

SPECIAL ISSUE:
Right to Education

TRANSFORMATIVE HOPE?

*Lecture on the Ceremony of Honorary Doctorate
at the Pázmány Péter Catholic University*

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Your Excellency Mr Grand Chancellor,
Your Excellency Mr Ambassador,
Most Honourable Rector,
Dear Deans and Professors,
Ladies and Gentlemen,

I am both humbled and proud to become an honorary member of your highly appreciated and acclaimed University and for the opportunity to receive this honour. While we very much appreciate this recognition, more importantly, this is a celebration of this University and its spirit of academic excellence and international collaboration. This ceremony should also be regarded as an appreciation and honour to *European Education Law and Policy* (ELA) community, whose leadership is partly represented in this audience.

The seminars, hosted by the prominent Ereký Public Law Center yesterday - as a continuation of the conferences in 2016 and 2020 on *'The role of Civil Society in Education'* - reflected the remaining vivacity of the ELA 'family', already 30 years old and developed the agenda for the coming years. We share the same passion.

'Education and the Law', *'Education and State Policy'*, *'Education as the prior human right'*, remain the main lines of commitment in my life, as an academic, as a public servant, and as an international activist. I should add: as a Catholic, as a parent, and as a volunteer. Serving during three months as a volunteer in institutions of the *Fathers and Mothers of Charity* of education and care for the most vulnerable: mentally affected persons by the genocide in Rwanda and heavily physically disabled children. It was a lesson of modesty in how these children inspired and taught us how to deal with the future. In the Gospel of Matthew, Jesus thanks his Father for

something very special: *'I praise You, my Lord, because you have hidden these things from the wise and the prudent, and have revealed them to the children'* (Mt.11:25-26).

Education systems seem to be the most dynamic link between generations. They reflect, especially in Europe, the traditions of the past. Education touches the very heart of a nation, the community or communities, its values, culture, history, present and future. After the Second World War, the international community stressed the need for education rights as the vital opponent of a dictatorial regime and embedded these rights in an impressive row of legal instruments.

Comparative constitutional law teaches us that (1) Education and Education Rights prove to be the supreme touchstone for the transition from a non-democratic state to a democracy; and that (2) without 'reconciliation' in and through schools, there will not be any chance of reconciliation in society.

Ethnic, cultural, religious, social and regional tensions in society are reflected in schools. They should be answered by appropriate education policy and by the fulfilment of individual education rights. *'Schools can be a part of the political problem but will always be a key to the solution'*, this was my opening statement at the conference in Jerusalem, with representatives from Israel and the Occupied Palestinian Territory.

It is not by hazard that education appeared to be the last deadlock in constitutional negotiations throughout Europe or in South Africa.

Twenty-five centuries ago, the Greek philosopher Aristotle pointed out, I quote: *'Of all the safeguards that we hear spoken of as helping to maintain constitutional continuity, the most important, but most neglected today, is Education, that is educating citizens for the way of living that belongs to the constitution in each case.'*

It seems that also this statement is more pertinent than ever. But let us listen to the commitments for the Future! And to the voice of learners and students. Who were the very first protesters, four years ago, at the *Tahrir Square* in Cairo, Egypt? *Students*. What was their first claim? *'Give us good education'*. A similar scenario emerged at *Maidan Square* in Kyiv, Ukraine, in Kinshasa, DRC. What remains the first request of my students I taught at the Faculty of Law in Bagdad, Iraq: *'Education - Freedom. Equity and Dignity through Education'*. The compelling question the young generation is now posing to us is: *'do you act as good ancestors...?'*

In his book *'The good ancestors: long term thinking for a short-term world'*, Roman Krznaric raises the question of how to create a sense of shared identity with the unborn generations of tomorrow's world. Visual art, film and literature will play a vital role, but they are not powerful enough on their own to create and sustain a new imagined community based on intergenerational solidarity. He immediately adds: it is essential that we tap into the two forces that have the potential to elevate and propagate the idea of the good ancestor: *education and religion!*

Recently, I attended a lecture by Yuval Noah Harari at the *'Sustainability Conference'* in Belgium recently, with a quite stimulating message, which I put now into historical perspective.

In his first book, *Sapiens*, Harari surveyed the past. In his second book, he explores the very distant future: *Homo Deus*. In his third, *'21 Lessons for the 21 Century'*, he focused on the *'hic et nunc'*.

And at the conference, Harari painted a shocking picture. His key message: this world already has the necessary technological and innovative scientific capacity to cope with world problems and the necessary budgetary resources at the *macro level*. However, according to Harari, it lacks societies dramatically on: (1) appropriate legislation at the national and international level and (2) a far-sighted long-term strategy and thus policy...!

Let this diagnosis be particularly applicable to the education sector: often incoherent legislation, lack of good governance, and absence of mature and scientifically substantiated vision of the future.

Listen to the biblical books of *Proverbs* (11:14): *‘For lack of vision, the people perish.’* Universities have to take the lead in *‘Innovating Education’* and *‘Educating for Innovation’*. Research should articulate quite well the role of education in shaping a strategy for smart, sustainable and inclusive growth.

High esteemed academic audience,

Among other topics in the most diversified world of Education and the Law, we are fascinated by the prior and most fundamental principle of the right to education.

‘Education’ is qualified by the US landmark decision in *Brown versus Board of Education* (1953) as ‘probably the most crucial State responsibility’.

‘Education’, is the first concern of parents, together with poverty, unemployment and climate change, according to the *Eurobarometer*.

‘Education’ with the most pressing challenges: reducing the inequality gap in education opportunities, strengthening the basic knowledge of the core curriculum subjects, improvement of teachers’ training and status, the professionalization of the job, and the ‘mission to teach’.

Education Law and Policy as an expanding academic discipline can be described as one of the most complex and dynamic domains in social sciences, transcending their classical divisions. Education lawyers are in demand and have become even more popular: we have to deal with most conflicts and challenges in society..., especially on a moment where *‘the unique certainty is change, and that change is permanently accelerating.’*

More than 7 out of 10 children who now enroll in preschool education will get a job which does not yet exist on mastering the technology we are not even aware of to resolve problems which are currently unknown.

All scenarios require a profound analysis of education goals and learning outcomes, with an emphasis on creative and critical learning rather than the accumulation of knowledge. Several ELA meetings focused on the key solutions for the future of the education system and of the education law, nationally and internationally. But more is required for a person’s flourishing life, particularly in our disruptive times. Authentic freedom is based upon rootedness, including and going beyond the family, upon a community of shared conviction and tradition, sufficiently robust that it can be tested and questioned, as it certainly will be, without falling apart.

Authentic education draws upon and in turn cherishes convictions about the essential dignity and worth of the person. Catholicism and other religious and humanistic traditions offer a framework for education richer than simply meeting

economic and social challenges and create a strong linkage between the family and the school. Wise governments do not seek to use schooling to disrupt that fruitful linkage but instead, through pluralistic educational policies, achieve an effective balance between the interests of families and of the wider society.¹

May I focus briefly on a cultural issue related to the expansion of the ‘digital world’ and of social networks, with an impact on people’s mindset: *this age of ‘post-truth’*. Objective facts have a lower influence in shaping public opinion, compared to emotions and personal opinion. Rather than being ‘after’ we are actually ‘beyond’ truth.²

The misinformation virus has very clear geopolitical consequences and repercussions on education. It influences the way we learn, find information and communicate. In a widespread climate of mistrust, each individual hangs on to their own ‘filter bubble’. It undermines an individual’s intellectual and cultural fruitfulness and willingness to interact with different people. Otherness becomes dangerous...

The main answer is: investing in education. The age of ‘post-truth’ needs schools and universities with a passion for forming responsible persons capable of ‘reading’ critically realities and building the common good. And to inspire students, if I may also quote (the apostolic constitution) *‘Ex Corde Ecclesiae’*: “... *students*, who are endowed with high levels of professionalism and with rich humaneness.”

The Constitution stipulates further: “*Catholic university must have the courage to speak the uncomfortable truth which does not please public opinion, which is necessary to safeguard the authentic good of society.*”

What binds us is our desire to understand what it means to be human, to seek the truth and to have the courage to express the truth even when it may not be popular or is challenged by voices that may be louder than our own.

Another issue that calls for education is *violent extremism* in both industrialized and developing countries – to be answered by global citizenship and complete education for all – and increased *cultural and religious pluralism* that invite a true culture of dialogue, encounter and exchange: schools as the space where people can learn about the sources for their own identity as well as that of others.

Inclusion in and through education will be the main target for education law and policy. It is the most vital notion in SDG4, and at the same time, the most complex and multi-dimensional concept. ‘Inclusive education’ has developed differently in various countries but supposes a real shift in law, policy and practice, supposing a holistic approach: learners are placed at the center of a system that must recognize and respond to learners’ diversities. The key message is: ‘Every learner matters and matters equally’.

Nobel Prize 2001 and peace activist in Liberia, Leymah Bowee, mentioned: at the ELA/General Conference on Science, Technology and Innovation (G-STIC) in

¹ Charles GLENN – Jan De GROOF (ed.): *Christianity and Education Law*. In: *Oxford Handbook of Christianity and Law*. Oxford University Press, 2023.

² Mgr. Vincenzo ZANI, ‘Conclusions’, Italo FIORIN – Angelo PALETTA – Christopher BEZZINA – Jan De GROOF – Angelo Vincenzo ZANI (ed.): *New Educational Horizons. Leadership in Catholic Schools and Universities*. Libreria Editrice Vaticana, 2018.

Dubai, this year: “*Peace is not the absence of war. It is the presence of conditions that dignifies all of us.*” Or in legal terms: ‘the immediate obligation to provide reasonable accommodation’.

High esteemed academic audience,

Permit me to formulate some final thoughts on what philosophers (as von Jellinek) argued to be the three driving forces of a modern democratic society, *Education, Religion and the Law*.

Only two centuries ago, most governments, and thus laws, in the West began to be effectively concerned with education, that dimension of schooling intended to form loyalty, character, and perspectives on life. Ever since then has been almost constant conflict, legislation and litigation in one country or another over the relationship between religion and education.

I had the privilege to write with my ELA ‘partner in crime’, prof. Charles Glenn (Boston University), the best education policy comparatist, the chapter ‘*Christianity and Education Law*’, Oxford Handbook on Christianity and Law, which is to be published soon. Through laws and policies, governments have employed schooling for nation-building. In such cases as Germany, the UK, Canada and Scandinavia the respective educational goals of governments and churches involved generally fruitful collaboration. Elsewhere, such as in the Netherlands, Belgium, Mexico and Spain, periods of intense conflict were followed by compromise. In yet other countries, such as France and the US, deeply ideological differences over schooling led to continuing political and legal conflicts and recent efforts to find ground for principled pluralism in education. History showed dramatic examples of the use of schooling as an instrument of policy. Immanuel Kant wrote: ‘*Man can only become man by education. He is merely what education makes of him*’.

In liberal democracies, while the authority of government in some spheres of national life (such as defense and the administration of justice, within constitutional constraints) is absolute, in others, such as internal affairs of religious communities and families, government altogether lacks authority (except in few cases, such as child abuse). Education occupies an intermediate position, where government and civil society (including families) must cooperate, and it is in defining the forms and extent of this cooperation that debates and even conflicts arise.

We analyzed the cases of *Collaboration or Conflict* in the education settings in various countries around the globe, and f.e.g. the evolution of ‘*laïcité*’, neutrality among competitive worldviews, to *laicism*, the alternative belief system of militant secularism.

Positive neutrality (a chapter of my research ‘*utriusque iuris*’, 40 years ago), rests upon a pluralist understanding of the political and social order, which recognizes the important role of faith communities and associations alongside other forms of voluntary organizations, in maintaining society and transmitting values which sustain it.

It is of the essence of a free society that government does not claim absolute sovereignty; it fulfills its duties and exercises its authority within a context that it does not create itself. The key end is the creation of a social space within which

autonomous individuals and groups can freely pursue their distinctive visions of what gives meaning and worth to human existence...

For all these reasons, Education Law and Education Rights, *a fortiori* for the most vulnerable, should be considered one of the most prominent services by the State and to every Person within the society.

This decade should be remembered as the new era of the '*Education Rights Revival*', - in order to foster the ethics of and within society.

This reminds us of the saying of a leading philosopher on Personalism: '*The whole life of a child is contained in his or her upbringing...*'. "*Dans l'éducation de l'enfant, il y a le tout de sa vie.*"

Annex to the lecture

Several conferences of the European Association of the Education Law and Policy (ELA) have already focused on the weaknesses of education policies and on the future agenda for education systems. We cannot avoid the need for a critical reading of the legal design, - on national, regional and international and comparative levels. We debated at large the following six tracks.

First:

'*How to regulate education ?*' The demand for an 'up-to-date' regulatory technique in education does not escape the revolution with regard to the educational system. The temptation is obvious to keep adding new amendments to the already frequently amended legislation: As wrote a leading French philosopher of law: '*L'erreur sur le caractère dynamique du droit vient de la succession rapide des lois*' (Ripert).

Education lawyers advocated alternative concepts that secure, for instance a 'core or framework provisions', but also leave room for the dynamism of schools and universities and their partners.

Reducing the government's drive to regulate may be achieved with a new generation of framework legislation with a model for the monitoring of education law evaluation and – not least - with an attitude of 'trust' towards the local education community.

Second:

Screening of national law to identify lacunae in fulfilling education rights, especially for children and adolescents, including the elaboration of a research methodology for evaluating and reviewing the existent and for drafting sound education legislation.

Full attention in the first review should focus on how 'inclusive education' is implemented by and through education law. Special attention will be paid to post- and decolonisation of and in education.

Third:

Rephrasing international and regional education legal standards. Most international legal education standards date more than 50 years back, with the exception of the

Convention of the Rights of the Child. Revising partly outdated international norms and guidelines was one of the main themes of our sessions yesterday.

The draft report should be discussed at regional conferences and can finally be presented at an international conference universally. Recommendations have to be submitted to the relevant instances in preparation for the occasion of the 25th anniversary of *General Comment No. 13 (1999), The Right to Education, International Covenant on Economic, Social and Cultural Rights; the General Comment No 1 (2001), Article 29 (1), The Aims of Education, Committee on the Rights of the Child; and the 20th anniversary of General Comment No. 7 (2005), Implementing child rights in early childhood, Committee of the Rights of the Child.*)

Fourth:

SDG4, on the Right to Education, has to be considered as the ‘mother of all sustainable development goals’. The ELA rapporteurs yesterday proved that the framing of the goal is, unfortunately a weak echo of the stringent international norm on the ‘immediate fulfilment’ of education rights.

But there is more. Although there is explicit attention towards the implementation schedule within the SDG’s toolbox, we concluded that the legal dimension is missing. The ‘*UN Transforming Education The Summit*’ of last month did not fill the gap at all! However, research shows that relevant and appropriate education legislation is an essential link in the fulfilment of the right to education. The SDG4 risks not be fulfilled by the year 2030.

Fifth:

There is already no longer a question of a purely national education policy due to the effect of hard and soft law. Within the European Union, the ‘European dimension’ will continue to gain further depth, and not just due to the non-discrimination and mobility principles. Within the larger European area of common values and competencies, the limits of the margin of appreciation could be questioned, when fundamental rights are at stake.

Sixth:

Enhancing the justiciability of education rights and the role of the Judiciary in protecting, promoting, and fulfilling them. Justiciability was debated at large at PPCU Conferences in the previous years: it renders the State accountable for action or inaction according to the Law.

In concreto: a research project could select and highlight the most relevant case law and landmark decisions as best practices worldwide. We should take an example from the South African Constitution; ‘*The Judge must consider international law. The Judge can consider foreign law.*’

Other leading Constitutional Courts follow the same path: the landmark German CC decision, November 19th 2021, acknowledged for the first time explicitly the *Right to School Education*, referring to the national constitutions of all EU Member States.

