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# The Hidden Curriculum in Legal Education<sup>4</sup>

## Abstract

The article raises an important problem of legal education in Poland. After covering the changes in legal education in the world, the paper moves on to focus on the role of academic and practical legal education. The authors point to the specific role of the hidden dimension of legal education, which tends to be unseen, but plays a key part in educating lawyers in Poland. The final part of the article discusses the possible changes to be made in the system of legal education.

**Keywords:** legal education, hidden curriculum, political nature of law, social theory

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## A new field of research

The problem of legal education has not been covered sufficiently in legal theory either in Poland or in Central and Eastern Europe. Thought on legal education in Poland and the region draws from the experience of 19<sup>th</sup> century positivism, which implies that the application of law is merely a technical act involving application of objective methods to relevant facts. In this perspective, the activity of lawyers appears as something rational and judgement-free. Law construed in such a way does not provide for instances of entanglement of legal practice in ethical or political dilemmas. If law as a social technique is to be effective, all forms of social consciousness – including moral and political – need to be adapted to it. And this is the main reason the issue of education has never been covered as it should be. Legal education has been treated purely instrumentally as a process designed to offer a uniquely valid vision of law. But since at least the mid-20<sup>th</sup> century, law has been employed to serve many different functions. Contemporary models of the application of law in a democratic state with the principle of the rule of law are much more argumentative and require lawyers not only to be familiar with the law itself but also to show different competence in interpreting and applying it in individual social contexts, taking its complex axiology into account. But these changes were not reflected in legal education in the post-1989 Poland. It can be seen in the contemporary conflict over the reform of the judiciary, where the parties to the dispute use arguments based on a traditional 19<sup>th</sup> century concept of law and legal education, while non-lawyer observers – having no sophisticated observation instruments at their disposal – see that the problem concerns the relationship between law and politics, and that it is not just a legal dispute.

Max Weber wrote about the connection between the system of teaching law and the actually existing legal system. He explained the differences between the law applied in continental Europe (*civil law*) and the Anglo-Saxon *common law* in these terms. According to Weber, the two different legal systems result from different ways of teaching law and from the consequently disparate intellectual construction of law. Moreover, in Anglo-Saxon countries, especially in the US of the late 20<sup>th</sup> century, legal education, influenced by the critical legal studies movement, became an area of a conscious reflection of lawyers-academics. The thesis on the indeterminacy of law, adopted by the CLS from American legal realists, reached the plane of intellectual discourse and affected the system of legal education based on case

studies. If law is indeterminate, which has been pointed out by critics – e.g. through an analysis of Blackstone’s commentaries – a lawyer needs not only knowledge about law but also a set of other skills and additional knowledge as well. Law has lost its divine-like status, but lawyers have earned a critical approach and had their position as seen by society elevated. In the 1970s, Roberto M. Unger argued that law understood as the “*legal order*”, and so based on autonomy, did not exist anymore<sup>5</sup>. He showed how the law changed under the influence of two factors: the idea of welfare state, when it became social engineering, and corporate capitalism – where the border between the public and the private nature of law vanished. These changes called for modifications in the practice of legal education.

In common law countries, the system of legal education does not abandon the idea of familiarity with legal texts, but teaching the understanding of legal texts takes place in the context of a critical approach to the texts and to the doctrine. The Socratic model of teaching in relatively small groups, where texts are analysed, is based on the assumption that truth is the effect of a democratic discourse, not a dogma, announced *ex cathedra* by the teacher. Law schools have become schools of democracy in a sense that students take part in a discourse from the very beginning, encouraged to express their opinions and present their arguments. The system of passing subjects, not merely on the basis of a single paper or examination, but ‘dispersed’ and supporting the so-called class participation and essay writing, promotes participatory and argumentative competence.

Our aim is not to glorify the system of legal education as practiced in common law countries, but to show that it is possible to adopt a different approach to legal education, one that has been developing for about 40 years now. From a sociological point of view, the new approach to legal education, the departure from learning texts and court decisions by heart, and switching to a critical and argumentative approach were all a response to the new functions that law served in the society. As mentioned above, the model of legal education in Poland is based on the 19<sup>th</sup> century positivist vision of law reduced to a legal text. The central idea is therefore knowledge about law. It is obvious that a lawyer is supposed to know law, but can law be reduced merely to a legal text? And this is where the theoretical model of law enters the stage. It does not matter that theory, philosophy or sociology classes let students find out about other theoretical models of law as the entire education model is based on legal positivism. This model assumes a dogmatic approach to law, excluding any critical analysis.

But it is quite a paradox that the positivist model of legal education acted as a smokescreen and a shield in the era of real socialism. Of course, there were some

<sup>5</sup> R.M. Unger, *Law in modern society*, New York 1977.

concessions, which involved accepting some references to Marx, but no conclusions for further argumentation were drawn from those references. Legal texts were the focus of lawyer-academics. That very approach made it through the social and political transformation of the time. The experience with socialism only strengthened the 19<sup>th</sup> century thesis on the autonomy of the legal system, which elevated the significance of the legal professions. It's important to add that in Poland, the legal profession, being a Dworkinian "interpretive community" for law, is dominated by lawyers who combine their legal practice with academic teaching. The system of practical education is as if it were controlled by an intellectual framework imposed by lawyer-academics.

The existing system of legal education doesn't only equip lawyers with a certain set of skills. It is also anti-democratic. The structure of the model of education, based on an intellectual model of law, does not treat law as a socially questioned phenomenon, but more as a Harry Potter-like vision of law. The latter should be understood as perceiving law as arcane knowledge available to a chosen few who possess some supernatural powers. This approach is enhanced through legal education at universities and through what we dub as the "hidden curriculum in legal education". As a result, 30 years after 1989 we are dealing with a paradox whereby jurisprudence offers itself as democratic and supporting democracy and equal human rights at the ideological level, but at the same time reinforces anti-democratic aspects at the level of everyday education practice (hidden curriculum).

This article aims to define a new field of research – legal education understood not as another research area but as a central element of theoretical and philosophical-legal reflection. To this end, we need empirical and theoretical studies into the functioning of the hidden curriculum in the Polish legal education. The objective of the article will be to provide a critical assessment of the fundamental principles of legal education in Poland, i.e.: 1) of the ontological orientation of legal studies, which view law as an external object – not a subject of interpretation, 2) of the technological vision of law, which aims at reaching a harmonious vision of society. An instrumental orientation of legal education may not be a source of values required in a civic society. As a result, legal education exacerbates ideological and cultural conflicts because it does not offer the appropriate competence to solve them.

## Academia and Practice

Legal education stretches across two levels – academic education and education offered by law firms. We thus have two centres of legal education: universities (Academia) and corporate self-governing bodies (Practice). At first sight, these centres are

oriented towards different goals, use different teaching methods, and hence design different models of a lawyer.

**Table 1.** Two Centres of Legal Discourse

Academia		Practice	
Researcher community	SCIENCE	Practitioner community	PRACTICE
SOURCES OF KNOWLEDGE	The truth of reason	SOURCES OF KNOWLEDGE	Casuistry
CREATION PRACTICES	Dogma	CREATION PRACTICES	Pragmatics
VERIFICATION PROCEDURE	Discourse procedures	VERIFICATION PROCEDURE	Effectiveness procedures
SUBJECTIVITY	Knowledge	SUBJECTIVITY	Skills

Source: Own elaboration.

Preparing oneself to pursue a legal profession requires not only some coordination between the said centres in the area of educational effectiveness, meaning the objectives and methods of teaching, but most of all good planning in the scope of its utility, meaning consideration of the desirable social roles to be fulfilled by legal professions. This landscape offers us two education profiles: one of a lawyer-academic (Academia) and the other of a lawyer-practitioner (Practice). Academia is oriented towards the perspective of a lawyer-academic. Such a lawyer is required to have mastered the knowledge of applicable law and to be able to develop a scientific dissertation. The main source of knowledge is legal dogma. Verification involves checking the skill of presenting and justifying arguments to support the knowledge gained from scientific conferences, reviews. Practice, in turn, is oriented towards the perspective of a lawyer-practitioner, someone who is able to put law into practice effectively. The ability to handle specific cases is especially valuable. Verification involves checking one's effectiveness understood as the ability to select the right legal measures to achieve the intended goal. This brief analysis tells us that Academia and Practice create different subjectivities/profiles of a lawyer.

The tension expressed in competing profiles proves the uniqueness and complexity of the issue of legal education. If legal education is to be not only effective but also useful, the education profiles offered should not exclude each other. On the one hand, a lawyer should use the skills acquired at university in practice and be critical of legal education at the same time. On the other hand, they should be ready to face the challenges of practice and be able to operate effectively. Legal

education is therefore crucial to making the transition from Legal Academia to Legal Practice possible. It is the missing link explaining why these opposing profiles may coexist as part of one discourse in relative harmony. Otherwise lawyers are at risk of experiencing a great shock because of the dissonance between “how it should be” (as taught at university) and “how it is”. University-taught lawyers usually become practitioners upon graduation. Therefore, the question is: *What qualities dominate this type of education – scientific or practical?*

We believe there is a third way, according to which legal education is a specific element of the legal discourse, next to science and practice – and what is more, an element not problematized so far. The said coordination requirement may be fulfilled not only within the framework of official (manifest) curricula but also, or perhaps most of all, within a so-called hidden curriculum. The concept of a hidden curriculum is based on the assumption that education should be as much about official education objectives and their justification as about the ways in which these objectives are pursued. And the ways of pursuing a given objective may involve teaching skills unrelated – or even contradictory – to the official objective. For instance, if education is to produce a scientifically and critically competent participant in legal transactions, pursuing this objective through lectures where the student is unable to question the knowledge taught contradicts this very objective. Put briefly, the hidden curriculum covers everything related to legal education provided that it may not be considered an outcome of the official (manifest) curriculum. Hidden curriculum occurs as a problem when real legal education – both academic and practical – does not promote legal qualifications desirable at the normative and political-social levels. It is curious to see that legal education of the scope discussed has never been the subject of any research in Polish literature thus far.

## Levels of research on legal education

Legal education may be researched on three levels:

- a) the normative level, stemming from applicable legal regulations and official statements by representatives of legal professions and legal educators, with the level defining the desirable profiles of law graduates and legal trainees;
- b) the political-philosophical level, which can be reconstructed on the basis of statements by theoreticians of politics and law, who point to the desirable civic competence of a lawyer, with this competence having a positive impact on the entire political community, ensuring a deepening and development of democratic relationships among citizens and between citizens and public institutions;

- c) the sociological level, comprised of real strategies and techniques existing in legal education, forming a so-called hidden curriculum of this education, with this curriculum not necessarily corresponding to levels a and b, which may make it promote a different profile and different qualifications of a law graduate.

We argue that the functioning of a hidden curriculum in legal education makes this education effective but less useful at the same time. Such education does not correspond to its official and political-philosophical claims. Therefore, a legal education aimed at “shaping” the socially desirable legal competence becomes dysfunctional and produces effects contrary to what was intended.

### a) the official narrative of lawyers: a need for critical competencies

Official statements made by representatives of legal professions suggest that lawyers should display not only knowledge about law but also a high level of social – including moral and ethical – competence. For example, Ewa Łętowska, the former Polish Commissioner for Human Rights and a former judge of the Constitutional Tribunal, argues in some of her publications<sup>6</sup> that a lawyer should act based on the following triad: knowing-wanting-being able. Law is not just knowledge and skills, but also competencies that make it possible to perform the role one has been assigned. A lawyer should be able to notice problems occurring in the interpretation of law. Problems usually involve a mismatch between a given current interpretation and social and axiological requirements. Then, lawyers have to want to offer their solution to the problem encountered. But in order to do so, they need to be able to construct a legal statement that will be acceptable in the relevant legal and social environments. Justice requires thus three components: ethical sensitivity, a desire for change, and technical abilities of making use of legal discourse. Each of these three components affects the other two: we won't come up with a new solution if we are not able to defend our standpoint; we won't desire change if we are unable to imagine a different state of affairs. This view is supported by Janusz Niemcewicz, a lawyer, a former Deputy Minister of Justice, and a former judge of Poland's Constitutional Tribunal, who said in an interview that humanities such as history, theory and

<sup>6</sup> Cf. E. Łętowska, *Boska sztuka interpretacji*, [in:] A. Łopatka, B. Kunicka-Michalska, S. Kiewlicz (eds.), *Prawo, Społeczeństwo, Jednośćka. Księga pamiątkowa dedykowana Profesorowi Leszkowi Kubickiemu*, Warszawa 2003, pp. 25–35; E. Łętowska, *Kilka uwag o związkach między prawem i etyką*, „Nauka” 2010, 3, pp. 74–81.

philosophy of law should be given a high rank in the curricula of law studies<sup>7</sup>. He believes that a judge should be able to respectfully listen to all parties, and explain their decision in a clear and understandable manner. And humanities help to make that possible.

### b) the political-philosophical level: democratic ethical education

The abovementioned narrative shows that legal education should feature the qualities of what Georg Lind named “moral education”, also referred to as “ethical education”. Given its philosophical connotations, we will opt for the second name for the purpose of this article. The objective of ethical education is purely political, and involves “enabling young people to respect the rights and freedom of others as much as their own”<sup>8</sup>. This respect is based, as Lind believes, on the idea of justice and democratic cooperation, which both can no longer be restricted to one’s family, ethnic group, or nation in the age of globalisation. The problem is that the process of education always stretches over a long period of time. We are not able to say precisely whether and – if so – when the skills we teach will appear useful. As Lind argues:

If, then, moral education has the goal of preparing young people for life in a world whose shape we cannot foresee and for challenges which are beyond our imagination, it must promote the *competence* of students to orient themselves morally in this world and to take well-considered, morally justified decisions.<sup>9</sup>

Lind defines ethical education from a negative perspective, determining what it is not. And it is not teaching ready-made solutions that may help one improve e.g. their examination score, but turn out to be useless in a new conflictual situation. Nor is it teaching values that are common in specific community. The problem is not about such values themselves, but about a prejudice about values professed by other people. When people are given the freedom to communicate, it appears that they share more values than they may have expected. The task of ethical education should then be to correct the distorted image of other people.

<sup>7</sup> Cf. J. Niemcewicz, *Sądzą nas technicy prawa*, „Gazeta Wyborcza: Duży Format”, 23.10.2014, text available at: [http://wyborcza.pl/duzyformat/1,141114,16844947,Janusz\\_Niemcewicz\\_\\_Sadza\\_nas\\_technicy\\_prawa.html](http://wyborcza.pl/duzyformat/1,141114,16844947,Janusz_Niemcewicz__Sadza_nas_technicy_prawa.html).

<sup>8</sup> G. Lind, *Edukacja moralna. Teoria dwuaspektowa*, „Principia”, 2013, 57–58, p. 42.

<sup>9</sup> *Ibid.*, p. 43.



It stems from the above that legal education should teach critical distance to one's own and others' behaviour, and to the assumptions on which these actions are based. This distance should make it possible to take action aimed at changing the behaviour classified as unjust. When one acts in a just manner, there is a conformity between the professed moral ideas and the action itself. This predisposition to act according to one's moral ideas was dubbed "judgment competence" by L. Kohlberg. People with low judgment competence, who tend to see the world in black and white, are prone to violence, be it physical or expressed through submission to an external authority, when their actions or ideas are questioned. They are simply unable to substantiate their position in broader terms.

Lind also points out that a conflict may occur between the objectives of moral education and the methods it relies on. How can education teach democracy if students do not experience democracy at their universities? As Ewa Nowak observes:

Most students have never had a first-hand experience with democracy. An open discourse, free from ideologies and 'victory-oriented' strategies, where people try to solve a problem together and in a respectful manner, is quite foreign to them: at best, they have been led to believe that an Oxford-style debate is a model democratic discourse. In Poland, the press and TV do not reinforce anybody's democratic behaviour. Our native democracy still bears the hallmarks of post-totalitarianism.<sup>10</sup>

### c) empirical studies: a tiresome necessity

Empirical studies conducted by the Centre for Legal Education and Social Theory (CLEST) on a sample of law students point to an inconsistency between a) the official narrative of lawyers and the requirements of democracy and b) the social reality<sup>11</sup>. We can see a clear asymmetry between academic education (students) and post-university education preparing individuals to pursue legal professions (trainees), with the latter designed by self-governments of attorneys and legal counsel. Almost two-thirds of the law students and attorney and legal counsel trainees (73.73% and 74.60% respectively) believe their education is too theoretical. Over half of the

<sup>10</sup> E. Nowak, *Demokracja zaczyna się w umyśle. Rozwijając osobowość demokratyczną*, "Principia" 2013, 57–58, p. 24.

<sup>11</sup> All numerical data comes from reports of the Centre for Legal Education and Social Theory, available at [www.clest.pl](http://www.clest.pl). Cf. A. Czarnota, M. Paździora, M. Stambulski (eds.), *Nużąca konieczność. Powody podjęcia i ocena studiów prawniczych na WPAE UW*, Wrocław 2017 [report available at: <http://www.bibliotekacyfrowa.pl/dlibra/docmetadata?id=80007>] and M. Stambulski, W. Zomerski, *Nużący rytuał. Aplikacja adwokacka i radcowska w Polsce*, Wrocław 2018 [in publication].

students (53.46%) and legal trainees (69.47%) think that their education does not offer good preparation to pursue a legal profession. At the same time, most of them claim that their education requires a lot of studying (students – 92.13%, legal trainees – 56.31%) and learning by heart (students – 69.13%, legal trainees – 50.65%).

Law students and legal trainees see legal education as overloaded with theory and learning by heart, and demanding at the same time. CLEST has dubbed the situation as a “tiresome necessity”, where the will to gain professional qualifications justifies submitting oneself to tiresome education, which does not teach creative problem-solving or active participation in a democratic society. Such an education is not only against the declared objectives, but it also may have negative political consequences. This gives rise to a question about the mechanism of sustaining and reproducing education in such a form.

## Hidden curriculum in legal education – between effectiveness and utility

We can distinguish three separate curricula in the process of education. The first of them is the official curriculum, a curriculum that is formally offered and approved. The second curriculum, situated at the informal stage of education, involves immediate and interpersonal forms of studying, which take place among students. A perfect example of such informal education is the practice of getting examination questions from students who have already taken a given exam, which happens each and every year. In other words, informal curricula are delivered mainly by way of everyday student interaction. The third curriculum, which is the main subject of this paper, is the hidden curriculum, which is a set of influences functioning at the level of the organisational structure and the taught code of conduct. In the 1980s, Henry Giroux defined four theoretical approaches to the issue of hidden curricula in university education<sup>12</sup>: the traditional approach, the liberal approach, the radical approach, and the dialectical approach.

The traditionalist perspective starts from a question: what makes a contemporary society last? By turning towards the mechanisms of socialisation, which are behind the generational transmission of cultural patterns, longevity, and the continuity of socially shared values, it recognizes the very important role of the hidden curriculum in the process of education. One may hazard a guess that teaching every field of study involves passing on “different cultures of conduct” related to

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<sup>12</sup> H.A. Giroux, *Theory and resistance in education: a pedagogy for the opposition*, South Hadley, Mass. 1983, *Critical perspectives in social theory*, pp. 48–60.

a given profession. The success of the process of passing on convictions, attitudes, and patterns of behaviour may be guaranteed neither by the coherence of formal education nor by individualised informal education breaking free from the rigid framework. The hypothesis behind the concept of a hidden curriculum assumes that the patterns of behaviour are passed on through active involvement, meaning in the course of observational and situational process of learning. In other words, when being a part of a faculty, we somehow naturally adopt certain patterns of behaviour related to practical education in which we participate. From this perspective, success in teaching depends in fact on the quality of the patterns of behaviour offered in the process of education. Although the reception of the offered patterns may differ, and they may be criticised too, the very functioning of a hidden curriculum is shown to have positive effects. What is more, only "participation" in a hidden curriculum lets student adopt and co-create values shared by their teachers. Such a curriculum's reinforcement of certain patterns of behaviour makes it possible to shape and develop the "right" ethical competence effectively. It's hard to resist the impression that the ethical competence forged in such a way is considered an internalised qualitative professional identity.

The liberal approach views the impact of a hidden curriculum in rather neutral terms, not in positive terms, which is the case with the previous approach. The main difference lies in a disparate view of the practice of teaching and the process of socialisation. In the liberal perspective, the taught "culture of conduct" is treated as yet another social construct that cannot be passed on without the active involvement of students in the education process. Students' active commitment to gaining knowledge is suppressed mainly by strict requirements of formal education. The positivistic and technocratic vision of education, enhanced by the hidden curriculum, generates patterns of behaviour that diverge from – or even contradict – the officially approved democratic ideas. As a result, students, instead of co-contributing to ethical competence, learn how to "suffer in silence". Shifting the emphasis from the taught content to the ways in which this content is taught, to channels and spaces of communication, makes it possible to also see the destructive effect of a hidden curriculum. Liberal criticism rejects only those aspects of hidden curriculum which are said to deform the normative categories lying at the heart of education into "patterns of incapacitation". In other words, the structures of everyday practical teaching, instead of supporting the competence useful in participating in democracy, unquestioningly reproduce hierarchy and force passive adaptation to divisions dominating of a bourgeois society, veiled in objective categories. The liberal perspective aims at creating practical teaching models that highlight the issue of intentionality, promote the awareness of responsibility, and reinforce the significance of human relations

in constructing hermeneutic categories of understanding and exchange of experience in the education process.

The radical approach stresses the political economy of education, makes it possible to recognise its political function with regard to notions such as class and dominance, and draws our attention to the structural factors that affect our everyday teaching practice and the outcomes of socialisation. In the empirical and theoretical perspective, the criticism of the hidden curriculum concentrates on revealing the mechanisms through which the social setting at universities reflects the social setting at work, which leads to an unintended effect of socialization in the form of sustaining the social and class divisions necessary to legitimise the process of reproduction of both social and economic capital. There has been a radical criticism of mechanisms supporting education stratification, education structures recreating class, gender, and racial division<sup>13</sup>. H. Giroux, quoting Michael W. Apple's studies published in an article entitled "The Hidden Curriculum and the Nature of Conflict"<sup>14</sup>, has shown how education promotes the rationality characteristic of a capitalist social structure. By performing an in-depth analysis of natural and social science textbooks, Apple pointed to permanent trends of ignoring the category of conflict or of attributing a negative value to it in social development. According to the supporters of the radical approach, curricula repeat and cement the whole range of notions attributed to privileged groups of stakeholders. From this point of view, the patterns of behaviour and the ethical competence shaped by hidden curricula fit fully in the social practices and norms of the capitalist system, and mould the education experience in the area of social control in an indefinable way.

The dialectical perspective of the hidden curriculum remains closely associated with the radical approach. However, in order to avoid a dead end – which the determinism of the radical approach leads to – the dialectical perspective does not radicalise the omnipotence of social relationships and capital. According to Giroux, a hidden curriculum, just like the entire education process, may never be homogeneous. Actually, we should speak of hidden curriculum in the plural, and its pluralistic structure and the surfacing contradictions create an opportunity to resist the social mechanisms of control and dominance. Taking advantage of the methodological categories conceived by the Frankfurt School, supporters of the dialectical approach wish to make it out of the aporia this theory has fallen into. The radical

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<sup>13</sup> A perfect example of criticism of the political economy of education in the US is a work by Paul Willis, where he provides a detailed explanation of mechanisms making the education of working-class children no longer a guarantee of social advancement. See: P.E. Willis, *Learning to labor: how working class kids get working class jobs*, New York 1981.

<sup>14</sup> M.W. Apple, *Ideology and curriculum*, New York 2004, 3rd edition, pp. 77–98.

approach, just like the first wave of the Frankfurt School, following such a far-reaching radical criticism, has inevitably questioned the very idea of the project of emancipation<sup>15</sup>. As in the case of the liberal approach, the supporters of the dialectical approach underline activity and causality of subjects of socialisation. The rejection of the functionalist paradigm in research on the hidden curriculum in education has re-opened the opportunity to become emancipated from the system. But it is not a socially untouched and theoretically newfound land, but the everyday experience of the actual teaching practice, viewed this time not in the categories of hegemony but as an arena of everlasting conflict, battle, and compromise. A perfect example of this approach is participatory action research<sup>16</sup>, which takes advantage of the contradictions occurring with hidden curricula and sees opportunities for changing the socialisation regimes in creative measures of resistance functioning among students and teachers.

Each of the presented theoretical approaches has its advantages and disadvantages. The traditionalist perspective stresses the scope of impact of the hidden curriculum in the process of shaping professional identities and ethical competence. However, the conservative understanding of teaching, lying at the root of this perspective, assumes students to be completely passive. The liberal approach is right in drawing attention to students' activity and to the necessity of collaboration between teachers and students when forming the categories of understanding. But it seems to completely disregard the structural and functional limitations of the tasks of the system of education in a bourgeois society. The radical view of the issue of hidden curriculum does not offer the expected breakthrough either. Facing the omnipresent power of structures of dominance and class struggle, the process of education is forced to serve only adaptational functions with regard to prevalent structures of capital reproduction. The dialectical perspective sees the light at the end of the tunnel in the everyday practices of resistance in the education process. The problem is, however, that these practices are observable only at the micro level – and being often indefinable, tend to fall outside scientific generalisations.

According to definitions current in educational sociology, the effectiveness of education is the “extent to which the objectives of an education undertaking are

<sup>15</sup> As for the aporia of critical philosophy, see M. Paździora, *Filozofia społeczna Jürgena Habermasa jako próba przezwyciężenia aporii teorii krytycznej*, [in:] R. Frei (ed.), *Ścieżki filozofii krytycznej*, Wrocław 2008, pp. 103–112.

<sup>16</sup> S. Kemmis, *Teoria krytyczna i uczestniczące badania w działaniu*, [in:] *Badania w działaniu: pedagogika i antropologia zaangażowane*, H. Červinková, B.D. Gołębiak (eds.), Wrocław 2010.

achieved”<sup>17</sup>. Formulating teaching objectives of particular parameters (type, level, nature, and intensity of changes in awareness, habits, etc.) is another issue: described quite well in theory – starting from Bloom’s classic framework. The effectiveness of teaching, in turn, translates into “social subjects (individuals or groups) interested potentially or actually in education gaining various types of benefits”<sup>18</sup>. Using the notions of “effectiveness” and “utility” – both from the field of educational sociology – to study legal education, we wish to facilitate the analysis of what set of legal competencies the system of legal education equips one with. Of course, opinions on the range of competence desirable in the legal profession derive from a broader system of beliefs regarding the nature of social reality and the role of a lawyer. We can come across these opinions most often in official statements made by representatives of both Academia and Practice, as well as in official curriculum documents, graduate profiles, and course syllabi.

The disparity between Academia and Practice, and between the declared values of education and the social perception of education into consideration, raises a question: *What lets two divergent education profiles coexist in harmony and maintains the current condition of legal education as it is?* The official answer to this question is that legal education should be subordinated to the requirements of utility, which calls for different requirements for the effectiveness of education (official curriculum).

**Table 2.** Official curriculum

Legal competence (desired outcome)	LEGAL EDUCATION
SOURCES OF KNOWLEDGE	Conflict
CREATION PRACTICES	Reflexivity
VERIFICATION PROCEDURES	Utility
SUBJECT	Cognitive intentionality

Source: Own elaboration.

The unofficial explanation is a claim that legal education takes effect through standardisation of the requirements for effectiveness, which results in achieving effects that are unintended and actually contrary to what is intended at the level of utility.

<sup>17</sup> A. Boczkowski, *Skuteczność i użyteczność kształcenia jako kategorie socjologiczne*, “Przegląd Socjologiczny” 2009, 58(3), p. 93.

<sup>18</sup> *Ibid.*, p. 94.

Table 3. Hidden curriculum

Legal competence (real outcome)	LEGAL EDUCATION
SOURCES OF KNOWLEDGE	Imperio rationis / dogmatic interpretation
CREATION PRACTICES	Discipline
VERIFICATION PROCEDURES	Examination
SUBJECT	Cognitive reactivity

Source: Own elaboration.

## Conclusion: beyond the hidden curriculum

The theoretical perspective we have adopted does not come from a simple comparison of the models presented, but rather from realisation of the problems into which they have inevitably fallen. The main point of reference is the possibility to save the potential of research on the hidden curriculum in education and a hope for a shift in the existing practice. The initiated programme of research on the hidden curriculum in legal education at the Centre for Legal Education and Social Theory is to lead to creation of – as Giroux defined it – an alternative public space where openness to dialogue of all parties engaged in legal education will contribute to a thorough restructuring of this very education. As Apple put it: “I do not approach the issue of curriculum design as a technical problem to be solved by the application of rationalized models. Rather, following a long line of educators from Dewey to Huebner, I conceive of curriculum as a complicated and continual process of environmental design. Thus, do not think of curriculum as a “thing”, as a syllabus or a course of study. Instead, think of it as a symbolic, material, and human environment that is ongoingly reconstructed. This process of design involves not only the technical, but also the aesthetic, ethical, and political if it is to be fully responsive at both the social and personal levels”.<sup>19</sup>

We can name three attitudes to a hidden curriculum, which can characterise legal discourse and be adopted by legal educators. The first of them is denial – believing that a given problem does not exist. A more ‘refined’ version of this attitude may involve shifting responsibility, e.g. theoreticians shifting responsibility onto dogmatists and the other way round. Another reaction may be a will to change. But there is a problem with patterns and means. Where to look for models of appropriate legal education and for the means to follow these models in practice? A more

<sup>19</sup> M.W. Apple, *Official Knowledge. Democratic Education in a Conservative Age*, Routledge 2013, p. 138.

participatory education requires a greater level of involvement of both institutions and students. The only possible way to find out if it is feasible is practice. The third option is to experiment with education. Coming to accept that a given current situation leads to a discomfort among students and educators, and that it may have dangerous political consequences. Accompanied by admitting that there are no good examples of education to follow (except for the fabled US). The experiment needs to focus on building a critical community that would get involved in large-scale research on legal education and share the experience gained. Students themselves may play an important part here – their very presence in such a community makes it possible to prevent the restoration of fossilized hierarchies.