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LEGAL EDUCATION OBJECTIVES AS A FACTOR OF IMPROVING LAWYER'S PROFESSIONAL ACTIVITY

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Abstract

The analysis of educational programs of legal institutions, requirements to legal professions, and the fundamental message of the former Minister of Education of the Russian Federation A.A. Fursenko stating the need to educate qualified consumers of legal information serve as a starting point for the authors' reflections on the goals of educating lawyers in Russia. The authors conclude that both in Soviet times and in today's Russia, the main goal of lawyers' education is a narrowly utilitarian goal to obtain a qualified consumer lawyer. Meanwhile, practice shows that a qualified consumer of legal information may be not a lawyer by education, but, for example, an economist, sociologist, banker, entrepreneur, etc., which contradicts educational standards in Russia but is supported by legislation allowing both lawyers and other persons with higher education to hold the same positions. Furthermore, it is sufficient to have a second higher legal education, including part-time tuition, to hold public office as a judge, prosecutor, notary, or a lawyer. On the other hand, when a law graduate starts working in a specialty, he faces the depreciation of his pattern theoretical experience, because it is not enough for a normal salary and even just for a job to be a lawyer-consumer. There is a need for creative competences far beyond those established by educational standards, but the educational process does not simply ignore them, but like denies their value. Of course, it is more difficult to educate a lawyer-creator than a lawyer-consumer.

Keywords: Activity, lawyer, legal consciousness, legal thinking, legal education, professional consciousness of a lawyer.

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1. Introduction

Fursenko (2007), Minister of Education and Science of Russia in 2004-2012, noted in one of his speeches: the drawback of the Soviet education system was an attempt to form a human being-creator, and now the task is to cultivate a qualified consumer capable of making qualified use of the results of others' creativity.

Pedagogical psychology calls *attention management* as the key to personality formation. It is possible to focus attention on different goals, including the opposite, and by different tools. This creates the very possibility of different educational strategies (Malushko et al, 2016).

If the former minister is right, the goals may be set as a scientifically grounded educational process. How do we understand what goal is the basis for the education of a modern Russian lawyer? Because it is not so obvious as it may seem, and therefore requires some criteria for its identification.

Therefore, we first need to define the *"center of gravity"* for the attention of building the lawyer and his compounds as the technical knowledge and skills to be absorbed by him. We intend to get the necessary insight into the mechanism of nurturing new reactions of perception and understanding in the future lawyer, the formal side of the process, and the set of objective criteria to distinguish the professional legal consciousness from the ordinary one at the most primary approaches.

2. Problem Statement

Our analysis starts from the conceptual grid of a lawyer by identifying the objects of his attention to show that this is clearly not the exhaustion of practical jurisprudence. As a result, it will become clearer what the Russian law school does not actually teach, but should teach, as this is exactly necessary for practice.

The behavior as an object of the law is regulated by the well-known "ubiquitous trinity": prohibitions, obligations, permits. It's an axiom of our existence. Of course, the law also applies to the mental impact on our consciousness. However, the endpoint of applying its regulatory properties is still our behavior, which is modeled in the norm system and so we accept it as a guide. Behavior is resulting from the system of relationships and circumstances within which it occurs, but the relationship is also expressed externally in a known behavior.

The law does not interest all the specifics of the human society, but only life relations, which repeat, become mass-produced and crystallize into some typical forms and social institutions. Thus, the legal norms reflect the conceivable combinations of social relations, while addressing the regulation of real-life relations, but their formulation contains abstract types of these relations or legal institutions as the object of research.

From here, the educational process tries to convey the important idea to every lawyer from the first years of education, regardless of the peculiarities of the legal system (from the dominant dogma), that only the behavioral patterns, the relations, and circumstances, that are already modeled or can be modeled in the law, have a legal meaning, and therefore are the object of his attention. In an allegorical manner, lawyers are trained to use a local map, which exists only on the map.

Following the logic of this fundamental prerequisite, the first condition for building any lawyer is to develop the ability to determine the legal relationship itself as a kind of mental construction by

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establishing the circumstances relevant in this situation or legal facts. This is essentially the most basic work with normative material to establish what can and should be done and what should not, what is mine and what is yours, etc.

Further, the pedagogical task is to equip students with tools to interpret the law, and as a result, they must master the ways of understanding and clarifying the will of the sovereign. In practice, the methods of interpretation are in great demand and skills of their competent use and general knowledge about their existence serve as clear markers of the lawyers' professionalism of any kind and legal families (Lizunkov et al., 2017).

The most difficult and therefore essential element for successful mastery of the profession, which raises the quality of a lawyer to a new level, is the knowledge of the whiteness of any legal system, the collision of its rule-containing functionalism, the ability to distinguish one from the other in real-time and knowledge of the ways developed by the doctrine to consistently overcome them.

Besides, ideally, for completeness of a picture our graduate should have representations about structural connections of the right and principles of its arrangement and functioning as the most fundamental laws, about the fictitious character of legal entities, and also presumptions, axioms, legal force and the hierarchy of legal acts, the legal technique of their preparation and ordering.

The formal side of the conceptual grid of a lawyer, described in a schematic form and supposed to be formed in the educational process, contains the necessary set of objective criteria to quite successfully differentiate professional consciousness from the ordinary one. This includes the ability to define legal relations in real life, to know the tools of interpretation and overcoming gaps and conflicts, to have a general theoretical knowledge of structural relations, principles, legal technique.

Certainly, at the first approximation, it seems that these criteria are most characteristic of judges, prosecutors, lawyers, legal advisors, and to a lesser extent but still officials and other subjects of public administration. We can hardly speak about a legislator, who should be understood in this case not as a deputy, but as lawmakers. It's a false assumption. The legislator faces the same problems as the abovementioned persons, but on a different scale of understanding, from the inside in other words (Davydova, 2018, p. 358).

To implement an adequate regulatory impact on social relations aimed at guiding them in the desired direction, any legislator should have an idea of the actual circumstances as knowledge of the needs of the managed society and the more accurate guess about the latter, the more effective will be the applied measures, otherwise, parallels will not cross.

To make the obligatory character for the interesting data, he, as a privileged subject of truth, needs to position them in a publicly available form as a source of law, i.e., to provide them as legally significant in law.

The actual constitution of society then distributes the roles of authorized glossaries of its will, whose content really depends on the managed material or the level of natural law development of the subordinates to at least the same extent as its state of mind.

And finally, regardless of pretensions to progressive or destructive ambitions, any legislation will always avoid excessive spaciousness, inconsistency of its models, striving for optimization of

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installations and harmonious, well-coordinated work of the whole legal regulation mechanism (Lizunkov et al., 2020).

So, it seems quite correct to assess the legislator in the same terms as law enforcer and other subjects as regards the criteria of professional identity with a certain share of conditionality.

The question is, does the possession of these legal tools make the lawyer a qualified consumer or creator? For example, we can present an arbitration judge who examined the materials, determined the circumstances of the case, rejected assumptions about the regulatory gap, pointed to the conflict, gave priority to special law over general law, and interpreted the regulatory material using teleological and systematic methods. He did not participate either in the creation of evidence or in the establishment of the legal framework for the case, since the arbitration process does not involve a judge.

Of course, this process is creative by itself, due to the production of a solution literally from his own head and its objectification in the form of a law enforcement act. However, in its characteristics this process is more similar to the *"discovery"* of the already known than the *"creation"* of the new. The complexity of the legal instrument is apparent and is generally due to the complexity of the life circumstances themselves, as well as the volume and complexity of the normative and non-normative material applicable to them.

These legal tools, in its formal sense, do not require much ingenuity of the user and illustrate the consumer (technical) side of the thinking of a lawyer of any profile, i.e. the very effectiveness of the forms of behavior grafted to him by training, which provides the very possibility to be a lawyer.

The phenomenon of a lawyer as a qualified consumer of legal information is based on several conventions that constitute the "center of gravity" of his attention and provide final assurance that we are not the creator, but a mechanical performer, like a "railroad switchman" (K. Schmitt).

Namely, such a paradigm understands the law as a *means of transforming* public life according to the principle of norme - cause - behavioral consequence, whose culmination pathos is the dogmatization of its statements, a certain "breakdown of reflection" (A.G. Maltsev).

3. Research Questions

But what is the true practical purpose of legal education? For if we are forming only a lawyer-consumer whether it turns out that we release only lawyers-statesmen, who have difficulty understanding or are not able to understand the law outside of its relationship with the state, as an independent phenomenon, more connected with finding freedom and legal ways of its protection, rather than with the correct establishment of what the legislator wanted to express, that is, with the state will? Which of the two types is more effective, and which is more in demand today, the lawyer-creator or the lawyer-consumer, and whether such statement of the problem is correct?

Today's society is becoming more complex in all respects, as it is in a permanent process of legislative reform and reformist legislation. It is clear that the State, as an actor and a facilitator of this process, feels the need for qualified law enforcers. However, against these changes, civil society is no less in need of lawyers-creators capable of defending its interests within the legal field, especially since the modern ultra-complex legislation (Usenkov, 2020, pp. 16-17) makes it possible. Meanwhile, lawyers become such a specialist on the ground, passing a very thorny and risky path of trial and error, which can

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result in the payment not only for their career but also for life and health. Why? Because when they leave school, they literally start their educational process anew in practice that is fundamentally different from the education they received in the alma mater. Obviously, there is a need to balance the educational process in a way that combines theory with practice.

4. Purpose of the Study

The purpose of the study is to show that those ideas about the law, which form the basis of the classical educational process, are not sufficient, that the latter is confined to the interests of the state and does not care or care in full about the education of specialists capable of thinking the law as an independent entity, as a means of fair differentiation of interests. Especially since the legislation contains a lot of opportunities for this, which graduates are simply not able to use until they change their settings to the opposite of what is in their heads and it is not so easy to do. Many young graduates simply quit their profession because of this inability to rebuild. Besides, this fact is one of the factors of low legal fees.

5. Research Methods

The main methodological approach of the present study is the idea, which is well known in the history of legal thought, that there is not only state law, but also a free search for a right, a "living right", that needs to be revealed to restore the balance of interests in society. The image of a standardist is no less eternal than that of a decisionalist, but classical education has an obvious bias towards the first one. Proceeding from the methodology of this dichotomy, it is possible to come to a logical conclusion that the formation of a lawyer should not be a classic, but differentiated, special, containing elements of classics (universality) only at the initial stage of acquisition, as is already widespread, for example, in medical professionals.

6. Findings

The methodology used for the classical education of the consumer legal profession may have at least two objections.

If we consider the professional legal consciousness conditioned by the legal position held, then we must recognize that not all law enforcers, legislators and subjects of executive and administrative activity, as well as other lawyers are quite familiar with these user skills, or have them with different levels and sometimes clearly insufficient, but nevertheless they somehow perform their activities.

Does it lead to the depreciation of this methodology? We think the answer's going to be two ways. On the one hand, it is necessary to agree with S.B. Polyakov, who convincingly showed with respect to law enforcers that a person's position does not determine the depth of legal consciousness since many people work by profession without a sufficient level of knowledge of the indicated legal instruments, but that it is possible to assess the degree of their professionalism using these criteria, so they claim to be objectivity (Polyakov, 2017, p. 4).

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But, on the other hand, and this is the following objection: what if we allow the possession of a truncated conceptual grid that includes only the above mentioned legal instruments in a somewhat simplified form, not a lawyer by education!?

Indeed, if we can imagine a judge who has no idea about analogies, collisions, interpretations, legal constructions. Many people have an example of this in their personal experience, why shouldn't it look like a legitimate attempt to suspect the existence of these skills of non-lawyers engaged in operative-executive and even law enforcement (Davydova & Zykov, 2019)?

This assumption has a lot of direct, well-known legal evidence, including that the message of the Minister was well received. There is an overabundance of lawyers-consumers, both in their own environment and among non-lawyers.

To convince it, it is enough to analyze the professional affiliation of the subject of applying administrative responsibility, determined by the widest range of authorized persons who have no legal education at all. Further, for example, there are also many law-enforcement agencies among such subjects of centralized public administration as state civil services (tax, customs, state registration, accreditation, etc.) permitted to perform their duties without a legal education.

So, part 1 of Art. 15 of the Law "On state registration of rights to real estate and transactions with it" dated July 21, 1997, No. 122-FZ, which lost its legal force for the most part from 01.01.2017, read: "Employees of the body implementing state registration of rights - citizens of the Russian Federation who have completed special courses, passed a qualifying exam and have either: higher legal education and work experience in a legal specialty for at least three years or work experience in a body that carries out state registration of rights for at least two years; other higher education and work experience in the body that carries out state registration of rights, at least three years."

Art. 64 of the Law "On state registration of real estate" dated July 13, 2015, No. 218-FZ, which replaced Law No. 122-FZ, does not contain any requirements for the state registrar, which means the action of the authorized body in this matter by analogy with the expired law No. 122-FZ, which is not prohibited by anything, until it is regulated at the level of subordinate lawmaking.

It is even more interesting in this regard to pay attention to the subjects of decentralized public administration, which also have a wide range of authorized bodies and their officials, such as the Central Bank of the Russian Federation, funds (pension, compulsory health insurance, social insurance), state corporations, municipal bodies, self-regulatory organizations (arbitration managers, chambers of commerce, associations of auditors, in the field of communications, in the field of advertising, management companies of investment funds, professional participants in the securities market, insurance entities, appraisers, non-state pension funds, housing savings cooperatives, agricultural cooperatives) exercising legal power and administrative functions delegated to them by the state.

The ability of all these actors to use the mentioned legal tools to carry out enforcement within their competence cannot be denied. Of course, we should stipulate that the normative material to deal with these subjects has a narrow focus and requires the ability to establish the actual basis of the case, interpretation, definition of the gap, collision and overcoming them at the most elementary level.

And although this possession is more likely to be an imitation and can not testify to a proper understanding of the basics of the legal profession, yet the possibility to master these knowledge tools by

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not a lawyer by education indicates their inadequacy as for the purposes of distinguishing the lawyer from the non-lawyer, and for the purposes of distinguishing the master from the apprentice. We have to admit that the right, following Hart's profound observation, does not reduce to a set of rules and the ability to use them but represents something more.

In turn, the conceptual grid of the lawyer-creator will include the means of cognition of a qualified consumer as a basis, but further, it assumes its own competencies, not reachable both for the average person and for the lawyer who stopped his development on the qualified consumption of legal information.

If the educational process indoctrinates at the mantra level that the right must be understood as a set of norms established by the state, it is impossible to get anything but lawers-dogmatics at the output. But do all lawyers by education go to work in public administration bodies and organizations or can we say that such skills are sufficient for a judge and prosecutor, legislator and lawyer!? The very understanding of the legal profession acquires methodological importance here. It is hardly true that a profession will suffice to master either a set of fundamental knowledge or simply the ability to apply knowledge technically in practice. Rather, the educational process can or should tilt in one direction or another depending on the intended objectives (Zykov, 2018, p. 33). Our classical education system traditionally favors the teaching of fundamental knowledge.

So, we can say that until now it was about the technical side of mastering the profession. But what can a lawyer create by using his professional thinking? Here we need to digress from the richest world of legal constructions, categories, rules, contracts, etc., as they are already created or reproduced the already known in "improved" form, and focus only on what the lawyer is constantly doing anew in his own practice and what the law faculty still does not teach.

So, one popular science books of private practitioner Orobinsky (2016a) highlights the following creative acts of the lawyer: *a new way to apply the law, schemes, evidence, pseudo-evidence, the necessary court practice, profitable cases* (pp. 164-191). Further, when disclosing the content of each highlighted point, we will reproduce only a few examples of the author's case studies to complement them due to their originality and corroborated by references to cases from jurisprudence (Pereverzeva & Shamne, 2017).

Thus, the author cites the use of Article 1065 of the Civil Code of the Russian Federation by the prosecutor of the Frunzensky District of St. Petersburg to deprive a citizen suffering from drug addiction of his driving license as a new way to apply the law. Usually, lawyers practiced this article to suppress, suspend or terminate the activities of industrial enterprises, noisy shops, operation of unfinished buildings, etc. The use of Article 1065 of the Civil Code of the Russian Federation in a different context is a fairly noted manifestation of atypical thinking of a lawyer. That's where the author stops.

We should add that this operation on the new application of the law is similar to the one used by public administration entities and especially by judges when they create a precedent or forcefully shape the practice in a certain direction.

There are schemes for evading responsibility, circumventing the law, saving time and money, etc. In particular, the author refers to ways of circumventing the law "On participation in the shared construction of apartment buildings and other real estate and on Amendments to Certain Legislative Acts

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of the Russian Federation" No. 214-fz. Knowledge of such schemes allows ordinary shareholders to avoid the risk of losing money. This point can provide many other legal examples of circumventing one norm or practice at the expense of another (cashing the maternity capital through transactions between relatives, obtaining higher insurance benefits after the repayment of the debt from the car owner by collecting penalties, the former legalization of self-building through the courts of arbitration, the former method of establishing "necessary" jurisdiction through a surety with a third party, etc.).

With regard to evidence and pseudo-evidence V.V. Orobinsky clearly notes that there are two ways to create a lawyer's work: to attach something as evidence and create evidence. This paragraph provides many useful tips for practicing lawyers on the difficulties of acquiring electronic correspondence, photos, pictures, videos, schematic images of the essence of the dispute, transcripts, expert opinions, examinations, etc., as well as creating the necessary evidence in the literal sense. Each of us knows from the personal experience of the complainant or defendant that the evidence collection process is truly creative and time-consuming. At least we can remember the problem with witnesses, among whom it is necessary to determine who to call and who not to call. And, for example, how to "create" the right witnesses at the enterprise, when an unscrupulous employee in collusion with colleagues for support appeals the imposition of a disciplinary sanction and it is necessary to protect the interests of the employer, otherwise the abuse of the right will go unpunished.

The necessary court practice means a situation when one of a dozen cases is won as a test case to create a positive "precedent", and then the template initiates an avalanche of lawsuits. And at this point, lawyers go to such tricks as collusion with the defendant to dispose to create the necessary court practice.

Profitable cases relate to "the right court practice" because they also involve the initiative of a lawyer. The author cites a case of lawsuits for recovery of moral damage by passengers of the plane on which he flew, forced to make an emergency landing because of technical problems. Another example is the recovery of penalties for the share construction when the developer did not launch the house in time, or offered buyers a smaller area of the apartment compared to the agreement.

These are just some of the tricks of the legal profession that Russian universities do not teach, namely, this kind of competence is in demand and well paid in practice. The issue of working with jurisprudence and other sources of law needed a special mention.

The exclusion of judicial precedent and doctrine from continental law sources, long questioned in scientific literature, is increasingly demanding attention in the educational process. The submission of references from the jurisprudence of various instances with negative and positive content as an annex to the claim, withdrawal, both in the courts of general jurisdiction and in arbitration (Orobinsky, 2016b, pp. 78-81) has already shown its effectiveness.

Such annexes are mandatory in the countries of the Anglo-Saxon legal family. In our realities, it becomes an increasingly effective source of predictability and uniformity of judicial and administrative decisions, as well as an indicator of a lawyer's qualification (Popova, 2016, pp. 30-32). This trend also affects the judicial system, bringing it closer to the standards of a civilized legal community, where the normative model of judges' conduct prevails over the empirical one (Tonkov, 2013, pp. 73-74).

A more flexible approach for students to study the sources of law deserves serious consideration. Generalizations of judicial practice show that it uses not only traditional forms of law in the general

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theoretical sense but also doctrine, textbooks and manuals, special literature, departmental non-legislative acts, even invalid, and messages of the President of the Russian Federation.

The phenomenon of a lawyer-creator is also based on several conventions, which constituents the "center of gravity" of his attention and allows us to make sure that we are not a mechanical performer, like a "railroad switchman".

Namely, within the framework of such a paradigm, the law means *the tool for the protection of interest*, both of one's own interest and the interest of one's clients, based on the principle of a restrictor of social laws themselves, based always on existential selfishness, hierarchy, and power. As Ihering (1907) wrote: "Whoever defends his right, he defends the right in its narrow limits in general" (p. 44).

The lawyer should be not only a qualified consumer, as his status and appointment depend not only on efficiency as a performer and user but also on demand as a defender and innovator, which, unfortunately, students often do not learn in law faculty.

7. Conclusion

Obviously, Russian classical legal education is not subject to revision as a whole. However, his approaches to shaping legal thinking are clearly outdated. In particular, it is necessary to challenge the fundamental premise that it is possible and necessary to grow in the masses within the walls of a classical university a universal lawyer who is willing and able to know all branches of law and legislation imposed on him equally well. There are few people who are willing and capable of such intellectual works. After all, an obstacle to this is already the individual propensity of the student, as a rule, limited, and therefore the mass of the student gravitates either to civilism, or to criminology (in the broad sense), or to a cycle of administrative disciplines, depending on the mindset and character. However, this is the least of the evils, because classical education has that undeniable advantage, which gives time to define, choose and identify with the most appropriate branch of law for his thinking. The big evil is the fact that while providing the student with the whole cycle of legal disciplines for digestion, classical education orients and draws the student exactly to the literate but conformist utilitarian consumption of legal information, whose effect is unilateral, without feedback from the creative competences of the student's thinking, as if cutting off his reflection (Tarakanov et al., 2019). As a result, we have conformist-prosecutors, conformist judges, and further conformist advocates, conformist lawyers, conformist legal advisers with similar attitudes. This conformism becomes aggravated by the fact that they all remain untrained as they tried to embrace the immensity, as they were told. We think that a precondition for studying any legal branch or legislation is not only theoretical mastery of abstractions, their components but also the practice that gave rise to these abstractions. The continental legal systems characterized by classical universal education, especially aggravated in the Russian tradition, have a strong belief that lawyers first invented the institution of sale or crime, and then began to apply it in practice. But it's not true! Teaching follows the same pattern. First, they force students to study the contract of sale or crime as a dry mental construction, and then they force them to correlate with reality, to impose on life situations. In this case, the student, as a rule, is completely ignorant about what is a crime in general, where did it come from and why in war who killed the enemy becomes a hero, and in peacetime he becomes a criminal, as well as what is the sale

and purchase, where did the money come from, etc. "The state invented all this" - the student answers himself and the reflection breaks.

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