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JOLANTA JABŁOŃSKA-BONCA[1]

# "You Can Get Lost When Standing Still Too."[2] On the Ways of Educating Lawyers

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## Abstract

"You can get lost when standing still too." These words of Edward Stachura are a metaphor of the main proposition of the paper. It aims to suggest a way to "set the ball rolling" by designing the paths of education for lawyers anew, with civil society in mind, and not just thinking of the requirements of legal training. Lawyers with knowledge in the field of information technology, interdisciplinary lawyers for business, lawyers-guardians of the rule of law and justice all need study programmes to take their predispositions, goals, skills, and abilities – all at different levels – into account. The purpose of the article is to shed light on the extra-legal barriers hindering the taking of a practical step ahead. The author shows three main ways of educating lawyers and explains why they are so important and why they call for changes in study programmes. Next, the author points to the obstacles faced by reformers and suggests exploring their actual impact on education in law and the level thereof.

**Keywords:** Artificial intelligence, educating lawyers, interdisciplinary lawyer in business, lawyer-defender of justice, narcissism, illusory superiority, 'bullshitting', *homo zappiens*

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2 A translation of a citation by E. Stachura: "Stojąc w miejscu też można zbłądzić." E. Stachura, *Wszystko jest poezją. Opowieść – rzeka*, Warszawa 1975, p. 133. E. Stachura (1937–1979), poet, prose writer.

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JOLANTA JABŁOŃSKA-BONCA

# „Stojąc w miejscu też można zabłądzić."[3] O drogach kształcenia prawników

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## Streszczenie

„Stojąc w miejscu też można zabłądzić". Te słowa poety Edwarda Stachury stanowią metaforyczną tezę główną tekstu. Jego celem jest zaproponowanie sposobu „ruszenia z miejsca" dzięki nowemu zaprojektowaniu dróg kształcenia prawników dla społeczeństwa obywatelskiego, a nie głównie „pod wymagania na aplikacje". Prawnicy mający wiedzę z zakresu informatyki, interdyscyplinarni prawnicy dla biznesu, prawnicy – strażnicy rządów prawa i sprawiedliwości – wymagają, aby programy uwzględniały ich predyspozycje, cele, umiejętności i to na różnym poziomie. Celem artykułu jest też wskazanie barier pozaprawnych utrudniających w praktyce zrobienie skutecznych kroków naprzód. Autorka wskazuje na trzy główne drogi kształcenia prawników i uzasadnia, dlaczego właśnie one są ważne i dlaczego wymagają zmian w programach studiów. Następnie wskazuje na bariery, które utrudniają prace reformatorskie i proponuje, aby zbadać, jaki mają faktyczny wpływ na poziom i sposób edukacji prawniczej.

**Słowa kluczowe:** sztuczna inteligencja, kształcenie prawników, interdyscyplinarny prawnik w biznesie, prawnik obrońca sprawiedliwości, narcyzm, złudzenie ponadprzeciętności, „wciskanie kitu", *homo zappiens*

[3] Słowa E. Stachury. E. Stachura, *Wszystko jest poezją. Opowieść – rzeka*, Warszawa 1975, s. 133. E. Stachura (1937–1979), poeta, prozaik.

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## Introduction

The current crises suffered by systems of justice of many countries, populism, and the rise of post-truth have all had a major impact on the condition of education in law.[4] The relationship is of a bilateral nature: higher education institutions (HEIs) find it difficult to educate lawyers in a way that would be appreciated by various stakeholders as a way that addresses the specificity of the evolving market of legal services in e.g. the business sector utilising automation, the development of digital technology, and artificial intelligence, and that would contribute to the strengthening society's trust in lawyers.[5]

As a famous Polish poet named Edward Stachura said, "you can get lost when standing still too." I believe that when it comes to designing tertiary education programmes, Poland has been "standing still" for at least 30–40 years. This is a problem many other countries are facing as well.[6] The situation in Poland – as proven by the very serious axiological and political conflicts in the legal environment – favours "getting lost".

This text aims to suggest a way to "set the ball rolling" by designing better education for lawyers with civil society in mind, and not just thinking of the requirements of legal training. Another aim is to signal some of the extra-legal barriers hindering the progress to be made, with these barriers being disregarded in the legal environment.[7]

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4 The paper had no sources of financing.

5 Cf. e.g. V. Pivovarov, *Future Law School, What Does It Look Like*, "Forbes" 12.02.2019, https://www.forbes.com/sites/valentinpivovarov/2019/02/12/futurelawschool/#659056a96a84 (access: 20.12.2019). The scope of this paper does not include issues concerning the organisation of law apprenticeship, "personal learning clouds" lifelong learning pursued through courses and postgraduate programmes, and other successful examples of reforms in some areas of education (e.g. legal clinics, street law programmes, etc.), forms of education. Cf. ibidem; N. Spencer, *Creating the 'lawyer of the future' in times of disruption: the power of building a new world of on-going, workplace-focused education*, https://www.law.ox.ac.uk/unlocking-potential-artificial-intelligence-english-law/blog (access: 20.02.2020).

6 The text contains general theses concerning typical situations in Western countries, but includes also remarks on the nature of education in Poland.

7 Disregarded because they originate mainly from psychological and social sources, and lawyers usually tend to seek the causes of difficulties in formal structures, political systems, and the content of law.

There is no doubt that there is one very clear global trend of the actual changes taking place at higher education institutions, involving attempts to adjust study programmes and requirements set to academics to extra-academic criteria (the problem of the "academic industry"), but the social effects observed so far, if this is the only such trend, are questionable to say the least.[8]

It is a fact that the attempts to transform higher education institutions into "academic enterprises" have resulted in the "capitalisation of knowledge" gaining precedence over values like: academic autonomy, objectivity, community, or disinterestedness.[9]

It is a de-formation of the minds of students and young researchers – say many dissatisfied scholars. Discussions on the subject matter have been going on for years. They were also quite animated in Poland in the inter-war period.[10]

Study programmes associated with scientific programmes are currently subordinated to the following idea: a graduate needs to be employable, research results need to be innovative as well as quickly yield tangible effects in industry and contribute to changes in social life.[11]

The problem is that there is no consensus as to what "an employable graduate" really means. The opponents of this axiology dominating the domain of studies in law, an ideology foreign to the traditional Humboldtian idea (a law graduate has to reason heuristically, be creative, and able to provide constructive feedback, and research needs to be cognitively significant from the point of view of the progress in science, and does not have to appliable right away), realise that education of such type is not currently possible (with some exceptions) due to the mass nature of studies in law. They cannot therefore be elite. Plus, they fail to keep up with the changes involved in globalisation, informatisation, and other new technological developments (which is the case of e.g. Poland). In addition to the above, Poland is currently experiencing a heated political battle over the "hearts and minds" of lawyers and a reform (or "deform") of the system of justice, but other countries have their own problems too. England and Wales, for instance, are debat-

[8] There is an extensive body of international literature on the subject matter, e.g. Krimski, cf. also: J. Jabłońska-Bonca, *Naukowiec w grze o władzę nad poznaniem. W świetle ustawy 2.0.*, "Krytyka Prawa" 2019, 4.

[9] S. Krimski, *Nauka skorumpowana?*, Warszawa 2006; cf. also: J. Jabłońska-Bonca, *Naukowiec w grze o władzę...* and eadem, *O szkolnictwie wyższym i kształceniu prawników*, Warszawa 2020.

[10] Cf. e.g. J. Derrida's remarks in: *Uniwersytet bezwarunkowy*, Warszawa 2005; cf. also: H. Izdebski, *Ile jest nauki w nauce?*, Warszawa 2018

[11] S. Krimski, op. cit.

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ing an innovation in the form of the introduction of the "Solicitors Qualifying Examination".[12]

In any case, law students from many countries criticise their study programmes, considering them boring. Likewise, a big part of academia is not happy with a situation that necessitates commercialisation and requires research to be conducted with "international visibility" in mind. Employers are not happy with the skill set of law graduates either.[13]

The vast majority of the environment of law theoreticians and practitioners know the main reason behind this state of affairs: the mass nature of studies we adopted in the Western world several dozen years ago – and around 30 years ago in Poland – makes education hardly elite. Also, state budgets are insufficient to finance research, the results of which cannot be turned into commercial products or services quickly. This is something virtually every European academic is aware of. They know that now they need to be experts, not scholars. And there is no "unconditional university" any more.[14]

Academic freedom is conditional. There is no homogeneous ethos of science either. Studies in law, with some exceptions, do not serve currently to produce social elites – also in Poland. This is not elite education anymore; it is mass education now. The problem is common also in Denmark, the Netherlands, and Germany.[15]

Are we really "standing still" despite so many changes taking place? And if we are, why is it so?[16] What should be addressed first? What are the challenges *hic et nunc*?[17]

We are "standing still" because, among others, the authorities of higher education institutions and of the state are unable to decide: whom we should actually educate in law given the highly dynamic changes taking place in our environment, i.e. court lawyers or also lawyers who will pursue other career paths; how often should study programmes be changed if we know that the average lifetime of a scientific truth is around ten years[18]; what the essential foundation of a law gra-

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12 N. Spencer, op. cit.

13 A. Młynarska-Sobaczewska, *Nuda w pałacu sprawiedliwości. O edukacji prawniczej w Polsce*, "Prawo i Więź" 2013, 3. More on stakeholders and their attitude to studies in law: J. Jabłońska-Bonca, *O szkolnictwie...*

14 J. Derrida, op. cit.

15 W. Schäfke-Zell, I.H. Asmussen, *The Legal Profession in the Age of Digitalization*, "Utrecht Law Review" 2019, 15(1), https://www.utrechtlawreview.org/articles/10.36633/ulr.454/ (access: 20.01.2020).

16 The programme changes taking place in Poland for years have been only adjustments; there has been no evolution or breakthrough in terms of the content and form of education.

17 I am dealing here with selected issues, more thereon – cf. J. Jabłońska-Bonca, *O szkolnictwie...*

18 J.-C. Carrière, *The ultimate in stupidity is to consider oneself intelligent* (translated), in: a multi-author publication edited by J.-F. Marmion, *Głupota. Nieoficjalna biografia* ("The Psychology of Stupidity"), Wrocław 2019, p. 303.

duate's knowledge and skills is to let them pursue the chosen career path successfully, or change the course if necessary; what the extra-legal barriers to changes are and where to look for them.[19]

## Whom should we educate in law to "make a move"?

In his book entitled *Dystans do roli w zawodzie prawnika* (2019), Przemysław Kaczmarek discusses three very interesting figures of legal profession.[20]

These are: lawyer-butler, lawyer-guru, and lawyer-man-of-the-borderland.[21]

"What is crucial in the professions of both a butler and an advocate is loyalty to their client, eagerness to take care of and represent the principal's interests."[22] A butler is expected to carry out all orders of those whom they serve without judging them.

A lawyer-guru has a vocation, treats their profession as a service to society, fights for justice and public good. They have broad substantive and moral knowledge, they are righteous and able to judge situations objectively. They understand that their legal practice requires the decisions made to be anchored in the past, the present, and the future. History and tradition are important to making fair, just decisions.[23]

A lawyer-man-of-the-borderland is a "hero, swindler, and helper." An advocate is the best personification of this figure. It is a person who builds their complex identity based on the various social practices in which they participate.[24] A person who skilfully adapts to new roles. Able to bring the sub-world of politics and the sub-world of law together. A jurist open to other opinions than those construed by the culture they are part of. Meta-disposed to assume and abandon various roles.[25] Skilfully mediating between different normative systems. A lawyer-hero is self-confident, competitive, energetic, intelligent, representing noble goals and principles,

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[19] Let me pass over the obvious underfunding of science. I am not addressing lifelong learning either – this is an important subject to be covered in a separate article.

[20] P. Kaczmarek, *Dystans do roli w zawodzie prawnika*, Warszawa 2019, p. 56. The typology concerns mainly advocates, but is useful in a broader context as well, as I will show below.

[21] Detailed characteristics – ibidem.

[22] Ibidem, p. 58.

[23] Ibidem, p. 61.

[24] Ibidem, p. 64.

[25] Ibidem, p. 65.

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successful. A lawyer-helper is cooperative, tolerant, accommodating, just, honourable, law-abiding.[26]

If P. Kaczmarek is right, do we make the matter of the skills and competencies essential to performing each of the said roles sufficiently clear to law students in Poland? Do our study programmes consider the ways of achieving the cognitive and affective goals connected with these roles to a sufficient extent? I believe not. And this is the main reason of our "standing still".

What can be done then? Here are some remarks on the ways to clearly plan the programmes of studies in law of relevance in the 21st century. They offer a good starting point, combined with a presentation of certain extra-legal barriers – with a focus on those that can be overcome or passed by. The 21st-century studies in law should not be homogeneous – neither in terms of their subject matter nor in terms of the assumed level of the skills they guarantee; they should be hybrid. They should also be carefully designed and conducted with the aim to offer different levels of legal competence.[27]

## Lawyer, "artificial intelligence", and digital technology

The views on the notion and significance of "artificial intelligence" (AI) are divided in academia. There is rather no doubt that robots will play an increasing role in decision-making processes and that algorithms are becoming more and more common in many areas of our life. Modern computers' computing power, the random access memory at their disposal, and their ability to make calculations instantly are still not "intelligence" in the traditional understanding.[28] They are a metaphor. Machines do not think. They are not able to transfer skills nor are aware of what they are doing.[29] "Machines are unable to transfer acquired skills from one field to another, while such a transfer is one of the fundamental mechanisms of human

[26] I am not covering the 'swindler' figure here as it is not relevant to the purpose of this paper.

[27] According to Bloom's taxonomy, the ability to pursue higher-level education depends on having acquired lower-level knowledge and skills. The cognitive sphere consists of six levels: knowledge, comprehension, application, analysis synthesis, evaluation. The emotional sphere is: perception, telling, valuation, organisation, characterisation. Due to the mass nature of and open access to studies in law, not all law students are able to reach and pass through all these levels.

[28] Cf. a conversation with J. Skałbania, a software developer, www.wnp.pl, 21.02.2020, "20 Piętro" podcast, season 2, episode 1, A. Rybiński, *Demokracja zanika i zastępuje ją algokracja*..., cf. also numerous statements by A. Przegalińska, e.g.: *Ludzie kochają AI albo się jej boją*, www.cyfrowa.rp.pl/technologie; www.msn.com/pl-pl/bruksela-przykęci-stubę-sztucznej-inteligencji (access: 19.02.2020).

[29] Cf. the opinion of J. Skałbania, a Polish software developer, in: P. Wiśniewski, *„Zabił" go Facebook, a i tak odniósł sukces. Polski programista podważa wiarę w sztuczną inteligencję*, ibidem.

intelligence."[30] They are therefore not "intelligent" in the standard sense. This is a terminological remark I would like to make in the light of my using this term further in the paper.

The European Commission noticed the problem and published its "White Paper on Artificial Intelligence" on 19 February 2020, which covered the possible changes enabling a trustworthy and secure development of artificial intelligence in Europe, "in full respect of the values and rights of EU citizens."[31] It suggested creating a legal framework concerning artificial intelligence, based on "excellence and trust."[32] "The ecosystem of trust" is to ensure AI's compliance with EU rules, including with the standards protecting fundamental rights and consumers' rights, in particular for AI systems that pose a high risk of improper use and misuse.[33]

Poland is working on its own AI strategy for 2019–2027.[34] The political goals are as follows: Poland is to become one of the 25% best AI development centres in the world, and by 2025 it should have over 700 companies working on this technology. It is estimated that it would take PLN 10 billion to finance the necessary investment projects by 2023. Studies conducted by the Polish Industrial Development Agency show that we will need around 200 thousand AI specialists by 2025. But the path towards this destination is long and uncertain. Polish enterprises have not yet reached the level of Western businesses in terms of data processing and analysis, comprehensive process management, and internal system integration.[35]

Automation will most surely take over an increasing number of tasks performed so far by lawyers alone in courts, administration, and law firms.[36] In administration, lawyers are already working with a range of software used to handle customer matters. There are more and more automated legal services offered online, e.g. automated income statements, tax form generators.

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30 J.-F. Dortier, *Typologia głupców*, [in:] J.-F. Marmion (ed.), op. cit., p. 29.

31 https://cyberdefence24.pl/ue-prezentuje-biala-ksiege-rozwoju-europejskiej-sztucznej-inteligencji (access: 19.02.2020).

32 The paper has given rise to a lot of controversy because an overly narrow legal and ethical framework in the EU may let American and Chinese technologies develop without limits, while Europe is going to be stuck in rigid structures.

33 The "White Paper" will be submitted for public consultation by 19 May 2020. The Commission will take further steps based on the received feedback.

34 https://cyfrowa.rp.pl/technologie/44421-unia-bierze-sie-za-regulowanie-sztucznej-inteligencji? (access: 20.02.2020).

35 By the time the text is published, the Polish strategy will probably have been announced. Cf. also: P. Szygulski, *Polskie firmy nie radzą sobie z danymi. To pożera ponad połowę etatu pracownika*, https://www.wnp.pl/tech/polskie-firmy-nie-radza-sobie-z-danymi-to-pozera-ponad-polowe-etatu-pracownika,373691.html (access: 20.12.2019).

36 Cf. recently e.g. R. Susskind, *Online Courts and the Future of Justice*, Oxford 2019.

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In order for customers to be able to make use of them, they should guarantee at least the same level of legal certainty as the services rendered by trusted lawyers in person. For this to be possible, lawyers should be committed to constantly feeding "machines" with exhaustive and valid legal information. This should be handled by lawyers with a detailed knowledge of law, understanding their actions when working with software developers. It is also necessary to ensure professional legal control of the technology behind the designed processes supporting decision-making (e.g. with the involvement of specialist agencies, accreditations, licenses). These processes may be designed in a way to limit the constitutional rights of individuals, pose threats in the domain of data protection, or deform the legal obligations of an individual – imperceptibly to a person without the right digital proficiency.

It is also expected that developing AI bots may soon "revolutionise" scientific communication, especially scientific (including legal) journalism.[37] Perhaps AI bots will be able to write and edit texts containing legal scientific information.

In the case of lawyers-academics as well as practitioners working for state bodies and in business, there is a new serious problem of algorithmic accountability. How to, for instance, settle the matter of copyright if SciNote's AI manuscript writer has already "written" over 100 scientific papers?[38] Or who holds the truth if Science Surveyor uses algorithms to describe scientific literature covering a given subject?[39] How to protect personal data?

Given the dynamic development of this area, we need to provide for interdisciplinary education of lawyers-IT specialists (and software developers) or IT specialists specialising additionally in law.[40]

Law should be studied by young people building their complex professional identity in a conscious manner, based on legal skills at all six levels of Bloom's taxonomy, as well as on IT and software development skills at least at the level of comprehension.[41] People who will be able to adapt to different complex roles. To bring together the sub-world of information technology (and software development)

37 M. Tatalovic, *AI writing bots are about to revolutionise science journalism: we must shape how this is done*, "Journal of Science Communication" 2018, 18, https://jcom.sissa.it/archive/1701/JKOM_1701_2018_E%20downl.%2010 (access: 20.12.2019).

38 https://sourceforge.net/projects/scinote-web/ (access: 20.12.2019).

39 Science Surveyor takes advantage of the latest algorithms to describe scientific literature on a given subject. By making use of the abstract of and citations from the reviewed article, Science Surveyor provides journalists with information about the article in the form of a few reader-friendly visual representations, https://science-surveyor.github.io/ (access: 20.12.2019).

40 A big problem here is the issue of remuneration. Good IT specialists and software developers will not be willing to work with lawyers in the domain of teaching for the rates offered by higher education institutions.

41 M. Tatalovic, op. cit.

and the sub-world of law. Jurists open to discussion with IT specialists and software developers. Technologically aware. Able to mediate or negotiate in and between various normative systems. They are therefore, as I believe, people of the qualities ascribed to lawyers-people-of-the-borderland (“heroes” or “helpers”), but many of them should also display the merits of lawyers-gurus, including in particular, interpersonal skills.

What should be done in order to attract people interested in digital technologies and programming to study law? There are many ways, actually. For instance, we could engage HEI employees and law students in events called hackathons (programming marathons). These are meetings addressed to software developers, where IT specialists, graphic designers, and interface developers get a task to deal with: to solve a specific design-related problem.[42]

The forms of education should be changed as well. And I do not mean some broad utilisation of e-learning in education in law because this is not the way to teach lawyers analysis, synthesis, and valuation, but only simple remembering.

Here are a few other examples of AI being used in educating lawyers in the US. At least 10% of American law schools teaches knowledge using AI.[43]

For example, there is TEaCH LAW Hub established at Northwestern University Pritzker School of Law, with rooms equipped with large touchscreens and modern videoconferencing tools. Cleveland-Marshall College of Law of Cleveland State University has launched its centre of technology running e.g. professional courses in cybersecurity. One of the partner companies of the Duke Law Tech Lab of Duke University School of Law has created an AI system able to predict whether a given bill is going to “pass” the US Congress’ session with an accuracy of 65%.[44]

In Great Britain, “virtual law firms” are established at universities (e.g. at Exeter University’s Law School).[45]

## Legal professions with low and high potential for automation and digitalisation

There are also other legal professions where AI will not be very useful even in the future because it is the lawyer who needs to understand the problem first, redefine

[42] A hackathon lasts 1–2 days. Its participants become familiar with the task only on the day when the competition begins. Assessment involves only the work performed during the event. Such events are a good opportunity to look for the right future students of law.

[43] Information based on: V. Pivovarov, op. cit.

[44] Ibidem.

[45] N. Spencer, op. cit.

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a given social or economic conflict and the relevant issues to turn them into legal problems. What is significant in the process of solving such problems is emotional aspects, intuition. What matters is heuristics, empathy, and understanding the customer. "Legal thinking is based on modern the utilisation and integration of three cognitive mechanisms – intuition, imagination, and reasoning in the language."[46]

In many legal professions, the most important thing is to treat the profession as a service rendered to citizens, to society, and being aware of the fight for justice and public good. Still, we can observe a small degree of automation of some tasks carried out so far by such lawyers.[47]

In 2017, McKinsey performed careful analyses and calculations for legal professions in the US in order to determine which legal (and related) professions had big potential for automation.[48]

The analysis of the findings for the US in many ways corresponds to the theses of European researchers, Werner Schäfke-Zell and Ida Helene Asmussen, as set in their *The Legal Profession in the Age of Digitalization*.[49] I believe that the general trends covered in McKinsey's report of 2017 are universal and true for Poland as well.

Below is a highlight of a clear general trend. The fact that the education systems in the US and continental Europe differ and that the competencies are grouped differently among the professions is of no major significance here. In general, there are over 9,000 people pursuing legal professions in the US. This group includes: lawyers (approx. 587,000), paralegals and legal assistants (approx. 259,000), title examiners, abstractors (approx. 34,000); judges, magistrate judges (approx. 14,000); administrative law judges (approx. 9,000); court reporters (approx. 9,000); judicial law clerks (approx. 6,000); arbitrators, mediators (approx. 3,000).[50]

According to McKinsey's analysis, an average of about 40% of activities performed by lawyers (and related professions) can be automated in the nearest future.

The report suggests also that the potential for algorithmisation and automation highly differs among legal professions. About 69% of simpler activities, carried out by paralegals and legal assistants, can be automated; in the case of judicial law clerks, the value is 67%.

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46 B. Brożek, *Umysł prawniczy*, Kraków 2019, p. 17. More on the matter.

47 On the architecture of a lawyer's mind – see: ibidem.

48 McKinsey Global Institute, *A Future That Works: Automation, Employment and Productivity*, January 2017 https://public.tableau.com/profile/mckinsey.analytics#!/vizhome/AutomationandUSjobs/Technicalpotentialforautomation (access: 10.01.2020).

49 W. Schäfke-Zell, I.H. Asmussen, op. cit., pp. 67–79.

50 Data taken from the said report; table: Top 10 occupations sorter by FTEs of potentially automated activities. Names of the professions are kept as in the source.

The automation forecast does not imply that lawyers do not (will not) have to supervise the performance of such activities even though they could be managed by persons without legal background when automated.

It is the first new way of "taking a step forward", underestimated so far in Poland: lawyers should focus on studies which will grant them qualifications enabling them to professionally supervise and make practical use of automated legal services in the near future.

In its "White Paper", the European Commission underlines that AI systems must be transparent. The user should be aware of the way in which they are used, and they should be supervised by a human. And this is exactly humans, not machines, who should make the final decision.[51] The purpose of this text, written before the publishing of the White Paper, is to e.g. justify the claim that these humans should be lawyers.

If study programmes disregard this issue, the automation of the processes of making legal decisions or decisions grounded in law will become completely incomprehensible to lawyers. They will lose control over this domain. This is actually happening as we speak. They should learn how law and algorithms go together already at the stage of their studies. Appropriate training in this area is of great importance because creativity and intuition result from practice.

Dutch researchers, Werner Schäfke-Zell and Ida Helen Asmussen, see this problem and wonder whether it is possible to go even further and prepare lawyers and organise the measures of control over digitalisation in a way to consider a possibility of this trend (i.e. automation control) becoming monopolised by lawyers.[52]

On the other hand, there is a very clear inclination to reduce the demand for lawyers who have dealt with simple activities so far. Those who remain and keep on managing the system will be handling legal platforms of different levels of complexity. But we may also see development in a different direction: it will be IT specialists who will specialise in the informatisation of law.

In order to remain employed despite the progressing automation, lawyers will need skills enabling them to communicate with software developers, IT specialists, etc. and choose a path of simple activities or acquire higher-tier competencies (Bloom's level six) which will let them "escape upwards" and get prepared to hold and be promoted to positions from the "lawyer-guru" category.

The automation of simple legal services also leads to a significant social phenomenon: the demystification of the social conviction of the "exceptionality" of lawyers'

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51 https://cyberdefence24.pl/ue-prezentuje-biala-ksiege-rozwoju-europejskiej-sztucznej-inteligencji (access: 10.02.2020).

52 W. Schäfke-Zell, I.H. Asmussen, op. cit., pp. 65–79.

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qualifications. Since a computer can do their job, why is it so special? There is yet another social issue: the trust in the automatically made legal decisions will be lower if actual lawyers are not able to explain the reasons behind such decisions. This will translate, in turn, into lawyers becoming considered less trustworthy.

Meanwhile, jobs requiring exceptionally high moral qualifications, communication skills, thorough substantive knowledge, critical intelligence, something we might collectively refer to as "the art of law", performed by traditional "lawyers" (mostly advocates), can be automated only in 23% of cases; in the case of judges and magistrate judges, it is 21%; administrative law judges – 26%; court reporters – over 15%.

The automation potential in the case of the work of arbitrators, mediators is definitely the lowest, amounting to only 11%.[53] This means that advocates, judges, mediators, and negotiators will not take much advantage of automation, AI, robots, and algorithms. They can feel safe about the future of their employment too. What are the implications for study programmes? How to transform our study programmes to give law students sufficient preparation to assume roles which require knowledge and skills in the said areas? There are two ways for an IT-savvy lawyer: the "high-profile" way and the "low-profile" way. And study programmes should take it into consideration.

## An interdisciplinary corporate lawyer

The second group of lawyers-people-of-the-borderland with "guru" qualities is interdisciplinary corporate lawyers. They should also be able to bring together two, or even three sub-worlds: business, law, and – in the case of state-owned companies in Poland – politics. They are jurists open to discussion with managers, engineers, management boards, employees, trade unions, politicians, etc. Able to skillfully mediate or negotiate within and between various normative systems the said groups function in.

A lawyer who wants to be successful in business in the 21st century needs to understand their role and the function they perform. Thanks to studies in law, such a lawyer should be able to understand the different types of interaction and the customs of the business world. Most of all, they should not be "butlers" in the sense referred to by P. Kaczmarek quoting passages of Kazuo Ishiguro's *The Remains of the Day*. The novel's protagonist, Stevens, is a butler committed to upholding the dignity of his profession: "And let me now posit that 'dignity' has to do crucially with a butler's ability not to abandon the professional being he inhabits."[54] A butler does

[53] Data source: ibidem; McKinsey report.

[54] After: P. Kaczmarek, op. cit., p. 56.

not judge the actions of the one whom they serve, they become impartial, following the obtained orders without questions, without influencing the decision-maker in any way.

A lawyer in business is no longer a mere participant of a clearly defined process based on legal principles; they become a co-creator of business strategies intended to yield the maximum returns to the stakeholders of the process, based on a set of defined risk parameters (within the limits of law).[55] They may not follow orders passively; they need to be creative, teaming with managers to seek for optimal business solutions, without limiting oneself to formal legalism.

The role of a lawyer is to protect businesspeople against decisions which could lead to a violation of law of any sort. Such a lawyer should 'stand by' the manager, be involved in key business processes, understand the objectives of and the constraints faced by a company, make real-time decisions to recommend certain actions or submit a given subject matter to another lawyer (an internal or external specialist) for analysis if the recommendation needs further looking into or additional security measures in the event of a dispute. The main job of a lawyer is to offer managers a broader perspective, provide a creative evaluation of the application of certain legal tools involved in making decisions regarding business operations, evaluate the risk involved in the application of such tools, and offer their support in the selection of the most effective way to proceed. A lawyer is there to help answer the question "how can this be done?" and not "is it legal?".

They are therefore not like a butler because they do not become impartial and their loyalty is not about not judging the decisions of their manager. On the contrary. Like a manager, apart from calculation skills, they need to be well familiar with the sector in which they operate, understand the competition dynamics, know their close and distant environment, be able to recognise short- and long-term trends and to estimate the risk involved in particular development initiatives. Be a partner in the development of the optimal course of action.

Business is a battle for fractions of percentages of profit margin, a fast pace of decision-making, a frequently growing flexibility of the offered solutions. Business is not just about simple purchase and sale transactions or contracts for building, say, a warehouse. It is increasingly common to see even simple transactions involve financial, insurance, or warranty instruments. This is because business works on an ASAP basis, we get to know our business partner less and less often, and business risks and transactions shift more and more often to the virtual world, taken and made using remote communication tools such as phones, video calls, messaging

[55] In this passage (concerning the function of lawyers in business) I am making use of some theses formulated in my paper: J. Jabłońska-Bonca, *O szkolnictwie...*; more on the matter therein.

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applications, e-mail. Legal structures – and the lawyers who create them – need to keep up with this progress.

It is necessary to be able to "read" people and situations quickly, to immediately adapt one's own behaviour, display a high level of communication and persuasion skills. You need psychological skills – intuition and intellectual illumination, which come from experience and training.

Legal knowledge and abilities are the foundation, but solving problems requires imagination, intuition, synthesis, valuation, and creativity, which is something students will not acquire through traditional "transmission-based" unilateral lectures (in the form of the teacher's monologue) or by pursuing an e-learning course in civil law, tax law, economic law, or companies law nor by filling in tests with closed-ended questions when taking their university entrance or legal training examinations.

"PCP – piped up the president of the management board of a very large company when I asked him [...] about the qualities he was looking for in the lawyers he wanted to work with. 'PCP, meaning: P-proactivity, C-creativity, P-positive attitude'. He went on to add: conciliation, communicativeness, pragmatism, the ability to work in a team, punctuality, good understanding of business."[56]

What is important in education in law is to make students aware of their being somebody bridging law and business, and sometimes law and politics, and of the evolving and the increasingly greater role and challenges they will have to face in the future. It is also crucial to determine the scope of knowledge essential to future managers as well as the limitations and needs they will experience – to make students aware of the need to develop complementary skills and fields of knowledge from the start. And to help them understand that simple legal activities will be taken over by computers while they should concentrate on other types of tasks, on analyses, syntheses, critical reviews, heuristics.

## Lawyer – defender of human rights, guardian of justice, the rule of law, and public affairs

Educating the third group of students, meaning those who would like to join the ranks of judges, advocates, advisers, high officials in public administration and audit, should focus not only on searching for data, knowledge, and remembering but also on analysis, synthesis, and the critical assessment of law and the context of its functioning.

[56] Citation: eadem, *Trzeba inaczej uczyć. Kilka uwag o homo zappiens i miękkich umiejętnościach komunikacyjnych prawników*, "Krytyka Prawa" 2018, 2.

This group consists mainly of lawyer-gurus, intellectuals, or at least those who understand the importance of the part they play in civil society. The programme of education does not correspond to the concept of educating at an "entrepreneurial university", to the mass education offered to lawyers. Instead, it is much more similar to the concept of university as proposed by Humboldt.

Only about 40 years ago, a university in Europe was a place of privilege, accessible only to those searching for the truth, conducting research, teaching others, committed to acting for impersonal, non-instrumental values such as the development of science. Such a university granted freedom of research, unlimited rights to disseminate research findings, without subordination to any internal interests. Scholars did not aim to please stakeholders, but to focus on cognition. The effects of their work were assessed according to internal criteria of scientific discoveries.[57] The assessment did not depend on a "price label". This made universities different from institutions dealing with industrial science.

A university was a symbolic space "closing the past and the future", a sort of "archive of truth." It was not as accessible as an ordinary public space. An individual who wanted to access this space had to fulfil many requirements.[58] In such conditions it was possible to educate intellectuals, working for the present, drawing from the past, and thinking about the future. Now, in many European countries, virtually any upper-secondary school graduate can study law. And this is the case of Poland as well. Not every upper-secondary school graduate may become a lawyer-"guru", treat their job as a service to society, fight for justice and public good. Many law students have no background to understand that the significance of legal decisions and decisions in law requires anchorage in the past, the present, and the future. It is not merely knowing how to solve a test.

According to McKinsey's studies on the potential areas of automation of legal professions, departing from the Humboldtian model of education in the case of this group is a mistake. The vast majority of activities performed in legal professions (i.e. a judge, an advocate, a business or political legal adviser, a mediator, a high-rank official in public administration) may be carried out in the future only by creative, highly-qualified lawyers of high ethical standards, well-familiar with history and cultural context, with a set of particular personality traits, with good communication skills, inspiring trust among citizens. AI does not think, understand, or feel. It will not replace humans in this respect.

Professional ethics, communication talents, imagination, intuition, a heuristic approach to problems, knowledge of social interactions, empathy, profound know-

57 Cf. H. Izdebski, op. cit.

58 More on the matter: J. Jabłońska-Bonca, *O szkolnictwie...*

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ledge of law are and will continue to be the foundation of solving complex problems. W. Schäfke-Zell and I.H. Asmussen claim that in the case of lawyers who are state officials or mediators, the ability to communicate clearly and in a solution-oriented manner with non-lawyers, to persuade and counter eristic devices, and to demonstrate professional ethics and virtues are and will continue to be crucial in the light of the advancing digitalisation.[59] They also note that "ADR may prove to be a shelter for lawyers."[60]

Studies should offer more history, philosophy of law, sociology of law, psychology of law, state theory, etc. Students should also practice using their knowledge and imagination, and understand why it is important. Perhaps the research higher education institutions established in accordance with the new Act on Higher Education and Science will become the beginnings of elite higher education institutions, offering some sort of return to Humboldt's ideas.

## Why can we get lost? Selected extra-legal problems[61]

### The situation in Poland

Study programmes will never offer students the skill sets that will make them ready to apply the acquired knowledge in practice right after they graduate. Practical tools can be developed only at the stage of early employment, but these tools will work as expected only if the foundation built during university time is not frail.[62]

But there are other reasons for difficulties too. Developing "high skills" has been interpreted (in Poland) often as 'case-based' teaching by lawyers-practitioners without a scientific and teaching background. It will not be fully effective because analyses, syntheses, and critical evaluation should be carried out not only with qualified teachers but also with academics specialising in particular fields of law, with good preparation in terms of methodology, rhetoric, and eristic, knowing how to teach interpretation. This is about considerable labour to be performed with students when exploring specific legal problems at all levels of the cognitive and emotional sphere of education, showing them that the future is in the hands of lawyers-gurus and lawyers-people-of-the-borderland. This calls for study pro-

59 W. Schäfke-Zell, I.A. Asmussen, op. cit.

60 Ibidem.

61 There are more barriers, of course, but in this paper I am focusing only on, as I believe, the most important psychological-social barriers.

62 More on the programmes: J. Jabłońska-Bonca, *O szkolnictwie*...

grammes to force students to carry out complex analyses, syntheses, and evaluation of law and facts expressed in line with the principle of interpretation and art of argumentation.

Mass education has significantly decreased the chances to educate social elites.[63]

Moreover, for political reasons and because of neglect in education in law, the legal discourse in Poland has recently become a "battle of authorities", *per fas et nefas.* Artur Schopenhauer would be happy. All of his eristic devices are currently being used in the media discussions on law. Also, all measures described by Jerzy Stelmach in his *Sztuka manipulacji* are being applied as well.[64] To quote J. Stelmach himself, "In our civilisation, we can see a strong presence of the 'winner's mythology', where the winner is never asked about what's ethically right, but only about their performance, the result, the score. [...] Many are convinced that manipulation is something normal, common, an element of our daily life, some ability that lets us survive in this increasingly complex world."[65] Unfortunately, for reasons I cover below, the thesis perfectly illustrates the situation of the Polish legal environment.

Until the end of 2015, the legal authorities in a stable, neo-liberal legal and political system legitimised and reinforced one image of legal reality. They were 'seated' in a legal, cultural centre that was either difficult to access or inaccessible at all when proposing other legal topics, subject matters, and views because those topics, subject matters, and views were not considered relevant in this environment. In the Poland of 2020, one can easily notice two centres of legal axiology and the axiology of law, each based on a different understanding or a clear demonstration (I am not sure if tantamount to inner approval, though) of dissimilar comprehension of many fundamental values involved in the rule of law and justice.

It exerts a direct impact on the education of the future generations of lawyers each and every day. It is actually reasonable to elaborate on how to talk with students about this situation – and to talk with them at all if they themselves show no interest in it.

Authorities from each side decide on taboos in the domain of the discussion on law, create "barriers to entry" (to certain conferences, symposia, meetings, which are no longer open, in line with the "academic education" principles), successfully eliminating the possibility to address issues which are inconvenient for the status quo. They try to put an end to discussions, mainly to protect the paradigms of research

63 This was noticed already 60 years ago: R. Dahrendorf, *The Education of an Elite: Law Faculties and the German Upper Class*, International Sociological Association (ed.), Transactions of the Fifth World Congress of Sociology, 1964.

64 J. Stelmach, *Sztuka manipulacji*, Warszawa 2018.

65 Ibidem, p. 13.

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and strategies of creating and applying law they have adopted. The current pressure on the permanent institutionalisation of science, standardisation of procedures, uniformization, and the ethos of control all favour this approach. It is easy to submit oneself to academic red tape. Yet, it is important to try to talk and listen to everyone.

Finally, I would like to highlight several universal psychological and sociological problems which I believe should be taken into account here and now in the education of lawyers, to a much greater extent than before. They should be discussed in the legal environment with social psychologists. The working hypotheses I propose are based on the universal results of scientific social studies and on my own teaching experience.[66] It is necessary to verify these hypotheses for Poland and think how they actually affect the study programmes and the learning outcomes offered to law students. I believe they do have an impact and that they are a real threat to trust in the relationships between lawyers, citizens, and academic teachers. They harm the trust between the parties, destabilise the attitude towards the truth, and often lead even to losing faith in the truth. For a democratic state, these threats are significant, and lawyers losing the trust of society are the core of the problem.

## Problem one: the “me” generation

The liberal principles and customs of society and its development, the approval of the value of pluralism led to a situation in which at the end of the 20th century, the traditional community values and traditions became uncertain. Individuals “broke away” mentally from communities. They decided it was better to focus on one’s own achievements and success, and on making one’s life convenient. Personal branding has become very important.[67] The marketing strategies executed *offline* are often integrated with those involving building a personal brand *online.* “Narcissism”, also referred to as “the ‘me’ generation”, less noticeable until recently, has become much more apparent. Narcissism is about fantasising, megalomania, and self-promotion, combined with a need for admiration. It is strongly connected with the popularisation of the Internet.[68]

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66 I have not conducted any organised empirical research in this field, but my intuitive hypotheses are based on a 45-year-long participant observation.

67 Cf. e.g.: G. Armstrong, P. Kotler, *Marketing. Wprowadzenie*, Warszawa 2012.

68 Cf. e.g. J.M. Twenge, W.K. Campbell, *The Narcissism Epidemic*, Atria Paperback 2009; C. Lasch, *Kultura narcyzmu: amerykańskie życie w czasach malejących oczekiwań*, Warszawa 2019.

I find this phenomenon to be noticeable in the environment of lawyers and law students.

You need to step out of the crowd (in the media) regardless of whether you have anything to say. It is not considered improper any more. Sometimes, therefore, a law student finds it hard to tell the difference between an eristic and an erudite in the media. They lack experience and legal intuition. "Good intuition is an outcome of experience and training. You can't expect someone who has had little to do with law to have accurate judgements based on intuition when it comes to law-related problems." – observes Bartosz Brożek in his *Umysł prawniczy*.[69]

It is hard to expect selfless assistance in the creation of new strategies of educating lawyers. HEIs do not have the funds to cover investments in modern study programmes and tools intended to aid education in law, or consider such investments unimportant because "there are still many willing to study law." From a social point of view, such an approach is a big mistake.

The help in this area is to be now provided in Poland by university councils composed of people from outside academia, but in some cases, such councils do not include any lawyers although the faculties of law are often really big organisational university units.

Likewise, it is difficult to engage in a dialogue in class if both the academic teacher and the student are focused on themselves.[70]

## Problem two: the Dunning–Kruger effect – the illusory superiority

The discussions with law students, their examination papers, the public addresses of many eristically talented lawyers and politicians fighting for justice and the rule of law (with moderate or relatively slight knowledge) reveal, I believe, a "self-enhancement" among lawyers and students, known in psychological literature also as the Dunning–Kruger effect, to a much greater extent than in the past.[71] This effect is a cognitive bias in which people with little knowledge of some specific field tend to overestimate their ability in that field whereas those with high qualification tend to underestimate their knowledge and skills.[72]

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69 B. Brożek, op. cit., p. 58.

70 J. Jabłońska-Bonca, *Trzeba inaczej uczyć...*

71 The researchers have tested their hypothesis by conducting a study among psychology students at Cornell University.

72 The phenomenon was described and documented by Justin Kruger and David Dunning from Cornell University, see: a publication by the said authors: *Unskilled and Unaware of It: How Difficulties in Recognizing One's Own Incompetence Lead to Inflated Self-Assessments*, "Journal of Personality and Social Psychology" 1999, 77(6), pp. 1121–1134.

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Justin Kruger and David Dunning proposed a hypothesis according to which a skill or ability that anyone could potentially master to a smaller or greater extent, those objectively incompetent: a) were not aware of their incompetence, b) could not assess the level of their competence correctly, c) could not assess the level of competence of others correctly, d) acknowledged their incompetence only after appropriate training in a given skill/ability.[73]

They examined the students' self-esteem in terms of their ability of logical thinking, knowledge of grammar rules, and sense of humour. After the students were shown the results of the tests they had taken, they were asked to assess their skill levels for each of the said categories. Those competent in a given field made correct assessments, whereas those incompetent tended to constantly overestimate their abilities. As J. Dunning and D. Kruger noticed, "4 experiments showed that those scoring lowest in the tests for the sense of humour, grammar, and logic tended to considerably overestimate their achievements and abilities. Although their test results placed them in the bottom 12th percentile, they themselves considered their performance to rank them in the 62nd percentile".[74] They also found that incompetent persons were unable to perceive and acknowledge the competence of those actually competent.[75]

In his essay entitled *Studium naukowe głupców* ("A Study of Fools"), psychologist named Serge Ciccotti makes an observation that thanks to J. Kruger and D. Dunning's work "we understand [...] why a fool finds it so easy to say that 'it's easy to be an advocate, law is something you learn by heart'."[76]

"You can't expect someone who has had little to do with law to have accurate judgements based on intuition when it comes to law-related problems" – adds Bartosz Brożek.[77]

I think that law students and lawyers are very prone to the illusion of superiority because of the myths and stereotypes promoted by the media (especially the film industry), portraying lawyers in an exaggerated form, as ever-excelling in the professional, financial, and private areas of their lives. As a result of any sort of experience in dealing with the system of justice or lawyers in business, this makes

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73 See also: M. Marody, *Technologie intelektu*, Warszawa 1987, and the typology offered therein.

74 I have been witnessing this every year for 45 years, whenever students are surprised with the results of their introduction to jurisprudence written examinations, puzzled to see a 2 instead of a 5 while having covered about 5–10% of what they should understand as 1st-year law students.

75 Illusory superiority is a cognitive bias, an individual's inclination to overestimate their skills and qualities as compared to other people. The phenomenon concerns e.g. intelligence, the ability to perform certain tasks and solve tests, and possessing certain desired personality traits.

76 S. Ciccotti, *Studium naukowe głupców*, [in:] J.-F. Marmion (ed.), op. cit., p. 29.

77 B. Brożek, op. cit., p. 58.

self-assessment difficult for law students – especially those in the first year of law. And this certainly does not have a positive impact on education. Lawyers-academic teachers usually have no sufficient knowledge in the field of social psychology to contain this phenomenon. They themselves tend to surrender to this illusion for the very same reasons as students, combined with the inclination to regard themselves as more competent due to having contact with people known from the media (politicians, businesspeople, artists) they work for.

## Problem three: "bullshitting" and destabilisation of attitudes towards the truth on the rise[78]

Academic communication, both internal – meaning with students and other academics – and public – meaning with other stakeholders – depends on the trust in both the source and the means of communication.[79] Meanwhile, we can see the phenomenon of 'cognitive masking' making an increasingly stronger presence in the discussions on law, not only in Poland. Many discussants (in the media) pretend to be contributing something to the debate, but in fact it is poppycock: clichés, superstitions, myths, stereotypes, tautologies.[80] Unfortunately, as Sebastian Dieguez, a psychologist, notices, "bullshit can be produced on a large scale by anyone and at a low cost, and those able to remedy its effects – and determined to do it – are small in number and need to put a lot of effort into it."[81] This phenomenon is known as the bullshit asymmetry principle.[82]

In 1986, Harry Gordon Frankfurt, an outstanding philosopher of morality, gave a lecture entitled *On Bullshit*.[83] The theses contained in the lecture remain valid, and may act as guidelines for research on the destabilisation of the attitude towards truth in the legal environment and among politicians and other persons making statements on the situation of the rule of law and the system of justice in Poland.

H.G. Frankfurt claims that a "bullshitter" is not an ordinary liar because a liar knows what truth is and denies it consciously and on purpose. A liar needs to

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78 "Bullshitting" is a metaphor used in the language of social psychology and philosophy.

79 P. Weingart, L. Guenther, *Science communication and the issue of trust*, "Journal of Science Communication" 2016, 15, https://www.semanticscholar.org/paper/Science-communication-and-the-issue-of-trust-Weingart-Guenther/ (access: 10.01.2020).

80 Bullshitting is a form of cognitive masking. See more on the subject matter: H.G. Frankfurt, *O wciskaniu kitu* ("On Bullshit"), Warszawa 2008.

81 S. Dieguez, *Głupota i postprawda*, [in:] J.-F. Marmion (ed.), op. cit., p. 225.

82 Ibidem.

83 The lecture was published in 1986, but only in 2005 as a book. Polish edition: 2008, translated by H. Pustuła.

know the truth in order to lie. A "bullshitter" does not care about the truth at all. The do not acknowledge truth or knowledge, nor do they use them in practice. They know that truth and knowledge are values, but they are of no central interest to them. "According to Harry Frankfurt's famous analysis, the essence of bullshitting is the indifference to how things really are. Unlike a liar, who has to always keep at least one eye on the truth to warp it or conceal it, a bullshitter simply doesn't care. A bullshitter will say whatever comes to their head if they find it fitting..."[84]

The phenomenon surfaces in Poland in media debates on the system of justice but I do believe it is universal and has always been present in discussions on law. But it requires now engaging in interdisciplinary studies because the reasons behind the dazzling success of public "bullshitting" is a mystery (at least to me).

Law students listen to it but are unable to address it in a critical manner. Unable to rely on knowledge, they often lose sight of ethics and ask e.g. if the contempt for the truth is really inherent to legal professions, or, standing amidst the axiological chaos, tend to look up to random points of reference because of the lack of experience and developed legal intuition. "This anchorage makes us, paradoxically, approximate this point, and not the truth".[85] The problem of "bullshit" is deepened by the "availability heuristics". As J.-F. Marmion points out: the incompetent believe that "the one who is the loudest is right."[86]

## Problem four: judgements dependent on the number of clicks and 'likes'

"Those who publish online don't wake up thinking about moral considerations or quality, but about the number of clicks." – said Ryan Holiday, a writer, when asked by Jean–Francois Marmion to answer the following question: "Does even a valuable piece of writing need tacky packaging?"[87]

Click count is currently a very important measure of value of products and services, including scientific papers (the number of citations comes second here); social media users tend to attach big significance also to 'likes'.

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84 S. Dieguez, op. cit., p. 215.

85 J.-F. Marmion, *Istota ludzka ogromnie się myli*, [in:] idem (ed.), op. cit., p. 29. The author writes about anchorage, p. 74

86 Ibidem, p. 75. This is, of course, not true if interlocutors are competent. The device does not work in this case because the discussion is won by the one who keeps their cool until the end, even if both are eristic.

87 *Najgorsi medialni manipulatorzy? Media!* ("Worst media manipulators? The media!") [a conversation with Ryan Holiday], [in:] J.-F. Marmion (ed.), op. cit., p. 185.

One can hardly wonder why young people are so obsessed about it because I believe that even many academics as well feel that their academic position is inseparably connected with how often their publications are cited or clicked, especially abroad.[88] This is the effect of the progressing commercialisation of science in the world and of the new rules of evaluation of academic performance, resulting in Poland from the 2018 act on higher education and science.[89]

I covered the universal problems involved in educating 'click-oriented' students in 2018, in an article entitled: *Trzeba inaczej uczyć. Kilka uwag o homo zappiens i miękkich umiejętnościach komunikacyjnych prawników* ("We Need to Teach in a Different Way. A Handful of Remarks About *Homo Zappiens* and Soft Communication Skills Among Lawyers").[90] In the article, I address the following issue: the current programmes of law studies in Poland are still 'analogue', academic teachers themselves are often 'analogue' as well, and students and legal trainees inhabit a completely different world, they are digital natives, *homo zappiens*, the 'ever-clicking'. Analogue studies and digital students, seminars versus webinars, linear knowledge versus hypertextual knowledge – these are real contrasts we need to deal with.[91]

## Problem five: "pointless" academic toil

It is estimated that over half of the employees in Poland feel their work is pointless, which means, by analogy, that there are quite many of those who also think like that at HEIs, both among academic employees and students.[92] We learn this way of looking at work while we are still in school. Schoolchildren learn to function in something they do not believe in. The mechanism is often common in the academic environment. This is found among students and academics alike. Some academics, tired of bureaucracy, do not see much point in the job they do. They also have doubts regarding their publishing activity because they publish for the score.[93]

Many gifted but frustrated and disillusioned researchers do not get research grants, earn little, feel bound by bureaucracy, and tend to believe they have no

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88 "If you wish to have the slightest chance of making your mark at a university, you need to keep a low profile", says Tobie Nathan, a psychology professor, writer, and diplomat, in a conversation with J.-F. Marmion entitled *Głupota to szumy w tle mądrości* ("Stupidity is Wisdom's Background Noise") [in:] J.-F. Marmion (ed.), op. cit., p. 327.

89 Act of 20 July 2018 – Law on Higher Education and Science, Journal of Laws of the Republic of Poland of 2018, item 1668. Cf. J. Jabłońska-Bonca, *Naukowiec w grze o władzę*...

90 Eadem, *Trzeba inaczej uczyć*...

91 More on the matter: ibidem.

92 Cf. M. Burtyna, *Tryby na niby*, "Polityka" 2020, 3, p. 36.

93 Ibidem.

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methodological background because methodology is generally never taught as part of law. And they publish to get some points and climb their way up through academic promotions. They have it easier if they are judges or advocates – then, they have ready resources to use in their dogmatic-legal papers. Reality is far away from Humboldt's ideas. And so, they go for pragmatism: they pay little attention to teaching as it is not a significant criterion of academic promotion and because their teaching load does not include the time spent to make classes interesting nor the effort made to improve students' performance. They try to steer clear of academic red tape: because they think that much of what they do and what people from their environment do is pointless.[94] It is therefore easiest to tell students what one already knows, and spend the time saved this way to produce texts, fill in tables, take part in meetings, or engage in legal practice. The new act has not changed the situation in this regard.[95] In his book entitled *Bullshit Jobs. A Theory*, anthropologist David Graeber studies and organises various "bullshit jobs" into categories. I think that there are many law academics who feel that their commitment to various initiatives and activities does not bring society any actual benefit or value. This is something worth exploring.[96]

## Conclusions

According to a famous poet, "you can get lost when standing still too." It would be good to stop pretending, to end with "bullshitting", to dispel our illusions and reform the programmes of law studies for good. We will get lost if we continue to stand still. Finding the right path may be difficult, true. I believe that faculties of law do not have to wait. They could actively engage in the process by setting the direction of the necessary transformation by offering graduate-level and postgraduate-level students a different model of education, to provide them with the right preparation to pursue different career paths. Given the significant loss of symbolic capital (prestige, social recognition) as a result of the mass nature of studies, the demystification of many skills and competencies of lawyers because of the progressing automation of many areas of their job, and the Polish battle in the legal

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94 "If you wish to have the slightest chance of making your mark at a university, you need to keep a low profile", says Tobie Nathan, a psychology professor, writer, and diplomat, in a conversation with J.-F. Marmion (op. cit., p. 327).

95 See more: J. Jabłońska-Bonca, *O szkolnictwie*...

96 D. Graeber, *Praca bez sensu. Teoria*, Warszawa 2019.

environment *per fas et nefas*, it is reasonable to consider the issues covered above because the solutions thereto may be new sources of symbolic capital.

In a 2019 Polish ranking of most respected professions, prepared based on a representative sample, the two top professions include 'fireman' and 'nurse', both considered of great social utility. Further in the ranking we have: 'skilled labourer', 'miner', and 'university professor'.[97] 'Lawyer' is not in the lead.

In the article I am trying not only to provide arguments for designing programmes addressed to graduates intending to take legal training examinations but also to offer a broader perspective on the stakeholders of higher education institutions, awaiting good lawyers. And the list of those waiting includes: businesses, administration, NGOs, and a range of other entities. Study programmes should not be designed with legal training in mind. They should be addressed to a civil society that needs lawyers. They should be good enough to prove that the professional foundation of a lawyer is: work ethics, communication, belief in the rule of law, and justice. We need to make a move because "two sitting intellectuals go less than a walking simpleton", as Michel Audiard wrote in a dialogue for a 1960 film entitled *Taxi for Tobruk*.[98]

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97 https://www.infor.pl/prawo/zarobki/oplacalne-zawody/3578717,Ranking-prestizu-zawodow-2019.html (access: 20.02.2020).

98 M. Audiard, *Un taxi pour Tobrouk*, 1961, cited after: J. Cottraux, *Głupota i narcyzm*, [in:] J.-F. Marmion (ed.), op. cit., p. 29.

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