture of deductive and inductive learning processes[14]. Even if the pedagogic models changed, especially after the 13th century, legal education continued to be treated as a social science: 'law was (and is) not (only) made out of concepts and universal principles but has been applied with social needs in mind'.[15]
Nevertheless, during the 17th and 18th centuries, legal education was deeply influenced by natural law, which advocated a completely ahistorical private law to be interpreted as a pure science based on rules and principles, forged in reason and in the light of a secular social contract. Next, legal positivism's influence provoked a disconnection between law and society and conferred on academics the role of mere exegetes of the legal sources in front of the exhaustiveness and completeness of the codification[16]. According to these new conceptions of law, abstract legal thinking and a formalistic, positivistic and conceptual approach to teaching and learning law began to prevail. Therefore, the overlap between continental legal education and the dogmatism and abstractness, as well as the disconnection of legal knowledge from the socioeconomic context, which traditionally characterised continental law studies, can be traced back to this historical moment.

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[11] This is the case, for example, in the Czech Republic, Greece, Malta, Slovakia, Slovenia and Spain.
[12] '*L'università fu la base comune del poderoso ceto internazionale dei giuristi*': P. G. Monateri & A. Somma, *Il modello di civil law*, in A. Procida Mirabelli di Lauro (ed.), *Sistemi Giuridici Comparati* 33 (Torino, 2009).
[13] See D. René and J. Spinosi Camille, *I grandi sistemi giuridici contemporanei,* 33 (5 ed, CEDAM 2004): '*The Law, as the Moral, is a "Sollen" (what we should do) and not a "Sein" (what we do in practice)'.*
[14] See, *funditus*, C. Amato *Experiential Learning from the continental viewpoint: if the cap fits*…, in R. Grimes, a cura di, *Rethinking Legal Education Under the Civil e Common Law. A Road Map for Constructive Change*, 13 ff. (2017).
[15] C. Amato, *Experiential Learning from the continental viewpoint: if the cap fits*…, in R. Grimes, a cura di, *Rethinking Legal Education Under the Civil e Common Law. A Road Map for Constructive Change*, cit. at p. 16.
[16] P. Grossi, *La cultura del civilista italiano. Un profilo storico*, 8 ff. (Giuffrè, Milano 2002); N. Bobbio, *Sul positivismo giuridico*, in Filosofia del diritto*,* 52(1), 15 (1961); R. Ferrante, *Il problema della codificazione*, in *Il contributo italiano alla storia del pensiero: diritto,* 277 (Abramo Printing s.p.s., Catanzaro, 2012).

In the meantime, the roles of universities and guilds[17] in the training of the legal profession began to take shape according to the progressive establishment in practice of a distinction between legal scholars and practitioners. During the Napoleonic period, the framework shifted somewhat in favour of the professionalisation of a 'legal class' and 'a new socialization based upon competency'.[18] Training courses and examinations were gradually established. Successive law reforms also introduced post-university traineeships and exams as requirements for entry to the legal professions. At the end of the 19th century, the legal educational system started to be articulated in the law degree, with a period of training followed by a final test[19]. In the universities, legal education continued to be informed by doctrinal approaches based on abstract legal thinking in which rules were taught as '*dogma*', while outside of the law schools among the lawyers' guilds, the awareness emerged that 'the application of the law to practical cases requires a very particular ability that can only be gained through practice'[20]. Notwithstanding the specifically academic roots of legal education which continue to retain an important influence on legal studies, we had witnessed by the close of the 20th century and in the civil law tradition the emergence and consolidation of a process of professionalisation in Continental Europe that has allowed professional bodies to acquire a specific weight in the training of lawyers, thereby retaining ultimate regulatory control over access to professional titles.

Distinct from the continental tradition, English legal education and training was born as a product of the legal profession. In the beginning, university legal education in England was almost non-existent, while the Inns of Court[21], as well as the Courts for the solicitors[22] and later, the Law Society, retained exclusive control over legal education for

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[17] In the second half of the Middle Ages, the different organisation of the two professional categories of lawyers and prosecutors began to take shape. From the 13th century onwards, the first corporation, 'Collegio dei Giudici', was founded, in which not only judges were admitted but also lawyers; by contrast, the prosecutors referred to the 'Collegio dei Notai o Causidici'. The Bar Association, abolished at the end of the 18th century (Art. 10, loi des 2-11 September 1790), was reconstituted in 1810 (Decree of 14 December 1810).

[18] See M. MALATESTA, *L'Ordine professionale, ovvero l'espansione del paradigma avvocatizio*, in Parolechiave, 3, 270 (1995). See also S. PARINI VINCENTI, *Ad Auxilium Vocatus. Studi sul praticantato da Napoleone alla Legge professionale del 1874: l'esperienza normativa*, in A. PADOA SCHIOPPA (ed.), *Avvocati e avvocatura nell'Italia dell'Ottocento*, 59 ff. (Bologna, 2009).

[19] In Italy, the Legal Professional Law No. 1938/1874 (L. 8 giugno 1874, n. 1938, *che regola l'esercizio delle professioni di Avvocato e Procuratore*, in *GU* n.141 of 15-6-1874, e successivo regolamento n. 2012, 27 July 1974) established the 'Ordini degli avvocati e dei procuratori', at each Court of Appeal and Court with the legal status of public bodies. The legal pathway to become a lawyer required a university degree, the completion of a two-year professional traineeship and the passing of a theoretical–practical examination. The Bar Associations had exclusive competence in the administration of the entry examinations, whereas the legal practice took place in professional offices and within the courts.

[20] See A. BIANCHI, *Sull'esercizio delle professioni di avvocato e procuratore. Testo e commento della legge 8 giugno 1874*, 99 (Torino, 1886).

[21] Concerning the evolution of legal education in the UK, see: C. N. GREGORY, *A Movement in English Legal Education,* in Harvard Law Review, 10, 418 ff. (1897); R. M. STEIN, *The Path of Legal Education from Edward I to Langdell: A History of Insular Reaction,* in Chi. Kent L. Rev., 57, 429 (1981); A. BOON & J. WEBB, *Legal Education and Training in England and Wales: Back to the Future?,* in Journal of Legal Education, 58, 79 (2008); N. PICARDI and R. MARTINO (eds.), *L'educazione giuridica* (Bari, 2008) and G. MORLEY, *Legal Education in England and Wales*, in N. PICARDI & R. MARTINO (eds.), *L'educazione giuridica*, cit., 365 ss.

[22] 2 Geo. II, ch. 23, 1729, An Act for the Better Regulation of Attorneys and Solicitors, modified in 1739 (12 Geo. II, ch. 39) and amended in 1750. Among scholars on the 1729 Act, see G. S. Holmes, *Augustan England: Professions, State and Society 1680-1730,* 152-156 (London, Allen & Unwin, 1982); H. Horwitz and L. Bonfield, *The 'Lower Branches' of the Legal Profession: A London Society of Attorneys and Solicitors of the 1730s and its 'Moots'*, in 9 Cambridge Law Journal 3, 461 and spec. at 462 ff. (1990); M. Birks, *Gentlemen of the Law*, cit., 131, 135-140; C.W. Brooks, *Interpersonal Conflict and Social Tension: Civil Litigation in England, 1640-1830*, in A. L. Beier, D. Cannadine and J. M. Rosenheim, *The First Modem Society. Essays in English History in Honour of Lawrence Stone* 357, spec. at pp. 370-80 (Cambridge University Press, Cambridge, 1989); R. Robson, *The Attorney in Eighteenth-Century England* (Cambridge University Press, Cambridge, 1959); E. B.V.

a long time. As a matter of fact, the modern legal educational system in England and Wales was shaped in part by a series of reforms that began only in the mid-20th century. Some government reports[23] have criticised the state of legal education, warning of its poor standards and recognising the inefficiency of the system, the need for reform of legal education and the possibility of introducing an entry method that would evaluate not only the practical training but also the university studies. In 1971, the Ormrod report[24] advocated the introduction of a three-stage model of legal education: an academic stage, a professional stage and a continuing stage. The normal academic stage became the law degree or its equivalent. In the wake of the Ormrod report and other reports that followed[25], the law degree was confirmed as the standard mode of entry into the profession (at least until the announced reform of the solicitors qualifying exam [SQE] –see further on, at *§ 4*).

As a result of the emergence and consolidation of law as an academic discipline – despite that its origins are essentially anchored in the professional world – we have witnessed an opposite evolution in the common law tradition as compared to the civil law tradition. The historical evolution of the different macro traditions of legal education gives evidence that even if the starting points are very distant (even opposite), there are some common trends that have harmonised European legal education up until the close of the 20th century. Over the centuries, every system has created a pathway for entry into the legal profession that ensures both academic education and professional training/practical experience, thus combining theoretical knowledge with practical aspects. Moreover, such deep changes in the educational systems have led in both civil law systems and in the common law traditions to the construction of different stages of education and training which have created distinct spheres of influence for the different stakeholders. Usually law schools, as liberal institutions, retain as their primary goals the promotion and production of legal culture, the transmission of legal knowledge and the development of students' analytical and critical reasoning skills.[26] On the other hand, bar associations have the mission to equip graduates with the understanding and acquisition of practical legal skills and competences, and potentially legal ethics, throughout vocational stages, traineeships and/or exam(s).

Christian, *A Short History of Solicitors* 11 ff. (Reeves and Turner, London, 1896); J.L. Maute, *Alice's Adventures in Wonderland: Preliminary Reflections on the History of the Split English Legal Profession and the Fusion Debate (1000-1900 A.D.),* in Fordham Law Review, v. 71(4), 1357 and spec. at 1360 ff. (2003); E.W. Ridges, *Constitutional law of England*, 250 (Stevens and Sons, London, 1905).

[23] See, in particular**:** Report of the Legal Education Committee, Cmd. 4663 (London, HMSO, 1934) ('Atkin Committee'); Report of the Committee Appointed by the Prime Minister under the Chairmanship of Lord Robbins, Cmnd. 2154 (London, HMSO, 1963) ('Robbins Report'); Report of the Committee on Legal Education, Cmnd. 4595 (London, HMSO, 1971) ('Ormrod Report'); Royal Commission on Legal Services, Final Report, Cm. 7648 (London, HMSO, 1979) ('Benson Report'); A Time for Change: Report of the Committee on the Future of the Legal Profession (London, General Council of the Bar/The Law Society, 1988) ('Marre Committee'); Lord Chancellor's Advisory Committee on Legal Education and Conduct, First Report on Legal Education and Training (London, ACLEC, 1996) ('ACLEC'); Review of the Regulatory Framework for Legal Services in England and Wales, 2004 ('Clementi Report'); Legal Education and Training Review, The Future of Legal Services Education and Training Regulation in England and Wales, June 2013, http://www.letr.org.uk/the-report.

[24] Report of the Committee on Legal Education, cit.

[25] See Legal Education and Training Review, The Future of Legal Services Education and Training Regulation in England and Wales, cit., xiv: '*A number of recommendations are made in respect of the Qualifying Law Degree (QLD) and Graduate Diploma in Law (GDL). These continue to provide an important pathway into the legal services sector for a range of authorised persons, and thus constitute an important foundation for professional training*'.

[26] Even if the freedom of universities sometimes encountered some constraints, as in the case of the several core subjects of the English GDL imposed by the professional bodies.

III. NEW EUROPEAN PARADIGMS FOR THE OLD LEGAL PROFESSION AND THEIR IMPACTS ON LEGAL EDUCATIONAL SYSTEMS

The convergence of legal educational models across Europe has more recently been spurred by some initiatives at the European level, including the Bologna Process, which is an intergovernmental reform process that aims to bring more coherence to higher educational systems in Europe[27] through the convergence of degree structures (i.e., the Implementation of the Bologna three-cycle degree), the recognition of common practices and shared quality assurance standards. In this supranational context, the recognition of the equal relevance and dignity of all the pedagogical components which characterise educational pathways (that is, knowledge, competences and skills as substantiated in terms of expected learning outcomes[28] according to the Dublin Descriptors)[29], has marked a decisive acceleration towards innovation in education, in general, and in legal education, in particular. The need for a legal educational process which encompasses both knowledge and practical skills has also been suggested by the Council of Bars and Law Societies in Europe (CCBE): in different documents, the CCBE has highlighted the importance of training and learning outcomes and competencies which include both theoretical and practical knowledge[30].

At an institutional level, the European Union's approach in the last two decades towards the liberal professions has constituted a leading force in the transformation of the legal market and profession in Europe. This trend was initially driven by the EU goal of achieving a single market in which all productive factors (goods, individuals, capital and services) could circulate freely. Starting with the Lisbon Strategy, the EU recognised the crucial role played by professionals in the internal market[31] and began to advocate for

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[27] On the implementation of the Bologna Process in Europe, see: European Commission/EACEA/Eurydice, The European higher education area in 2018, Bologna Process implementation report, Luxembourg: Publications Office of the European Union, 2018; Id.., The European higher education area in 2015, Bologna Process implementation report, Luxembourg: Publications Office of the European Union, 2015; Id., The European higher education area in 2012, Bologna Process implementation report, Luxembourg: Publications Office of the European Union, 2012. These publications are available at https://eacea.ec.europa.eu/national-policies/eurydice/content/european-higher-education-area-2018-bologna-process-implementation-report_en

[28] Council Recommendation of 22 May 2017 on the European Qualifications Framework for lifelong learning and repealing the recommendation of the European Parliament and of the Council of 23 April 2008 on the establishment of the European Qualifications Framework for lifelong learning (2017/C 189/03), in OJ, 15.6.2017, C 189/15;
Recommendation of the European Parliament and of the Council of 23 April 2008 on the establishment of the European Qualifications Framework for lifelong learning (2008/C 111/01), in Official Journal of the European Union, 6.5.2008, C 111/1.

[29] Shared 'Dublin' descriptors for Short Cycle, First Cycle, Second Cycle and Third Cycle Awards, A report from a Joint Quality Initiative informal group, 2004.

[30] See, for example, CCBE, Comments on European Legal Training, 2010; CCBE Recommendation on Training Outcomes for European Lawyers, 2007, in which the CCBE has substantiated the training outcomes for European lawyers in terms of substantive knowledge as well as practical knowledge and skills; see also CCBE Recommendation on continuing Training, 2003

[31] See Council of the European Union, European Council Presidency Conclusions, 22–23 March 2005, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/84335.pdf; European Parliament, *Follow-up to the Report on Competition in Professional Services*, P6_TA(2006)0418, http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P6-TA-2006-0418+0+DOC+PDF+V0//EN; European Parliament, *Resolution on Market Regulations and Competition Rules for the Liberal Professions*, 2004 OJ (C 91E) 126, http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+MOTION+B5-2003-0432+0+DOC+PDF+V0//EN; Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, *Professional Services—Scope for more reform—Follow-up to the Report on Competition in Professional Services*, COM(2004) 83 of 9 February 2004 (SEC(2005) 1064): COM/2005/0405 final, http://eur-

the application of competition law even in the professional sector.[32] In order to justify this economic approach, the professions have been classified by European jurisprudence and by Commission decisions as an undertaking in line with a broader European notion which encompasses any entity that carries out economic activity – consisting of providing services on the market – regardless of the particular status of the entity and the way in which it is financed[33]. As a consequence, the peculiar attributes which characterise the intellectual professions (e.g., the intellectual, technical or specialised nature of the services and the personal and direct basis on which the services are delivered)[34] as well as the fact that they are mostly classified at the national level as regulated professions cannot be deemed as obstacles in classifying lawyers as undertakings.

lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52005DC0405; Commission Communication, *Report on Competition in Professional Services*, COM/2004/0083 final, http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52004DC0083

[32] Concerning the European attempt to apply competition law to professional services, see: Report on the Economic Impact of Liberal Professionals in Different Member States, Invitation to Tender, Open Procedure (2001); I. PATERSON, M. FINK & A. OGUS, *Economic Impact of Regulation in the Field of the Liberal Professions*; European Commission, DG Competition, *Stocktaking Exercise on Regulation of Professional Service: Overview of Regulation in the New EU Member States*, COMP/D3/MK/D(2004), http://ec.europa.eu/competition/sectors/professional_services/studies/overview_of_regulation_in_the_eu_professions.pdf; European Commission, DG Competition, *Invitation to Comment: Regulation in Liberal Professions and Its Effects: Summary of Responses*, 2003, http://ec.europa.eu/competition/sectors/professional_services/studies/summary_of_consultation_responses.pdf; Commission Communication, *Report on Competition in Professional Services*; Commission Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Upgrading the Single Market: More Opportunities for People and Business*, COM(2015)550 final; see also the European Parliament's intervention 2015/2354(INI); Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Reform, *Recommendations for Regulation in Professional Services*, {SWD(2016) 436 final}, COM(2016)820 final, http://ec.europa.eu/transparency/regdoc/?fuseaction=list&coteId=1&year=2016&number=820&version=ALL&language=en; Communication from the Commission to the European Parliament, the Council, and the European Economic and Social Committee, *Evaluating national regulations on access to profession*, COM(2013)676, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52013DC0676; European Commission, *Proposal for a directive of the European Parliament and of the Council on a proportionality test before adoption of new regulation of professions*, COM(2016) 822, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2016:0822:FIN; Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018 on a proportionality test before adoption of new regulation of professions, in *GU L 173 9.7.2018,* pp. 25–34, https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ%3AL%3A2018%3A173%3ATOC&uri=uriserv%3AOJ.L_.2018.173.01.0025.01.ENG.

A similar trend towards deregulation was first endorsed in other jurisdictions, such as in the US and Australia and, at the international level, by the Organisation for Economic Co-operation and Development (OECD). Cf. OECD, *Competition Policy and the Professions*, 1985; OECD, *Competition in Professional Services*, DAFFE/CLP(2000)2, http://www.oecd.org/regreform/sectors/1920231.pdf; OECD, DAF/COMP(2007)39. In regard to the US experience: *Goldfarb v. State Bar of Virginia*, 421 U.S. 773 (1975); *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977); C.J. GAWLEY, *Protecting Professionals from Competition: The Necessity of a Limited Antitrust Exemption for Professionals*, in S.D. L. Rev. 47, 233 (2002); D. VÁZQUEZ ALBERT, *Competition Law and Professional Practice*, in ILSA J. Int'l & Comp. L., 11, 555 (2005). More generally, see L.S. TERRY, *The European Commission Project Regarding Competition in Professional Services*, in Northwestern Journal of International Law & Business, 1 (2009)

[33] Case C-41/90, *Höfner ed Elser c. Macrotron*, ECLI:EU:C:1991:161; Case 118/85, *Commissione c. Italia*, ECLI:EU:C:2002:36. L. SCUDIERO, La nozione di impresa nella giurisprudenza della Corte di Giustizia, in IV. *Foro it.* (*Foro italiano)* 1994, p 113; V. AFFERNI, 'La nozione di impresa comunitaria', in F. GALGANO, *Trattato di diritto commerciale e diritto pubblico dell'economia, II*, 134 (Padova: CEDAM 1978).

[34] 95/188/EC: Commission Decision of 30 January 1995 relating to a proceeding under Art. 85 of the EC Treaty (IV/33.686 – Coapi) OJ L 122, 02/06/1995, 0037–0050.

In accordance with this innovative view, the EU Commission has introduced rigorous discussions about the justifications for national professional regulations that affect both entry requirements and the exercise of the service, and MSs have been required to revisit their professional rules according to the so-called 'proportionality test' under which restrictions are justified only on public interest grounds. The European call for '*better regulation'* has revitalised the economic theories surrounding professional regulation, as well as the idea that some pro-competitive mechanisms can be implemented without detriment to the quality of professional services, even if in some cases the protection of clients and society as well as the good governance of the profession may impose the maintenance of some traditional restrictive rules. According to the *public interest theory*, certain forms of regulation might be considered as a remedy for market failures arising from the particular features of the legal service markets; that is, the information asymmetry which has usually characterised the lawyer–client relationship[35] together with the 'credence nature' of most professional services[36] might lead to quality deterioration resulting from adverse selection[37] and to the rise of the 'moral hazard' problem.[38] It might also generate negative externalities and prevent positive ones[39]. In this scenario, not all the restrictive rules may be justified on the basis of the public interest arguments

[35] B. ARRUNADA, *The Economics of Notaries*, in Eur. J. Law Econ., 3, 5 (1996); Robert G. EVANS and Michael J. TREBILCOCK, *Lawyers and the Consumer Interest* (Toronto: Butterworths 1982); M. FAURE, J. FINSINGER, J. SIEGERS and R. VAN DEN BERGH (eds.), *Regulation of Professions* (Antwerpen: Maklu 1993); R. C.O. MATTHEWS, *The Economics of Professional Ethics: Should the Professions Be More Like Businesses*? in Econ. J., 101, 737 (1991); F. H. STEPHEN, *The Market Failure Justification for the Regulation of Professional Service Markets and the Characteristics of Consumers* and R. VAN DEN BERGH, *Towards Efficient Self-Regulation in Markets for Professional Services*, in C.D. EHLERMANN and I. ATANASIU, *European Competition Law Annual 2004: The Relationship Between Competition Law and the (Liberal) Professions*, 143 and 155 (Oxford and Portland, Oregon: Hart Publishing 2006).

[36] The professional is always aware of the quality of the service being proposed or delivered; the client, however, has to rely on the professional's judgement due to his/her inability to ascertain the quality of the legal service and its correspondence to his/her legal needs. In fact, most professional services are considered as 'credence goods'. As a result, it is often not possible for the client to evaluate the quality of the service, either before or after purchasing the service itself.

[37] If clients cannot judge the different value of professionals' services, their willingness to pay might be hampered; conversely, if lower fees become the 'average prices' of legal performance, the most qualified lawyers are encouraged to leave the market as long as their behavioural traits and their efforts are not recognised and properly remunerated. See G. AKERLOF, *The Market for Lemons: Quality Uncertainty and the Market Mechanism*, in Q. J. Econ., 488 (1970); I. PATERSON, M. FINK and A. OGUS, *Economic Impact of Regulation in the Field of the Liberal Professions in Different Member States: Regulation of Professional Services,* 17 (European Network of Economic Policy Research Institutes Working Paper 52/February 2007), available at https://www.ceps.eu/system/files/book/1455.pdf; R. SPIEGLER, *The Market for Quacks*, in Rev. Econ. Stud., 76, 1113 (2006); H. E. LELAND, *Quacks, Lemons, and Licensing: A Theory of Minimum Quality Standards*, in Journal of Political Economy, 87, 1328 (1979).

[38] An information gap might lead to professionals' opportunistic behaviours, including the overvaluing of services in order to charge higher fees, the delivery of services at higher prices and the provision of additional or totally unneeded services. See F. H. STEPHEN & J. H. LOVE, 'Regulation of the Legal Profession' in B. BOUCKAERT and G. DE GEEST (eds.), *Encyclopedia of Law and Economics, Volume III: The Regulation of Contracts*, 989 (Cheltenham: Edward Elgar 2000); R. VAN DEN BERGH and Y. MONTANGIE, *Competition in Professional Services Markets: Are Latin Notaries Different?*, in Journal of Competition Law & Economics, 2, 189, at 193 and 194 (2006) E. SHINNICK, F. BRUINSMA and C. PARKER, *Aspects of Regulatory Reform in the Legal Profession: Australia, Ireland and the Netherlands*, in Int'l J. Legal Prof., 10, 237 (2003).

[39] Legal services serve public goals such as the successful administration of justice and a well-functioning judicial system; for this reason, the quality of the legal performance might have a severe impact, not only on the single client situation but also on society as a whole. On the one hand, legal services of insufficient quality might generate negative externalities, damaging both clients and third parties involved in the justice system; on the other hand, good-quality legal services generate positive externalities, contributing to ensure the protection of the client's rights as well as to safeguard the correct administration of justice in the interest of the community. As a result, among the rationales for professional regulation, there is the need to avoid negative externalities while protecting the positive ones. See R.l N.M. GRAHAM, *Legal Ethics: Theories, Cases, and Professional Regulation* (3rd edn., Toronto: Emond Publishing 2014).

which may constitute the premise and the justification for the maintenance of professional regulations at the national level.[40]

Given the European economic perspective on the regulation of the liberal professions, the justifications for qualification and entry requirements (encompassing academic education and training as well as professional examinations) have been questioned as to whether the qualitative entry restrictions are effectively justified in the name of the public interest, consumer protection or quality of service or, contrariwise, may excessively restrict competition, promoting only lawyers' interests without yielding corresponding benefits to society. Even if empirical evidence on this aspect is limited and fragmentary,[41] it has been argued that *ex ante* or input regulation could be a valuable tool to guarantee a high level of quality of legal services in the clients' and the public's interest. When a profession is regulated, only professionals who meet certain requirements and possess the appropriate qualifications are allowed to offer their services in the market. As has been noted elsewhere, 'Licensing thus attempts to influence the quality of the service before its provision (*ex ante)* and controls the input (mainly education and/or training) rather than the output. The underlying assumption is that there is a strong complementary relationship between investments in human capital (input) and the quality of the service provided'.[42] When professionals who do not have the required qualifications and competence are excluded from the market, the overall quality of the legal services performed will naturally be higher. For this reason, the input or *ex ante* regulation might be considered proportionate to the goal of ensuring professional quality: it is justified by public interest arguments, working both as a remedy for market failures[43] and as a deterrence to moral hazard.[44] In the absence of contrary empirical evidence, the EU has more recently recognised the homogeneity across Europe concerning the qualification requirements ('In terms of qualification, higher education is required in the large majority of Member States (a law degree being compulsory), followed by a mandatory traineeship and/or additional professional experience and bar examination'[45]) and has not pointed out any criticalities or suggested any reform regarding the legal education path as regulated at the national level by MSs[46].

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[40] Moreover, the 'public interest theories of regulation are challenged by private interest theories' (R. VAN DEN BERGH, *Towards Better Regulation of the Legal Professions in the European Union* (RILE Working Paper Series n. 2008/7 2007). Several economists are skeptical about the benefits of professional restrictive rules, arguing that professional regulation is mainly used to serve the interests of the legal profession and can be better explained by rent-seeking behaviour, effective lobbying and regulatory capture. See J. A. KAY, *The Forms of Regulation*, in A. SELDON (ed.), *Financial Regulation or Over-Regulation*, 3342 (London: Institute for Economic Affairs 1988). The origin of this approach may be traced to Smith's view, who defined self-regulatory occupational groups as natural institutions for 'conspiracy against the public' and a 'contrivance to raise prices'. See, also, A. SMITH, *Of Wages and Profit in the Different Employments of Labour and Stock, Part II: Inequalities Occasioned by the Policy of Europe*, in A. SMITH, *An Inquiry into the Nature and Causes of the Wealth of Nations*, 97 (1776 – New York: MetaLibri 2007).

[41] See F. H. STEPHEN and J. H. LOVE, *Regulation of the Legal Profession*, cit., 989; R. VAN DEN BERGH and Y. MONTANGIE, *Competition in Professional Services Markets: Are Latin Notaries Different?* cit., at 193–194.

[42] T. HEREMANS, *Professional Services in the EU Internal Market: Quality Regulation and Self-Regulation*, 4 (Hart Publishing, 2012).

[43] See H. E. LELAND, *Quacks, Lemons, and Licensing: A Theory of Minimum Quality Standards*, cit.

[44] C. SHAPIRO, *Investment, Moral Hazard, and Occupational Licensing*, in *The Review of Economic Studies, 53, 843* (1986).

[45] EU Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and The Committee of The Regions on reform recommendations for regulation in professional services**,** COM(2016)820, p. 18

[46] The EU Commission pointed out some critics on more circumscribed aspects, for example, the fact that in some MSs 'training and experience obtained abroad are not duly taken into account when allowing access to legal traineeships for lawyers'; in some other MSs, there is the provision of additional

So far, the legal education pathway – based on the three-stage model of university degree, vocational stage and training/exam(s) – seems to remain duly justified from a deregulation perspective.

IV. LEGAL EDUCATION IN THE 21ST CENTURY: THE RIFT BETWEEN CIVIL LAW AND COMMON LAW SYSTEMS REVIVES

As history explains, the relationship among different stakeholders is not a stable one, and the three-stage model – university degree, vocational stage and training/exam(s) – established across Europe is just an artificial division. What is more constant are the critics of the legal educational system; as noted elsewhere, 'Legal education has come under fire from all quarters, almost everywhere in the world. Legal education is criticized in many different contexts, by a variety of actors, and for a great number of reasons'.[47] Indeed, there is a common and live debate on the need to rethink the approaches to teaching and learning the law in theory and in practice as well as to rethink the ways to assess knowledge, skills and competence, taking into consideration the ongoing changes in the legal profession.[48] The legal profession is facing not only a new working environment marked by increasing globalisation, competition and deregulation but lawyers are also tackling a new reality driven by digital innovation and technological advances which is reshaping the traditional working structures and the way in which legal services are provided as well as the contents of the practice of law.

This sense of dissatisfaction with the way in which legal education is structured and delivered along with the pressure to change coming from the market and the new features of the legal profession have generated opposing responses from the common law and the civil law traditions.

In England and Wales, this resulted in the recent reform concerning the pathway to qualify as a solicitor implemented by the Solicitors Regulation Authority (hereafter,

professional qualification requirements in order to practise before the highest courts; and so on (see COM(2016)820, cit., pp. 18 and 19.

47 See S. CASSESE, *Legal Education under Fire*, cit., p 143.

48 See S. CASSESE, Legal Education under Fire, in Eur. rev. priv. law., 1, 143, at 144 and 145 (2017): the author considering the French model underlined that: '*Teaching methods and materials are criticized as being too dogmatic and doctrinal, closed to the social sciences, and oriented towards the study of law as set out in books rather than to the study of law in action';* C. JAMIN, *L'enseignement du droit à Sciences Po: autour de la polémique suscitée par l'arreté du 21 mars 2007*, in Jurisprudence: Revue critique , 125 ff. (2010); C. JAMIN, *La cuisine du droit: L'École de Droit de Sciences Po: une expérimentation française* (Paris: L.G.D.J. 2012); M. VOGLIOTTI, *L'urgence de la question pédagogique pour le droit postmoderne*, in RIEJ, 72, 73 ff. (2014); C. JAMIN and M. XIFARAS, *De la vocation des facultés de droit (françaises) de notre temps pour la science et l'enseignement*, in RIEJ, 107 ff. (2014); C. JAMIN and M. XIFARAS, *Retour sur la 'critique intellectuelle' des facultés de droit*, in La Semaine Juridique, 4, 155 ff. (2015); R. SEFTON-GREEN, *Démoulages': Du carcan de l'enseignement du droit vers une éducation juridique, Société de législation comparée*, (Paris 2015); referring to the situation of legal education in Germany affirmed that: '*German experts too complain that doctrinal subjects are central in legal education, that legal education does not focus sufficiently on the application, active creation and implementation of the law, that law teaching does not pay enough attention to the European legal order and to the comparative approach, that academic reflection prevails over practice-oriented studies, and that there is not enough interdisciplinary cooperation*' (Wissenschaftsrat, Prospects of Legal Scholarship in Germany. Current Situation, Analyses, Recommendations, Hamburg 9 November 2012). See also A. VON BOGDANDY, *Le sfide della scienza giuridica nello spazio giuridico europeo*, in Il diritto dell'Unione Europea, 2, 22 (2012). Concerning the critics of the English system, the author, referring to the LETR report, recalled as main reasons for critique: 'insufficient assurance of a consistent quality of outcomes and standards of assessment; limits on the acceptable forms of professional training; knowledge and skills gaps in respect of legal values and professional ethics, communication, management skills and equality and diversity awareness; limits on horizontal and vertical mobility; increasing cost barriers affecting access to academic, professional and workplace training, particularly for solicitors and barristers in non-commercial practice; and the existence of limitations on the capacity for coherent evidence-based policymaking' (Legal Education and Training Review, The Future of Legal Services Education and Training Regulation in England and Wales, cit.).

SRA) in the framework of the SRA reforms of legal education[49] followed by the Legal Education and Training Review (LETR)[50]. Beginning in 2021, would-be solicitors were required to complete a qualifying law degree (QLD) or law conversion course at university (GDL), a one-year vocational course, the Legal Practice Course (LPC) and, finally, two years of supervised training (*training contract*) in order to qualify as a solicitor.[51] This pathway clearly reflected the suggestions made by the Ormond Report (see supra), which recognised the value of a legal educational process articulated into consecutive and separate stages, namely the academic, vocational and work-based training requirements.

Nevertheless, as part of a new approach to qualifying as a solicitor in England and Wales, the SRA decided to abandon the qualifying law degree (QLD) and the Legal Practice Course (LPC) in favour of a centralised examination system, the Solicitors Qualifying Exam (SQE).[52] In particular, the SQE reform requires would-be solicitors to undergo a

[49] Among the priorities set out in the 'Training for Tomorrow policy statement', the SRA included the opening up of the pathways to qualify as a solicitor: Solicitors Regulation Authority, 'Policy Statement: Training for Tomorrow' (Solicitors Regulation Authority 2013) https://www.sra.org.uk/sra/policy/training-for-tomorrow/resources/policy-statement/

[50] J. Webb et al., *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales* (2013).

[51] The three-stage structure is similar to the traditional educational model designed for the would-be barrister: graduates (with a QLD or a GDL) were required to pass a Bar Course Aptitude Test (BCAT), join one of the Inns of Court, undertake a one year, full-time course, the Bar Training Course, be called to the Bar and complete a recognised period of training under the supervision of an experienced barrister, the Pupillage. The maintenance of the Bar Course Aptitude Test (BCAT) is now under discussion: '*the Bar Standards Board (BSB) has decided, at its meeting on 31 March 2022, that it will seek approval from the Legal Services Board (LSB) to discontinue the requirement that students should take the Bar Course Aptitude Test (BCAT)':* Bar Standards Board, Press Release of 1 April 2022. https://www.barstandardsboard.org.uk/resources/resource-library/bsb-seeks-to-abolish-the-bar-course-aptitude-test.html; see also Bar Standards Board, Future Bar Training: Consultation on the future of the Bar Course Aptitude Test (BCAT), September 2021: https://www.barstandardsboard.org.uk/uploads/assets/9d3ea74c-5631-44f5-a81f0142c99ef1d9/BCAT-Consultation-Document-Sept21.pdf

Moreover, new training requirements for the Bar came into effect from 1 September 2020: nevertheless, the three components of education and training (the academic component, the vocational component and the work-based learning component) have been maintained, even if delivered through one of four approved training pathways: 'a. Three-step pathway – the academic component, followed by the vocational component, followed by the work-based learning component (pupillage); b. Four-step pathway – the academic component, followed by the vocational component in two parts, followed by the work-based learning component (pupillage); c. Integrated academic and vocational pathway – combined academic component and vocational component, followed by the work-based learning component (pupillage); d. Apprenticeship pathway – combined academic component, vocational component, and work-based learning component (pupillage); : Bar Standards Board, The Bar Qualification Manual, available at: https://www.barstandardsboard.org.uk/training-qualification/bar-qualification-manual-new.html

For more information concerning the legal educational system in England and Wales: A. BOON and J. WEBB, *Legal Education and Training in England and Wales: Back to the Future?* cit., 79; D. NITTI, *La professione forense in Inghilterra*, in A. BERLINGUER, *La professione forense. Modelli a Confronto*, 97 ff. (Milano, 2008); C. GILLIGAN, *La formazione dell'avvocato in Inghilterra e Galles: qualità professionale, deontologia e mercato*, in G. ALPA and A. MARIANI MARINI (eds.), *La formazione dell'avvocato in Europa*, 113 ff. (Pisa, 2009); B. NASCIMBENE, *La professione forense nell'unione europea*, 233 ff. (Milano 2010); R. M. STEIN, T*he Path of Legal Education from Edward I to Langdell: a History of Insular Reaction,* cit., 429; D. NITTI, *Come cambia la professione forense inglese: spunti per una comparazione*, in Contratto e Impresa/Europa, 280 ff. (2006); R. CRESPI, *Le professioni legali in Inghilterra e Galles da Edoardo I al Court and Legal Service Act*, in Le carte e la Storia, 126 (2005); P. PURPIDGE, *La formazione professionale in Inghilterra e nel Galle*s, in Rass. Forense, 399 (1995).

[52] See SRA, *Statement of Solicitors Competence* (March 2015), https://www.sra.org.uk/solicitors/competence-statement.page; SRA, *Training for Tomorrow: Assessing Competence, Consultation Paper* (7 December 2015); SRA, *A New Route to Qualification: The Solicitors Qualifying Examination, Consultation Paper* (25 April 2017); SRA, *A*

centralised exam regulated by the SRA which consists of two parts: a test of legal knowledge by means of multiple-choice questions; and various skill assessments. The candidates must also undertake 24 months of practical training (qualifying work experience – QWE).

The radical changes introduced by the SRA which undermined the validity of the traditional three-stage model are expected to have a profound effect on the entire English model of legal education. Since a law degree will not be mandatory to be able to sit for the SQE, the only choice for law schools will be between opting in or opting out of SQE preparation. They could, in other words, keep a distance from the interests of the legal profession and provide a more liberal and theoretical education; or they might move in the direction of professional and vocational courses in order to reach the standards required to embrace the SQE.[53] Both choices have potentially significant and obvious consequences. The replacement pathway to qualify as a solicitor in England and Wales offered by the SRA totally underestimates the role of universities and pushes towards a pure apprenticeship model; it also seems to remove the English system from the previously described harmonised model of legal education.[54]

In Continental Europe, the criticisms concerning the current educational system as well as the innovations involving the professions in the recent years are still generating some significant changes (even if the impact is not comparable to the English one).

Despite the growing professionalisation of the legal class and the increased importance of the bar association in the legal educational process, Continental European law schools over the past century have reaffirmed their own roles and have continued to uphold as their exclusive aims the promotion and production of legal culture, maintained in

New Route to Qualification: New Regulations, Consultation Paper (15 November 2017), https://www.sra.org.uk/sra/consultations/new-regulations.page.

For comments on the SRA initiative, see R. FLETCHER, *Legal education and proposed regulation of the legal profession in England and Wales: a transformation or a tragedy?*, in The Law Teacher, 50, 371 (2016); E. HALL, *Notes on the SRA report of the consultation on the Solicitors Qualifying Exam: 'Comment is free, but facts are sacred'*, in The Law Teacher, 51, 364 (2017); E. FRY and R. WAKEFORD, *Can we really have confidence in a centralised Solicitors Qualifying Exam? The example of the Qualified Lawyers Transfer Scheme*, in *The Law Teacher*, 51, 98 (2017); C. JAMES and J. KOO, *The EU law 'core' module: surviving the perfect storm of Brexit and the SQE*, in The Law Teacher, 52, 68 (2018); J. GIBBONS, *Policy recontextualisation: the proposed introduction of a multiple-choice test for the entry-level assessment of the legal knowledge of prospective solicitors in England and Wales, and the potential effect on university-level legal education*, in International Journal of the Legal Profession, 24, 227 (2017); M. DAVIES, *Changes to the training of English and Welsh lawyers: implications for the future of university law schools*, in The Law Teacher, 52, 100 (2018); P. Leighton, *Legal Education in England and Wales: what next?* in *The Law Teacher*, 55(3), 405 ff. (2021, v. 55). See also Caroline Hood and Chris Simmonds, *The solicitor apprenticeship*, in The Law Teacher (2022), with a focus on the relationship between the SRA reform and the solicitor apprenticeship.

[53] 'With regard to the demise of QLDs and GDLs, for law schools which choose to continue to offer degree courses or similar which prepare students for the SQE, this will be the first time for most that they have faced an externally devised syllabus and externally set and marked assessments with regard to this aspect of their activity. For those institutions which choose to opt out and, perhaps, use the introduction of the SQE as an opportunity to move their law degrees away from their current professional accreditation focus, this will be the first time in decades that they have faced a significant market test to determine how many students will choose to study law without a professional accreditation attractor': M. DAVIES, *Changes to the training of English and Welsh lawyers: implications for the future of university law schools*, cit., at 101.

[54] Even if the law degree maintains its validity with reference to the pathway to qualify as a barrister in England and Wales, it is well known that the percentage of graduates who become barristers is very low compared to the percentage of students who qualify as solicitors. In 2017, the total barristers in practice were 16,435 (see Bar Standards Board, Practising Barrister Statistics, https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/practising-barrister-statistics/); while 'at 31 July 2017, there were 139,624 solicitors with practising certificates (PC) and 181,968 individuals in total on the role of solicitors' (see The Law Society, *Annual Statistics Report 2017*, https://www.lawsociety.org.uk/support-services/research-trends/annual-statistics-report-2017/).

conformity with such objectives as an essentially theoretical teaching methodology.[55] Nevertheless, a number of harsh criticisms consistently levelled against academia over the past 100 years are signs of a disconnect between the law school and the wider society. Is there a need for an education that insists on keeping theory and practice apart?
Such criticism is still echoed today in university classrooms and, although it does not appear sufficiently supported, in an 'atmosphere of dated paralysis'[56] that has perhaps always characterised academia and other institutions under pressure to change, it seems to dictate current (and increasingly noticeable) progressive trends. Recently, there have been attempts directed at integrating practical components into the curricula, such as some law school initiatives targeted at introducing legal skills courses and legal clinics.[57] While far from the norm, such developments are on the increase across Continental Europe. The creation of a European clinic network (ENCLE – European Network of Clinical Legal Education), the international clinical legal education networks (e.g., GAJE – Global Alliance for Justice Education; and Réseau des Cliniques Juridiques Francophones) and several national networks (e.g., Rete Italiana Cliniche Legali, FUPP – Polish Legal Clinics Foundation; Association of Legal Clinics of Ukraine; CLEO – Clinical Legal Education Organisation; La Red Española de Clinicas Juridicas, etc.) gives sufficient evidence.[58] One may speculate as to the driving forces, but almost certainly, they include the aim of developing a student's knowledge, practical skills and values/ethics, all of which are required of a professional.[59]

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[55] See M. CAPPELLETTI, J. H. MERRYMAN and J. M. PERILLO, *The Italian Legal System: An Introduction*, 89 (Stanford, 1967): the authors, referring to Italian academia, affirmed that law schools 'are not concerned with techniques of problem-solving, but with the inculcation of fundamental concepts and principles'.
[56] See L. CAIANI, *Problemi dell'Università italiana*, 7 (Milano, 1955).
[57] In relation to the recent development of clinical legal education in Western Europe, defined as 'the last holdout in the worldwide acceptance of clinical legal education' (R. WILSON, *Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education – Part I/II*, in German Law Journal, 10, 823 ff. (2009); see C. BARTOLI, *Legal clinics in Europe: for a commitment of higher education in social justice*, in Diritto e Questioni Pubbliche, 1 (2016); Id., *The Italian legal clinics movement: Data and prospects*, in International Journal of Clinical Legal Education, 2, 22 (2015); D. BLAZQUEZ-MARTIN, T*he Bologna Process and the Future of Clinical Education in Europe: A View from Spain*, in F.S. BLOCH (ed.), *The Global Clinical Movement. Educating Lawyers for Social Justice*, 121 (Oxford, 2011); H. OLÀSOLO, *Legal Clinics in Continental Western Europe: The Approach of the Utrecht Legal Clinic on Conflict, Human Rights, and International Justice*, in American Society of International Law, 104, 98 (2010); J.A. HANNEMANN and F. CZERNICKI, *Eine rechtsvergleichende Analyse der 'Clinical Legal Education' – studentische Rechtsberatung in Polen und Deutschland*, in German Journal of Legal Education, 2, 27 (2015). With regards to the Brescia Legal Clinic, see C. AMATO, *Developing strategies for academic and financial sustainability: the Brescia legal clinic's experience*, in E. POILLOT (ed.), *L'enseignement clinic du droit: Expériences Croisées et perspective pratique* (Luxembourg: Larcier, 2014). In relation to the recent development of clinical legal education in Central and Eastern Europe, see, above all, M. BERBEC-ROSTAS, A. GUTNIKOV and B. MAMYSLOSWSKA-GABRYSIAK, *Clinical Legal Education in Central and Eastern Europe: Selected Case Studies* in F.S. Bloch (ed.), *The Global Clinical Movement. Educating Lawyers for Social Justice*, cit., p 53.
[58] See: www.encle.org; https://www.cliniques-juridiques.org/
[59] Legal studies in several civil law jurisdictions have come under criticism; thus, their exclusive theoretical nature and the need for more practical elements in the curricula have been suggested. As a consequence, they have had similar legal studies' development, even maintaining their traditional and historical features; see, as an example, the Czech Republic experience: 'The Czech Republic, which can be perceived as a bridge between Western and Eastern Europe and shares many common features with countries from both parts of Europe. The legal education was traditionally very theoretical, with occasional discussions about the lack of practical elements. In the 1990s, there were several clinical projects taking place at different law schools, but none of them was particularly successful (…). I have the impression that the recent intensive development of legal clinics in the Czech Republic (and also in other European countries) derives from understanding that traditional legal education was inefficient and did not focus enough on skills and professional values': M. TOMOSZEK, *The Growth of Legal Clinics in Europe – Faith and Hope, or Evidence and Hard Work?*, in International Journal of Clinical Legal Education, 21, 99 (2014).

In conclusion, despite the harmonising movements that characterised European legal educational systems at the gates of the 20th century, the latest reform trends seem to be leading the common law and civil law systems along two distinct and opposite paths, and in both cases, taking legal education back to its earliest origins.

V. FINAL REMARKS

A new harmonised trend is emerging in Continental Europe despite cultural differences among national models of legal education on the European continent, the specific requirements imposed by national law curricula and the different relationships between universities and the relevant professional bodies; such a common and renewed approach to legal education begs a rethink of curriculum content to embrace knowledge, skills and values.[60]

In this latest process of reform, the mission of law schools and the mission of post-university training associations (bar associations, professional schools and, in some instances, universities) are tending to converge while maintaining their own specificities: they each provide knowledge, skills, competences and abilities for a defined market, and students are required to master theoretical legal concepts as well as to meet standards of technical competency in order to understand law in its operational context and to aspire to be ethical and competent professionals. In this trend, the liberal educational tradition is reconciled with the demands of professional worlds, the needs of society and the supreme objective of preserving and enhancing justice. Experiential learning, in general, and clinical legal education, in particular, may constitute valuable tools for tackling the challenges and meeting the needs of the current and renewed educational context with specific reference to the academic stage.

By contrast, the answer of the common law world to the crisis of legal education and of the legal professional market seems to bring the English system back to its professional origins: strong criticisms of universities resurfaces and the controversial decision to include legal education as an academic discipline[61] is once again questioned. The legal educational system goes back to the exclusive hands of the professional world; in front of the decline of both the role of the university as an institution and the intrinsic value of law schools, legal education turns out to mainly be identified with the process of professional formation of legal professionals. This is probably in line with the aim to prepare would-be solicitors for the practice of law and produce "'practice ready lawyers" for today's profession'[62]. Nevertheless, it raises some doubts about the suitability of such a choice in front of more ambitious goals, such as the purpose of legal education to create 'tomorrow lawyers', that is, professionals who will be able to face the new and unexpected challenges of the legal world, marked by globalisation and digital innovation – and more generally to provide students with a liberal and critical understanding of law which is the basis to take an active role in order to contribute to the improvement of legal systems towards justice[63].

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[60] '*Sapere, Saper fare e Saper essere: è questa la trilogia sulla quale si struttura il mestiere dell'avvocato*': G. PASCUZZI, *How to Become Lawyers and Able to Do So: Teaching the Ethics of the Legal Profession through Narrative*, Research Paper no. 11 (2012) available at http://eprints.biblio.unitn.it/4003/1/11._Pascuzzi.pdf.

[61] L. Martin, *From Apprenticeship to Law School: A Social History of Legal Education in Nineteenth Century New South Wales*' in University of New South Wales Law Journal, 9(2) 111 (1986).

[62] L. Martin, *From Apprenticeship to Law School: A Social History of Legal Education in Nineteenth Century New South Wales*, cit.

[63] On the purpose of legal education, see D. Goldsworthy, *The Future of Legal Education in the 21st century*, in Adelaide Law Review, 41(1), 243 (2020).