

## MARKETISATION OF UNIVERSITIES AND LEGAL EDUCATION IN POLAND: THE BALANCE 25 YEARS AFTER THE TRANSFORMATION

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### INTRODUCTION

The twenty-fifth anniversary of the 1989 Polish transformation was a great opportunity to discuss and assess the achievements and failures of the political, cultural and social changes that occurred. Since the start of the Third Polish Republic, the transformation has been regarded as being rather successful. This kind of view is still dominant abroad and Poland is sometimes given as a leader and an example of former communist countries in Central Europe. Although this optimistic view is dominant, critics of the model and the changes in Poland since 1989 have always been present in the public discourse. Recently, the number of critical voices has grown rapidly, even in the mainstream Polish narrative, where the process of transformation is regarded as a brilliant achievement. One of the most criticised aspects of the changes since 1989 is the unconditional and uncritical implementation of the Western (mainly American) neo-liberal model of society and free market<sup>1</sup>. One of the most visible outcomes of implementing this liberal way of thinking in Poland since 1989 is the marketisation of many spheres of public life that has also embraced higher education and universities<sup>2</sup>. It should be emphasised

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<sup>1</sup> Prof. Marcin Król, one of the Founding Fathers of the new Polish system after 1989, admitted in an interview for “Gazeta Wyborcza” that belief in the market economy was too high, the liberal model of social relations was overvalued and inflexibly implemented, and the architects of Polish transformation “were foolish” on that matter. Marcin Król, ‘Byliśmy głupi’ [‘We were foolish’] (*Gazeta Wyborcza*, 7 February 2014), <[http://wyborcza.pl/magazyn/1,136528,15414610,Bylismy\\_glupi.html](http://wyborcza.pl/magazyn/1,136528,15414610,Bylismy_glupi.html)> accessed 10 March 2016. Another author, Andrzej Szachaj, consequently claimed that at the beginning of transformation Poland chose and wrongly developed an individualistic Anglo-American model of liberalism, instead the Scandinavian model, which is based on social solidarity. See Andrzej Szachaj, ‘Kapitalizm drobnego druku’ [Small-Print Capitalism] (Instytut Wydawniczy Książka i Prasa 2014).

<sup>2</sup> Marek Kwiek, *Knowledge production in European universities: States, markets, and academic entrepreneurialism* (Peter Lang 2013); Idem, ‘Creeping Marketization: Where Polish Public and Private Higher Education Sectors Meet’ in Roger Brown (ed), *Higher*

that, despite the dominance of the free market in the narrative about universities and their role, this does not mean that this ideology has been fully implemented without any modifications. On the contrary, we can note that the dominance of free market ideology is accompanied by a process of bureaucratisation and increasing state control of universities<sup>3</sup>. The aim of this paper is to present the contemporary discourse on the model and goals of Polish legal education since 1989. These considerations have to take into account the broader context of the marketisation of universities and the dominance of the free market ideology, as the issue of legal education is only one part of the general issue of university education.

## I. THE MEANING OF MARKETISATION

It is necessary to clarify the meaning of “marketisation” as used within this paper. This term is very often used in literature concerning economy and marketing and refers to the process that enables some public entities from traditionally non-economic sub-systems to operate as market orientated companies<sup>4</sup>. Examples of these sub-systems include culture, education, healthcare, science and the arts. All of these fields of social life were traditionally driven by values and rules other than economic efficiency, and in many cases were treated as functions that should be the responsibly of the state, regardless of cost or inefficiency. The marketisation process rapidly changes this perception, as according to the market, everything should be treated simply as typical enterprises. According to neo-liberal assumptions, the process of marketisation is beneficial for the functioning of society because all these entities provide services to clients, therefore the rules of the free market lead to an increase in the quality of consumer services. This beneficial effect is caused by the outcomes of free competition of service suppliers, who try to improve their quality in order to win clients, particularly when clients have a guaranteed choice between different offers. Moreover, free market rules eliminate the worst service providers, and at the same time force others to improve their offer<sup>5</sup>.

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*Education and the Market* (Routledge 2011) 135; Dominik Antonowicz, *Między siłą globalnych procesów a lokalną tradycją. Polskie szkolnictwo wyższe w dobie przemian* [Between the strength of global processes and local tradition. Polish higher education in the era of changes] (Wydawnictwo Naukowe Uniwersytetu Mikołaja Kopernika 2015).

<sup>3</sup> See Zbigniew Rykiel, ‘Szaleństwo czy metoda? Modernizacja przez biurokratyzację i prekaryzację’, [Madness or Method? Modernisation through bureaucratisation and precariatization] (2014) 2 *Przestrzeń Społeczna - Social Space* 1.

<sup>4</sup> According to PWN dictionary: “urynkować” (Polish equivalent to the English “to marketise”) means “ulec działaniu praw wolnego rynku” (to succumb to forces of the free market). The meanings and range of the marketization process are discussed by Uwe Schimank, Ute Volkmann, ‘Economising and Marketisation in a Functionally Differentiated Capitalist Society—A Theoretical Conceptualisation’ in Uwe Schimank and Ute Volkmann (ed), *The Marketisation of Society: Economising the Non-Economic* (University of Bremen 2012) 47–56.

<sup>5</sup> On neo-liberal values and economy see David McKnight David, *Beyond Right and Left: New Politics and the Culture War* (Allen & Unwin 2005); Eugenia Potulicka, ‘Teoretyczne podstawy neoliberalizmu a jego praktyka’ [Theoretical basis of neo-liberalism and its practice] in Eugenia Potulicka, Joanna Rutkowiak, *Neoliberalne uwikłania edukacji*, [Neo-liberal entanglement of education ] (Oficyna Wydawnicza “Impuls” 2010).

According to neo-liberal assumptions, this model of operating hospitals or schools in a way similar to typical companies' results in better management based on economic efficiency calculations. The necessity of cost minimisation combined with the desire to maximise profits means that this kind of entity is managed in a more rationalised and effective way. Therefore, all intervention and financial support from the state should be reduced because it is harmful for the functioning of the free market and always leads to inefficiency. Of course, the dominance of this neo-liberal point of view is closely related to its ideological victory over the communist model of a centrally controlled economy. According to Fukuyama's claim about the end of history after collapse of Soviet Union and the failure of the Marxist vision of economy, the free market combined with liberal democracy should be treated as the final social and political system of every state<sup>6</sup>.

There are significant social consequences of this liberal vision of society and the relations between individuals, combined with a common perception of all spheres of human life in terms of market choice and services. Firstly, this vision requires all entities to evaluate their activity in terms of economic efficiency; they are obliged to undertake and do anything that produces profits, and at the same time avoid everything that might cause losses. However, for many entities it is problematic to combine their goals with economic efficiency. It has to be remembered that some institutions were not created to generate profits, but to fulfil some social needs or mission, and their activity cannot be reduced only to earning money. This category includes universities, which are a great example of the process of marketisation clashing with traditional systems driven by non-economic values.

## II. THE HUMBOLDTIAN V. THE MARKET-ORIENTATED MODEL OF UNIVERSITY

The philosophy of the Enlightenment and the practical assumptions derived from it had a great influence on the perception of universities and their duty to society in modern Europe, especially in Central European countries<sup>7</sup>. The ideas of Enlightenment were based on an unconditional belief in human reason, an assumption that we can easily perceive in Rene Descartes' quote "*cogito ergo sum*" (I think, therefore I am). The consequences of the Enlightenment's conviction of the dominance of human reason were twofold: firstly, this belief was associated with the respect for knowledge and science, and that the human goal should be to gain them; secondly, that human reason was not only the most valuable instrument to understand the world and its rules, but also to be able to change reality. As we can see, the ideas of the Enlightenment were based on the strong belief that it was possible to change

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<sup>6</sup> Francis Fukuyama, 'The End of History' (1989) *The National Interest* 3; See also extended version: Francis Fukuyama, *The End of History and The Last Man* (The Free Press, Maximilian Inc. 1989).

<sup>7</sup> On philosophy of Enlightenment see Zbigniew Drozdowicz, *Filozofia oświecenia* [Enlightenment's Philosophy] (Wydawnictwo Naukowe PWN 2006).

human relations and character by erasing some existing patterns of thinking, beliefs, customs, and replacing them with better ones based on constantly developing human reason. This assumption could explain the broad interest of the Enlightenment's philosophers in the processes of upbringing, education, and the shaping of human minds in a broad sense<sup>8</sup>.

The successful implementation of the Enlightenment's ideas in higher education was achieved mainly by the German philosopher and teacher Wilhelm von Humboldt and was firstly embodied in Berlin University, which was established in 1809<sup>9</sup>. According to Humboldtian ideas, universities should have a holistic character and goals that embraced both scientific research and the shaping of students' characters<sup>10</sup>. As the best method to achieve those goals, the unification of tuition and scientific research was regarded as the best approach. Students should not simply get answers to their questions from authority, but try to find them themselves, thereby gaining knowledge. In that model of university, the most important rule was absolute freedom and independence in research and learning. Teachers and students constituted an academic community that worked together to freely investigate the world. The guarantee of the special status of universities was their vast range of autonomy and independence, not only from the state and its administration, but also from market requirements or those of a particular profession. Professional teaching was the domain of vocational schools.

Although universities regarded as a "temple of science" should give students the opportunity to gain and practice knowledge, their role was not limited to this. A university should also develop and shape student's minds and characters. The duty of professors was to influence students' thinking and impress harmony and humanistic values on their characters, especially by emphasising the significance of the social roles of well-educated people. The knowledge and skills acquired during study should not be used only for personal success, but should also be used to attempt to influence society by educating it, explaining things that are not commonly understood, and trying to encourage simple people to enter education. By realising these goals, universities would fulfil their social missions, by creating and shaping elite people who feel responsible for society and its development<sup>11</sup>. This attitude of graduates was visible in Central European countries, especially in the ethos of the social group called the "intelligentsia" (inteligencja) that was typical of

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<sup>8</sup> K Mrozowska, 'Koncepcje pedagogiczne Oświecenia: Rolland d'Erceville – Denis Diderot – Komisja Edukacji Narodowej. Studium porównawcze' [Pedagogical Concepts of Enlightenment: Rolland d'Erceville – Denis Diderot – Komisja Edukacji Narodowej. Comparative Study] (1976) 19 Rozprawy z dziejów oświaty 3; Stanisław Janeczek, 'Ideale wychowawcze w edukacji oświeceniowej (w perspektywie historii intelektualnej). Z dziejów Komisji Edukacji Narodowej' [Ideals of Education in Enlightenment Education (in Line of Intellectual History): On the History of the Commission of National Education] (2015) 6/2 Roczniki Kulturoznawcze 5.

<sup>9</sup> Mitchel G Ash, *German Universities Past and Future. Crisis or Renewal?* (Berghahn 1997).

<sup>10</sup> F Schleiermacher, 'Gelegentliche Gedanken fiber Universitäten im deutschen Sinn' in E Anrich, 'Die Idee der deutschen Universität' (Darmstadt, Hermann Gentner 1956) 219-308, cited after: Rosaline Pritchard, 'Humboldtian Values in a Changing World: Staff and Students in German Universities' 30 Oxford Review of Education 509.

<sup>11</sup> See chapter 4 in: RD Anderson, *European Universities form Enlightenment to 1914* (Oxford Scholarship Online 2004).

this region and rather unnoticed in Western European countries<sup>12</sup>. Belonging to this group was associated with the necessity to be socially active, as this was considered a form of public service that was an unavoidable outcome of the intellectual elite's special status in society.

The Humboldtian model of university always had the tendency to dominate in German-speaking countries and achieved absolute ideological domination in the second half of the 19th century in Germany and the Austro-Hungarian Monarchy; therefore, it had a significant influence on universities in Central Europe<sup>13</sup>. Two Polish Universities were also influenced in this way: the Jagiellonian University and Lwów University, which was situated in Polish territory before the First World War, and after Poland regained independence in 1918. These ideals were also accepted by other new or reborn Polish universities<sup>14</sup>. Despite the many problems associated with Marxist ideology, the idea of a university that simultaneously teaches and conducts scientific research existed during the period of People's Republic of Poland. Although Polish universities in that period were under great pressure and state control and their autonomy and especially the freedom of academic research was a fiction, that vision of goals and ideals of universities was maintained in the official academic narrative<sup>15</sup>. The fall of communist rule and the onset of the political, economic and social transformation after 1989 was treated by a great part of the academic society as enabling the possible restoration and realisation of the Humboldtian model; however, it finally turned out that this vision had to face the new vision of a university model.

The postulated university model that appeared in Poland after 1989 was not based on Humboldtian philosophy; however, it was not something new and had functioned for many years in the Anglo-Saxon world, especially in the United States<sup>16</sup>. The most important feature of this type of university was its tight connection with the free market as teaching processes were conducted in line with the requirements of employers. This kind of university is rather practically oriented because its goal is to give to students the knowledge and skills which allow them to be successful in the labour

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<sup>12</sup> Definition and features of 'inteligencja' see Jerzy Jedlicki, 'O czym się mówi, gdy się mówi o inteligencji?' [What is the meaning of Intelligentsia?] in Hanna Kowalska (ed), *Inteligencja. Tradycja i nowe czasy*, [Intelligentsia. Tradition and Modern Time] (Wydawnictwo Uniwersytetu Jagiellońskiego 2001) 11-14; Aleksander Gella, 'A structural definition of intelligentsia' in Raj P Mohan (ed), *The Mythmakers: Intellectuals and the Intelligentsia* (Greendwood Press, New York 1987).

<sup>13</sup> Walter Rügge (ed), *A History of the University in Europe. Volume III. University in the Nineteenth and Early Twentieth Century (1800-1945)* (Cambridge University Press 2004) 64-65.

<sup>14</sup> Warsaw University was restored in 1915 and Stefan Batory University in Vilnius in 1919. Also in 1919 Poznań University was created. See Zofia Skubała-Tokarska, Zbigniew Tokarski, *Uniwersytety w Polsce. Rys historyczny* [Universities in Poland. Historical outline] (Wiedza Powszechna 1972).

<sup>15</sup> A similar situation existed in others communist countries in Central Europe. Walter Rügge (ed) *A History of the University in Europe. Volume IV. Universities since 1945* (Cambridge University Press 2011).

<sup>16</sup> Jaroslav Pelican, *The Idea of University: Reexamination* (Yale University Press 1992); Marek Kwiek (n 2).

market<sup>17</sup>. In that case, studying is treated by students more like the acquisition of necessary personal features that allow for individual success than a period of developing humanistic character, a sense of mission, and social responsibility. Of course, these universities conduct scientific research, but in such a way that results in free market profits. Moreover, in this model universities are managed like companies that have to assess potential profits and losses<sup>18</sup>. The philosophy of this kind of university is based on simple pragmatism and utilitarianism: a university cannot be an “ivory tower” separated from social and market needs or expectations, but has to prepare people who will be well-educated experts in society. Therefore, during studies the most significant emphasis is put on shaping practical and professional skills. The social mission and duty to society of a university is to prepare professionals for the market.

Since 1989, this vision of university has gained the acceptance of a significant proportion of the academic community in Poland, who postulate that Polish universities should be reformed and changed according to the American model, especially in the field of management or in relation to students<sup>19</sup>. Of course, this discussion was related to the common acceptance by the Polish mainstream of the neo-liberal standpoint of society and economy.

### III. THE MARKETISATION OF UNIVERSITY EDUCATION – ESSENCE AND OUTCOMES

The marketisation of higher education can be described from two perspectives. Below I describe what are, in my opinion, the most important aspects and outcomes of this process. The most important change, which can be considered as the source of many others, is the changing relationship between the university and the students, which has become similar to the relationship between the consumer and the service provider<sup>20</sup>. This relation is typical of the market and contradicts the traditional relationship between the student and the university in Poland that is based on administrative bonds in which universities have a stronger position. Before the nineties, when the number of students in Poland was quite low, there were only public high schools and the elitist shape of university education was dominant. The educational boom in Poland in the nineties, combined with the very high

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<sup>17</sup> According to Thorstein Veblen universities should be treated as factories of human capital run by education entrepreneurs. Thorstein Veblen, *The higher learning in America. A Memorandum on the Conduct of Universities by Business Men* (New York 1918) 62-98.

<sup>18</sup> About the clash of two visions of University, as self-governing Corporation or company managed by professionals see Michał Seweryński, ‘Model akademicki czy menedżerski?’ [Academic or managerial model?] (2015) 11 Forum Akademickie, <<https://www.forumakademickie.pl/fa/2015/11/model-akademicki-czy-menedzerski/>> accessed 15 March 2016.

<sup>19</sup> Andrzej Koźmiński, ‘Dezercja elit’ [Desertion of Elites] (Rzeczpospolita, 4 August 2015) 8; Paweł Dobrowolski, ‘Harward w Polsce nielegalny’ [Harvard is illegal in Poland] (Rzeczpospolita, 18 May 2012).

<sup>20</sup> Kazimierz Denek, ‘Uniwersytet: między tradycją a wyzwaniami współczesności a przeszłości’ [University: between tradition and the challenges of the present and the past] (2013) 1 Edukacja Humanistyczna 7.

demand for university graduates in the Polish market, firstly caused an explosion in the number of private high schools, and, secondly, greatly influenced state universities, which started earning on fees for evening and part time students<sup>21</sup>. This relationship was based more on market forces (I pay for some educational product, therefore I require high quality), than on the traditional elite-shaping university model. During the good years of growing demand for higher education which started in the nineties and lasted until around 2005, this relationship was rather typical for part time, evening and private high school students. During this golden age for both state and private universities, one thing differed from typical market features: the lack of real competition for students. This changed rapidly when the number of students started to fall, which led to a crisis the field of higher education that forced all universities to compete for all types of student<sup>22</sup>.

As previously mentioned, the essence of this relation is to treat universities as service providers and students as clients who consume services. It is easy to find many examples that prove this in the discourse on university education. Study has become an educational product, and students have become clients. This product has to be attractive, properly targeted, and well-advertised compared to the offerings of other service providers in order to win clients (students). Moreover, when supply is rising and demand for educational services is falling, each competitor tries to offer new or better products, mainly in new fields of study<sup>23</sup> and many types of short-term postgraduate studies.

Of course, if study is treated as an educational product offered to potential clients, it has to be of high quality and the same as is advertised by the university. According to free market ideology, only truly free competition results in high quality products; however, in Poland this task was not left only to the regulation of the invisible hand of the market. Just after the transformation, there was no certain and developed system for controlling educational quality. This emerged during the nineties and was subsequently developed: in 2002 the Polish Accreditation Commission (Polska Komisja Akredytacyjna) was created, whose main task was to control the educational

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<sup>21</sup> Piotr Żuk, 'Wstęp. Od uniwersytetu w Bolonii do makdonaldyzacji szkolnictwa wyższego' [Introduction. From Bologna University to the MacDonaldisation of higher education] in Piotr Żuk (ed) *Wiedza-Ideologia-Władza. O społecznej funkcji uniwersytetu w społeczeństwie rynkowym*, [Knowledge-Ideology-Power. On social function of University in open society] (Wydawnictwo Naukowe Scholar 2012).

<sup>22</sup> The issue of demographic decrease in Poland and its impact on universities is discussed in report of Instytut Sokratesa: Dominik Antonowicz, Bartłomiej Gorlewski, 'Demograficzne Tsunami. Raport Instytutu Sokratesa na temat wpływu zmian demograficznych na szkolnictwo wyższe do 2020 roku' [Demographic Tsunami. The report of the Socrates Institute on the influences of demographic changes on higher education till 2020], <[http://instytut sokratesa.pl/pliki/Demograficzne\\_Tsunami\\_Institut\\_Sokratesa.pdf](http://instytut sokratesa.pl/pliki/Demograficzne_Tsunami_Institut_Sokratesa.pdf)> accessed 16 March 2016.

<sup>23</sup> For example, the most popular courses created by law faculties, with the exception of law itself, are: Kryminologia (Criminology), Bezpieczeństwo wewnętrzne (Internal security), Prawo europejskie (European Law), Zarządzanie i prawo w biznesie (Management and law in business), Prawo finansowe i skarbowość (Finance and Financial Law).

standards of universities<sup>24</sup>. Nonetheless, the real revolution and acceleration towards market efficiency in Polish university education was the reform of the Ministry of Science and Higher Education which was started by Barbara Kudrycka in 2011. This is often called “Kudrycka’s reform” in Poland and it established the National Qualifications Framework (NQF) for study<sup>25</sup>.

In short, according to NQF requirements, all educational activity of universities should be assessed in three categories: knowledge, skills and social competence<sup>26</sup>. Each study subject should deliver these three precisely described elements to students. Of course, before this reform, all universities were obliged to deliver knowledge that developed students’ skills and character, so it would seem at first as if nothing had changed, but this is a misleading impression. The most important difference imposed by the reform was the requirement for universities to deliver detailed and precisely specified knowledge, skills and social competences to students. The last is especially difficult to define and even harder to verify as, although it is easy to check a student’s knowledge and skills, it is hard to examine his or her level of compassion, ethical standards or attitude to his work. The problem is also found in the language of official documents which contain phrases such as “the student knows” or “the student is able” instead of “the student should know” or “the student should be able”, which suggests that the university is not obliged to try its best to deliver knowledge or build social competence, but has to guarantee indicated outcomes. In that case, this modified form of universities’ duty to students becomes a duty to achieve specific results in teaching, instead of a duty of best efforts. The aforementioned requirements imposed on universities are treated as possibly lower standards of teaching which should be delivered to students, and their main aim is to guarantee a minimum quality of educational services<sup>27</sup>. Accordingly, students can demand from universities a guaranteed level of knowledge, skills and social competence, similar to the demands that consumers put on service providers. According to its authors, one of the main aims of the NQF was to improve

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<sup>24</sup> <<http://www.pka.edu.pl/misja/>> accessed 15 March 2016. See also: Monika Stachowiak – Kudła, *Autonomia szkół wyższych a instytucjonalne mechanizmy zapewnienia jakości w Polsce i wybranych państwach europejskich* [The autonomy of universities and institutional quality assurance mechanisms in selected European countries] (Difin 2012).

<sup>25</sup> Andrzej Kraśniewski, ‘Jak przygotowywać programy kształcenia zgodnie z wymaganiami wynikającymi z Krajowych Ram Kwalifikacji dla Szkolnictwa Wyższego?’ [How to prepare teaching programs according to the requirements of the National Qualifications Framework for Higher Education] <[http://www.nauka.gov.pl/g2/oryginal/2013\\_05/ef57bc328860fb57230230e32fa62885.pdf](http://www.nauka.gov.pl/g2/oryginal/2013_05/ef57bc328860fb57230230e32fa62885.pdf)> accessed 16 March 2016.

<sup>26</sup> In his guide for scholars who prepare curriculums and syllabuses according to the requirements of the NQF, one of the authors of reform, Andrzej Kraśniewski wrote: “The learning outcomes defined by the university should not reflect the expectations and ambitions of staff, but real possibilities to achieve these effects by the weakest student who (...) should acquire a diploma certifying qualification of first or second degree of study”, Andrzej Kraśniewski (n 25). This stance was widely criticized as an encouragement for universities for lowering the level of teaching. See Andrzej Nowak, ‘Hodowanie troglodytów’ [Breeding of cavemen] (2012) Rzeczpospolita <<http://www.rp.pl/artykul/905410-Hodowanie-troglodytow.html>> accessed 16 March 2016.

<sup>27</sup> Mentioned in the previous footnote, Andrzej Kraśniewski wrote also: “Defining the learning outcomes by university constitutes, in fact, not so much assumption or intention - as the term “the expected learning outcomes” might suggest - but enforceable commitment”. Andrzej Kraśniewski (n 25).



teaching quality and to give students a guarantee of the promised level of knowledge and skills<sup>28</sup>. The difference is that the Ministry of Science and Higher Education and the Polish Accreditation Commission has to oversee this process. Therefore, we can see a free market narrative (quality of service) combined with vast control by state agents, or bureaucracy.

Moreover, another aim of the NQF is to influence university teaching in order to make it more compatible with free market needs, which is another example of the free market ideology narrative<sup>29</sup>. From this perspective, study should not be treated as an end in itself or as period for intellectual and character based enrichment of person, but rather as a simple tool that leads to a goal. This goal is success on the free market, and the aim of study is to provide the best possible knowledge and skills that allows for success. This attitude rapidly changes the stances of both students and universities. If a university is perceived only as a potential service provider that is chosen on the basis of its educational offering, then it has to meet the expectations of potential clients in order to win them. In this case, a university that offers new fields of study has to follow a client's requirements, which are defined by free market demand. However, from a student's point of view, the most important factor is that he obtains the knowledge and skills that allows him to be competitive on the free market.

This goal leads to students having both a utilitarian and a technicistic attitude to study and the process of gaining knowledge and skills. A utilitarian approach to study means that we should value knowledge in terms of its usefulness in our future professional career. The outcome of this attitude is that only knowledge and skills that we can predict will lead to market success are to be pursued, while knowledge and skills that are regarded as useless are rejected<sup>30</sup>. In turn, the technicistic approach means that if we have some goal to achieve, we should choose the easiest way to achieve it and reject all means that, according to our knowledge or experience, do not lead directly to our

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<sup>28</sup> According to that interpretation of character of requirements of NQF it is possible to imagine a lawsuit against university by student, who can claim that they did not acquire the promised level of knowledge, skills or social competence during the study. Similar actions became popular in some West Europe countries and the US. Jan Petter Myklebust, 'Foreign student sues university over course quality' <<http://www.universityworldnews.com/article.php?story=20150430124032415>> accessed 10 April 2016; Elisabeth Olson, 'Law Graduate Gets Her Day in Court, Suing Law School' (2016) New York Times <[http://www.nytimes.com/2016/03/07/business/dealbook/court-to-hear-suit-accusing-law-school-of-inflating-job-data.html?\\_r=0](http://www.nytimes.com/2016/03/07/business/dealbook/court-to-hear-suit-accusing-law-school-of-inflating-job-data.html?_r=0)> accessed 10 April 2016; Abbay Jackson, 'A guy with \$170,000 in student loans who can't find a job in the legal profession is suing his law school and working full time for Uber' <<http://www.businessinsider.com/thomas-jefferson-lawsuit-2015-12>> accessed 10 April 2016.

<sup>29</sup> The main aim and assumption of reform was included in document prepared by the Ministry of Higher education and Science: 'Reforma szkolnictwa wyższego' [The reform of Higher Education] <[http://www.nauka.gov.pl/g2/oryginal/2013\\_05/c206c1142bb1abce72e45bb9a3a3929e.pdf](http://www.nauka.gov.pl/g2/oryginal/2013_05/c206c1142bb1abce72e45bb9a3a3929e.pdf)> accessed 10 April 2016.

<sup>30</sup> More about the essence of a utilitarian approach see Claire Andre and Manuel Velasquez, 'Calculating Consequences: The Utilitarian Approach to Ethics' (1989) 2/1 Issues in Ethics <<https://www.scu.edu/ethics/ethics-resources/ethical-decision-making/calculating-consequences-the-utilitarian-approach/>> accessed 10 April 2016.

goal, or do not lead to it directly enough. In short, we should choose means that allow us to reach our goal as easily and as quickly as possible<sup>31</sup>. The outcome of the combination of these two attitudes is the tendency amongst students to require that universities deliver only the kind of knowledge and skills that would definitely be useful in their future, and in general reorienting all study towards practical market demands. We can see that from this point of view, the aim of study is not the versatile development of personality, but practical knowledge and skills that lead to a better position in free market competition. Traditional, humanistic education is perceived as too theoretical and completely unadjusted to the reality of the market, and many university faculties are regarded as “factories of unemployment” because they deliver useless knowledge and skills<sup>32</sup>. Even if the delivered product cannot be regarded as completely useless because it contains knowledge that might be used in the future, there is no certainty of this and it can still be regarded as a waste of time, because it cannot guarantee short-term, practical benefits on the job market. Due to these requirements, humanistic education is regarded as an uncertain means to free market success from the perspective of expected further profits.

#### IV. DISCUSSION ON LEGAL EDUCATION – BETWEEN HUMANISTIC AND PROFESSIONAL PARADIGM

The discussion on the teaching models and goals of university education was especially lively in the legal community, involving not only professors and students, but also representatives of the legal professions, especially those with a corporate character such as barristers and solicitors. The law-teaching model was very vulnerable to discussion of the character of universities and the form of their education that cannot be reduced only to an academic system of science because of its innate character and the fact that a significant aspect of law is practice. It has to be mentioned that, in general, some streams of legal philosophy deny the assumption that law has a scientific character and claim that it should be regarded as pure practice<sup>33</sup>. In

<sup>31</sup> See Jerzy Wróblewski, ‘Prawoznawstwo: Perspektywa technicystyczna i humanistyczna (Z problemów III Kongresu Nauki)’ [Jurisprudence: Technicistic and Humanistic Perspective (From Problems of III Congress of Science)] (1986) 4 Państwo i Prawo 1; Jacek Srokosz, ‘A Technicist Perspective and the Contemporary Perception of the Role of Lawyers in Polish Society’ in Cosmin Cercel, Rafał Mańko, Adam Sulikowski (ed) *Law and Critique in Central Europe* (Counterpress, forthcoming in 2016).

<sup>32</sup> See for example: Tomasz Ciechoński, ‘Fabryki bezrobotnych: Sprawdź jakich studiów nie wybierać’ [Factories of unemployment. Check out what studies you should not choose] <<http://bydgoszcz.wyborcza.pl/bydgoszcz/1,48722,19308425,fabryki-bezrobotnych-sprawdz-jakich-studiow-nie-wybierac.html>> accessed 12 March 2016; Justyna Serafin, ‘Studia – fabryki bezrobotnych?’ [University studies – factories of unemployment?] <<http://www.niedziela.pl/artikul/59355/nd/Studia---fabryka-bezrobotnych>> accessed 12 March 2016; Andrzej Klesyk, ‘Szukamy tych którzy myślą samodzielnie’ [We are looking for those who think independently] <[http://wyborcza.pl/1,75968,11593341,Prezes\\_PZU\\_Szukamy\\_tych\\_ktorzy\\_mysla\\_samodzielnie.html](http://wyborcza.pl/1,75968,11593341,Prezes_PZU_Szukamy_tych_ktorzy_mysla_samodzielnie.html)> accessed 12 March 2016.

<sup>33</sup> That stance represents legal realism in broad sense. See Brien Leiter, ‘Legal Realism’ in Dennis Patterson (ed), *A Companion to Philosophy of Law and Legal Theory* (Wiley-

this case, it has to be considered whether law should be taught as a well-ordered system of science or presented as a rather chaotic and random practice, and that legal education should deliver necessary skills for future lawyers that allow them to find some order in this chaotic field. Moreover, the legal profession was more prone to regarding itself as separated from the world of science, and legal study as completely different from typical university study because it prepares for the practice of one concrete profession<sup>34</sup>. Many lawyers claim that, contrary to other studies, if you go to a Law Faculty you know in general what you want and will do in the future, hence this period should be treated as time for thorough, professional preparation.

The discussion on legal education in the context of its theoretical or practical character and professional preparation for legal practice is an evergreen topic of legal debate in Poland. This issue arose in past debates and still occurs in contemporary legal discourse; however, most of the arguments were given earlier and are probably now just repeated. However, nowadays it seems that proponents of the practically orientated model have a tendency to dominate. Due to the shortness of this paper, I will not present details of previous debates; I will only draw outlines of them that are necessary to understand their essence.

The aforementioned two most significant debates took place some time ago in the interwar period. The first appeared at the dawn of II Republic of Poland and engaged two brilliant Polish law professors from Jan Kazimierz University in Lwów: Oswald Balzer and Juliusz Makarewicz. The axis of the argument and *casus belli* was the status of historic subjects during legal study, whose significance for lawyers was denied by penalty law professor Makarewicz and defended by history law professor Balzer<sup>35</sup>. However, the essence of this discussion was the vision of the form of legal education: Balzer was a proponent of the traditional, humanistic vision of law teaching, while Makarewicz claimed that law faculties should prepare their graduates in a professional manner.

The second debate, which took place in the 1930s, engaged many more academic staff, students, judges and advocates<sup>36</sup>. Many topics were

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Blackwell 1996); Jerzy Stelmach, Ryszard Sarkowicz, *Filozofia prawa XIX i XX wieku* [Philosophy of Law in 19<sup>th</sup> and 20<sup>th</sup> Century] (Wydawnictwo Uniwersytetu Jagiellońskiego 1999).

<sup>34</sup> For example Thorstein Veblen wrote "in point of substantial merit the law school belongs in the modern university no more than a school of fencing or dancing". Thorstein Veblen (n 17) 155. Paul Samuelson claimed that in reality law schools are connected with university only by postal code. Paul A Samuelson, 'The Convergence of the Law School and the University' (1975) 44 *The American Scholar* 258.

<sup>35</sup> See Grzegorz Kowalski, 'O miejsce historii prawa w programie studiów uniwersyteckich. Polemika pomiędzy Oswaldem Balzerem a Juliuszem Makarewiczem' [About the place of Legal History in the Curriculum of Law Studies. The Polemic between Oswald Balzer and Juliusz Makarewicz] (2004) 2 *Czasopismo Prawno-Historyczne* 345.

<sup>36</sup> Maciej Marszał, Jacek Srokosz, 'Rzymianie czy barbarzyńcy? Z dyskusji nad reformą programu studiów prawniczych w Polsce w latach 1931-1937' ['Romans or Barbarians? The debate about the curriculum of legal education in Poland 1931-1937'] (2010) *Przegląd Prawa i Administracji* 263.

covered by this debate, but the most important concerned the general character of legal education and the profile of graduates. In my opinion, the essence of this discourse was described by law theory professor Czesław Znamierowski, who wrote about the clash between the two visions of law graduates: “Romans” and “barbarians”<sup>37</sup>. The former referred to humanistically-educated lawyers who possessed general knowledge from many fields of science, had developed minds, and served some kind of mission in their legal practice, while at the same time being completely unprepared to enter the legal service market due to their lack of certain professional skills and knowledge. For Znamierowski, who was an opponent of this vision, it was obvious that legal education should be practically orientated as even the best humanist education could not replace a practical lawyer’s skills and would not lead to success on the legal services market. The latter of these two types of lawyers were practically educated lawyers who had lawyer’s skills and a complex but rather fragmented knowledge from specialised legal fields which allowed them to make a seamless start in practicing law immediately after graduation. However, the “barbarians” did not have a broad knowledge of social processes from other realms of knowledge or a general humanistic education. In other words, these two types of lawyers can be described as Artists of law and Artisans of law.

This reference to a discussion from nearly one hundred years ago might sound strange, but despite the years that have passed since the Balzer-Makarewicz debate which later ran in the thirties, most of the arguments formulated in these debates are repeated in contemporary discussions on the character of legal education. Of course, this does not mean that both sides simply argue ritually without the hope of any shift in standpoint and that contemporary discussions are a mere rehashing of arguments from the past.

Contemporarily, better words to describe discussions on the character of legal education would be divided into humanist-lawyer education or professional-lawyer education<sup>38</sup>. The first vision of a humanist-lawyer is substantially similar to the vision from the interwar period and corresponds to the Humboldtian model of university teaching. Proponents of this vision require humanistic, general and broad knowledge from lawyers in many spheres of social life, and treat university as a time for shaping the character and moral backbone of future lawyers. From this perspective, it is less important to obtain concrete knowledge about laws in force and practical lawyering because the most appropriate time for obtaining them is during practical on-the-job training (“aplikacja”) that prepares for the practicing of a specialised legal profession. On the other hand, proponents of practical legal education emphasise the professional character of legal practice and the ethos of the professionalism of practicing lawyers<sup>39</sup>. Professionalism requires from

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<sup>37</sup> Czesław Znamierowski, *Nil desperandum*, Gazeta Polska (28 April 1937) 1.

<sup>38</sup> Jacek Srokosz, ‘Między humanizmem a technicyzmem. Spór o model nauczania prawa w polskim dyskursie prawniczym’ [Between Humanism and Technicism. The dispute on the Legal Teaching Model in Polish Legal Discourse] in Adam Bartczak, Monika Król, Monika Zalewska (ed), *Integracja zewnętrzna i wewnętrzna nauk prawnych* [Inner and Outer Integration of Legal Science] (Wydawnictwo Uniwersytetu Łódzkiego 2014) 47.

<sup>39</sup> Although a proponents of practical character of legal education usually as the most practice-oriented indicate American Case Method, there is a lot of doubts amongst American Academics if this method is really preparing for practice and to “think like a lawyer”, or rather is too theoretical and teach “to think like law professor”. See for example: Harry T

them highest level of knowledge, and skills which allow them to provide clients with the highest possible quality of legal service. From this point of view, students should practically prepare for legal service from very beginning of their legal education in order to start their professional activity immediately after graduation. Of course, a lawyer can also be a well-educated humanist with a strong sense of social responsibility, but he or she should primarily be a well-prepared professional who represents the interests of his or her clients.

Neo-liberal ideology and the process of marketisation give stronger arguments to followers of the professional lawyers' stance in the discussion on graduate lawyers and university education. All the previously discussed marketisation phenomena are particularly conspicuous and enhanced in legal education because of its unique character. As previously stated, the study of law is one of many fields of study that prepares for the practice of a specified profession, and, in most cases, people who study treat it as some segment of the road to a concrete career in the legal profession. This forms the basis of the proposition that legal education should be made more practical, mainly by eliminating or at least significantly reducing the number of subjects that have more general, humanistic character, such as Legal History, Theory and Philosophy of Law, Political and Legal Thoughts or Sociology of Law. According to this concept, the essence of legal education should be purely practical and prepare students as well as possible to practise law following graduation. These proposals are popular amongst students, which does not come as a surprise because their attitude is in harmony with the typical utilitarian free market approach. Subjects and skills that are immediately profitable and correspond to typical market strategies such as profit maximisation and cost minimisation are preferable. The time required for learning, passing exams or practising skills should be regarded as a cost.

The consequence of the idea that legal education should be more practice-oriented leads to the idea of radical changes in teaching methods; from traditional university lecture methods towards something with a more practical character<sup>40</sup>. The most popular proposed method of teaching is based on the American Case Method, as it is regarded as the best way for students to think and act like a lawyers<sup>41</sup>. In addition, clinical legal education is quite popular, but because of the associated high cost is generally treated as very beneficial teaching supplement rather than a main method of legal education.

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Edwards, 'Growing Disjunction Between Legal Education and the Legal Professions' (1992) 91 Michigan Law Review 34. Sometimes appear proposition to take back law teaching from law professors and give it professionals. Mathias M Siems, 'World without Law Professors' in Mark van Hocke (ed), *Methodologies of Legal Disciplines. What kind of Method? What kind of Discipline?* (Hart Publishing 2011) 71-87.

<sup>40</sup> The proposition of a radical reform of Polish legal education in a direction similar to the American solution was put forward by Fryderyk Zoll. See Fryderyk Zoll, *Jaka szkoła prawa? Czy amerykańskie metody nauczania mogą być przydatne w Polsce?* [What law school? Can American teaching methods be useful in Poland?] (Dom Wydawniczy ABC 2004).

<sup>41</sup> Jacek Srokosz, 'The American discussion on the value of the Langdell's education method of teaching students to "think like a lawyer", and the possibility of its implementation in Polish legal education' in Milos Večeřa, Tatiana Machalová, Jirý Valdhans (ed), *Aktuální otázky právní metodologie*, (Masaryk University 2014) 132-146.

## CONCLUSIONS

The discussed tendencies in Polish legal education since 1989 are closely related to marketisation processes and the predominance of the American model of liberalism in public discourse. The term “Americanisation” sometimes arises when describing the influence of American culture, its ways of thinking and ideology, and its effects on the culture of other countries, including the post-communist countries in Central Europe, including Poland<sup>42</sup>. Amongst others, the process of copying American thinking on universities and their role has also been applied in the Polish public discourse<sup>43</sup>. The tendency to treat universities as a kind of school that prepares students for practicing a profession is visible, and that kind of thinking is very fertile ground from the perspective of legal teaching. This tendency is closely associated with the falling significance of the Humanities, the American approach to practical study, and its close relationship to the demands of the free market.

Of course, university education cannot be treated as perfect and unchanging, with no need for development. In addition, universities cannot be treated as “ivory towers”, without any relationship with, or relevance to, the world around them. The question is whether they should absolutely follow pro-market trends, redefine their social role, and become simple professional schools that prepare graduates to enter the free market? We can imagine the implementation of that kind of educational vision in reality, particularly in legal education, but there would still be a problem defining what it is that employers really want from university graduates. An argument that often appears in public discourse is that an open mind, creativity, and the abilities to learn quickly and adjust to the changing world are most important and expected by employers, but some doubts emerge as to whether strictly professional teaching can meet these expectations. Firstly, we cannot clearly predict the market and its requirements when we start study, as the market is always changing. Traditional legal teaching in Poland theoretically prepared a graduate for practicing one legal profession, but not everybody follows this path after graduation<sup>44</sup>. Moreover, because of the growing number of professional lawyers on the market and the rapidly growing competition

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<sup>42</sup> The term “Americanisation” denotes the influence which American culture has on the cultures of other countries, especially on sphere of popular culture, common customs, media, way of life, business practice or political technique. See Neil Campbell, Judge Davis, George McKay, *Issues in Americanisation and Culture* (Edinburgh University Press 2004).

<sup>43</sup> Elżbieta Wnuk-Lipińska, ‘Tożsamość Uniwersytetu’ [The Identity of University] (1996) 8 *Nauka i Szkolnictwo Wyższe* 1.

<sup>44</sup> According to statistic data prepared by Ministry of Justice from 2008 to 2014 the number of postgraduates of legal study who attempted to exam ranged from 27% to 46% of all postgraduates of law in each year. Ministerstwo Sprawiedliwości Departament Zawodów Prawniczych i Dostępu do Pomocy Prawnej, *Analiza wyników egzaminów wstępnych na aplikacje: adwokacką, radcowską, i notarialną oraz egzaminu konkursowego na aplikację komorniczą*, 27 września 2014 r [Ministry of Justice, Department of Legal Professions and Access to Legal Aid, The analysis of the results of entrance examinations for applications: attorney, legal counsel, and the notary and the competitive examination for the application bailiff, September 27, 2014] <<https://ms.gov.pl/pl/informacje/download,6803,0.html>> accessed 15 March 2016.

between them, many students choose to work in different professions. Additionally, legal professions differ from each other so much that it might be better to teach general knowledge which would be beneficial for all legal professions, rather than only skills limited to one or two fields.

Although creativity is important in the market, a lot of research proves that professional training kills rather than develops it because it frames thinking into established, occupational habits, and treats them like undeniable truths that must be accepted without question. A general humanistic education would enable graduates to cope successfully with atypical or extraordinarily complex situations that would sometimes be impossible for those only accustomed to typical situations<sup>45</sup>. In jurisprudence, so called “hard cases” are quite common; therefore, simple knowledge of current legal rules would not be enough to deal with them<sup>46</sup>.

In the United States, the dominant character of university education is that it should be pragmatic and targeted at preparation for a particular profession, but some do not agree with this vision. In 2013, a group of Humanities and Social Science scientists created a report entitled “The Heart of the Matter. The Humanities and Social Science for a vibrant, competitive and secure nation”, in which they emphasised the significance of a broad, humanistic education for future leaders, social activists, and politicians. The authors tried to argue that without humanistic aspects in all fields of study, universities would produce (not raise) graduates with narrow intellectual and ethical horizons, and worse, they would not be good social leaders that can deal with the challenges of the contemporary world<sup>47</sup>. Similar opinions also exist in other Western countries. Over recent years, similar opinions have been raised in the Polish academic discourse, so after years of the dominance and even admiration for the free market vision, critical voices have appeared and some formal associations defending the humanistic character of Polish universities have been established<sup>48</sup>.

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<sup>45</sup> This argument appeared during discussions in interwar period. See Maciej Marszał, Jacek Srokosz (n 36).

<sup>46</sup> Roland Dworkin, ‘Hard Cases’ (1975) 88.6 *Harvard Law Review* 1157; Idem, *Taking Right Seriously* (Harvard University Press 1977) 81-131. See also Jerzy Zajadło, ‘Czym są hard cases?’ [What are the Hard Cases?] in idem (ed), *Fascynujące ścieżki filozofii prawa* [The Fascinating Paths of Legal Philosophy] (LexisNexis 2012) 7-18; Marcin Król, ‘Koncepcje trudnych przypadków a prawomocność’ [The conception of Hard Cases and Validity of Law] in Mirosław Kocoł, Wiesław Lang (ed), *Teoria prawa. Filozofia prawa. Współczesne prawo i prawnictwo* [Theory of Law. Philosophy of Law. Contemporary Law and Jurisprudence] (Wydawnictwo Uniwersytetu Mikołaja Kopernika 1998); Bartosz Wojciechowski, ‘Rozstrzygnięcie tzw. trudnych przypadków poprzez odwołanie się do odpowiedzialności moralnej’ [Resolving so called Hard Cases through resource to moral responsibility] (2004) LXX *Studia Prawno-Ekonomiczne* 1.

<sup>47</sup> ‘The Heart of the Matter. The Humanities and Social Sciences for a Vibrant, Competitive and Secure Nation’ <[http://www.humanitiescommission.org/pdf/hss\\_report.pdf](http://www.humanitiescommission.org/pdf/hss_report.pdf)> accessed 14 April 2016. See also Martha C Nussbaum, *Not For Profit: Why Democracy Needs the Humanities* (Princeton University Press 2010).

<sup>48</sup> For example Komitet Kryzysowy Nauki Polskiej (Crisis Committee of Polish Science) was established in 2014 as an answer to the attempt of the Authority of Białystok University to liquidate study of Philosophy. Also many articles and some books criticizing marketisation of university were edited – the best known is a book of Piotr Nowak, *Hodowanie troglodytów. Uwagi o szkolnictwie wyższym i kulturze umysłowej człowieka współczesnego* [Breeding of

Finally, in Poland the elitist or egalitarian character of legal study is very important. Due to the humanistic essence of the Humboldtian model, study definitely has an elitist character, which is natural because the aim of study was to create spiritually and intellectually elite members of society. This contemporary vision of study that is based on elitist education has largely been rejected in an attempt to make study more egalitarian, which is justified by democracy and equality. Free market relations between students and universities would seem to be a good way to make study more egalitarian and to strengthen the position of students, who can always change university and choose other service provider. This could be a solution to the feudal relations within Polish universities. Personally, I do not believe that this would be an effective solution because narratives about the relationship between university and student that are based on the equal position of both parties and depicted in the form of service provider and client would only create an artificial image of reality. In reality, it would be more like the relationship between big corporations, such as banks, and their clients, where formally both parties are equal, but the reality is completely different. The marketisation of Polish universities combined with the process of bureaucratisation would only change the narrative, but not the essence of the situation.

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