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Lawyers, law schools and social change – defining the challenges of academic legal education in the late modernity

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ABSTRACT

This article argues that due to their position and task in society, legal professionals are confronted with specific difficulties connected to contemporary circumstances. To outline these circumstances, this article draws on the work of Ulrich Beck and Zygmunt Bauman and places both theories within the late modernity. Lawyers need to be able to deal with the difficulties late modernity poses and are therefore in need of appropriate knowledge and skills. Law schools should offer relevant schooling so that their students are equipped to deal with the difficulties confronting them in late modernity's society. This article offers a first inquiry into the challenges that lawyers currently face, alongside anticipating alteration of academic law school programs by clarifying the challenges caused by two societal processes in late modernity, namely (1) the increase of technological possibilities and, simultaneously, the demystification of science; and (2) globalization. These processes lead to a complex society ruled by uncertainty that faces the challenge of allocating responsibility. In addition, some initial suggestions are presented regarding the conceivable adjustments to academic legal education in late modernity.

Introduction

Teachers of academic legal education face a difficult task.¹ We are teaching the digitalized generation of millennials and are committed to prepare these students for a professional life in a society that has vastly transformed in the last decades. Today's students will build careers in a complex society that is changing with increasing speed due to technological innovations.² This article offers a contribution to the ongoing discussion on the aims and content of academic legal education by viewing legal education in the theoretical and social context of late modernity. By suggesting late modernity as the starting point for an analysis of legal education's circumstances, various purposes and functions of legal education can be observed, which consequently provide an inclination of its content.

The lawyers we educate – in the broad sense i.e. all legal professionals – will have the opportunity to contribute to societal change because of their

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employment in legislature, judiciary, academia, international organizations and corporations.³ Interestingly, the very position and task of academic lawyers are both in need of reconsideration. Legal experts are traditionally mostly skilled in interpreting law, conflict resolution and avoiding these conflicts altogether by, for example, writing contracts governed by law. Contemporary society, however, is changing and the problems lawyers must encounter gain in scale, quantity and complexity. A number of tasks that conventionally are central to legal professions are currently transferring to other professionals, laymen or even computers. Professionals from other industries offer clients services in legal disputes; self-taught citizens visit websites or watch YouTube videos providing legal information; and in the future, legal cases might be solved by computers working with algorithms that predict outcomes.⁴ In the increasingly complex society, lawyers' services will transform and also become more complex. This implies that legal professionals need relevant knowledge and need to develop a matching set of skills to be able to redefine and practice their profession in contemporary society. Here, law schools could play an important part in preparing students for their future tasks.

This article offers a first inquiry into the processes and challenges lawyers and academic legal education are confronted with in the late modernity. I use the notion of late modernity by connecting the cross points between the social theories of Beck and Bauman. These theories note that late modernity can in particular be defined by processes such as (1) the increase of technological possibilities together with the demystification of science and (2) globalization. Essentially, I will argue that these two processes add to the complexity of late modern society, presenting endless possibilities that demand selection. As a field of international research and collaboration, biotechnology, for example, offers many possibilities for medicine and agriculture, but there are drawbacks: cloning, the selection of embryos or bio-enhancing crops might have unwanted consequences. Therefore (moral) choices have to be made, which research to pursue and how new knowledge should be used in practice. It is often not clear which choice is preferable and any choice could come with a frightening cost. This leads to a collective sense of uncertainty, which results in complications in distributing responsibility, because it is unclear who is specifically responsible for occurring catastrophes. One way to cope with the uncertainty is by reconsidering the allocation of responsibility. Legal experts are particularly suited for that task, since they are active in a field where questions of responsibility are dealt with. Therefore, academic legal education needs to prepare its students for that task.

In this article, I clarify the two processes of late modernity and describe the contemporary challenge of allocating responsibility. Then, I will describe the way in which legal professionals are confronted with this social change and I offer some initial suggestions on how legal education should prepare its students for a professional life in late modernity.

Lawyers and law schools in the late modernity

To designate contemporary times, I use the term *late modernity*. With this denomination, I seek to emphasize that the modernization process continues under changed circumstances.⁵ To offer a useful depiction of late modernity, I combine core elements of two social theories on modernization. Beck's globalized and risk-oriented society describes the space and time of late modernity, while Bauman's ideas on moral responsibility describe the factual by characterizing the social relations between individuals. Together, these theories portray late modernity as an era in which society faces (1) the realization that science is fallible and (2) globalization. These processes offer endless possibilities, which makes society complex and leads to collective uncertainty. This creates (3) difficulties in allocating responsibility in the case of harmful events. In the following, I will sketch the outlines of late modernity and describe how lawyers and academic legal education are confronted with each difficulty.

Process 1: Demystification of science and technology

In modern society, science was virtually given a mythical superiority. According to Beck, however, this is changing fundamentally and society is confronted with the flaws of modernity's core beliefs.⁶ For instance, society is confronted with the "dark side" of wealth production. While producing enough food to sustain the world's growing population, air and water pollution becomes a threat to the life of plants, animals and humans. These risks affect us all and are the self-manufactured, irreversible, unforeseen and unpredictable side-effects of science and technology. Risks encompass a constant threat of catastrophe and risks become the main focus of society. Beck labels this society as a risk society. This is a society no longer structured through class, gender or religion, but focused on and organized around risk and risk management because the realization has struck that science is not only capable of solving problems but, ominously, often *causes* novel problems while attempting to solve known difficulties.⁷ In an attempt to find certainty and control fear, risk assessment turns into an important industry and information becomes an essential resource. Interpreting data to calculate risks is a booming business⁸ and published data, which can be found easily and in abundance through traditional and new media, is presented in clever rhetoric.⁹ Unfortunately, risk assessments depend on fallible technology and experts constantly contradict one another, which makes them subjective. Consequently, a demystification of science and technology emerges in which the once unquestioned trust in *modernity's* scientific, political and cultural elite and institutions vaporizes fast.

Lawyers and the demystification of science and technology

The legal occupational group now faces the public's mistrust of *modern* institutions and experts. This affects the authority of the legal system: its authority

is no longer unconditional, but only accepted after persuasion or under the condition that the legal experts' decision agrees with public opinion.¹⁰ The mistrust in the legal system is exacerbated by legal errors and miscarriages of justice extensively covered by the media.¹¹ Moreover, very noticeable difficulties met by lawyers are the need for risk assessment and managing uncertainty in the legal professional field.

In our quest for security, we are eager to eliminate or, at least, calculate risks. For that reason lawyers frequently need to step out of their comfort zone and need to interpret legal, but also social, economic, financial or medical data and figure out which risks are involved, how substantial the risks are and if and how those risks can be minimized. A lawyer might be asked by a client to predict the outcome of her case, to estimate a success rate or to calculate the probability of the witness's truthfulness. This is problematic, because these calculated outcomes are very valuable and influential, while lawyers are not yet trained to calculate these complex and multi-disciplined contemporary risks. In conclusion, lawyers hold much power when interpreting data, but they must learn to use that power well.

Law is struggling to cope with risk issues. These issues are both trans-science and trans-legal, but the relation between the realm of facts (science) and the realm of normativity (law) is often problematic.¹² Unfortunately, traditional legal standards are often not capable of solving these problems. Legal experts need to find their way in this professional field featuring uncertainty. Researched data or risk calculations that lawyers interpret or use are often incomplete and depend on the individual interpretation of the "expert". This state of affairs requires legal professionals to adopt a critical attitude. They have to be aware of the fallibility of science and need to be able to detect contradictions and falsehoods in the claims of others and in any information they are given. The awareness and the skill to locate inconsistencies will enable them to enter a dialogue in which subjective truths can be created based on multiple information sources.¹³ Also, judgments, convictions and decisions seem changeable and conditional, but this does not mean that talking about opinions or "facts" is pointless. The legal profession revolves around well balanced decision-making and these decisions are of great importance in the treatment of risks: decisions offer a level of certainty.¹⁴ Therefore, it is important that lawyers participate in open, social dialogues which result in these decisions. Changes in the legal debate, such as addition of economic, political, medical and social information compel lawyers to be articulate and convincing in dialogues on a variety of topics. This demands general knowledge that exceeds the legal field.

Law schools and the demystification of science and technology

The difficulties of *risk assessment* and *uncertain truth* demand legal education to provide students with a broad education that covers not only legal subjects but also courses in other professional fields such as economy, sociology, medicine,

philosophy and risk management. Law schools should enforce Bachelor students to attend several courses in disciplines other than law and should incorporate elements of these fields into legal courses. This will teach our students that every problem can be evaluated from multiple and sometimes incompatible perspectives. Broadening the field of knowledge through courses and communication with professionals from different areas in different professional languages, creates a hothouse for emerging ideas and solutions and will reduce blind spots within the own professional field.¹⁵

Furthermore, our students need to be confronted with uncertainty and doubt during their education. Since we are geared towards certainty and doubt increases, at least temporary, uncertainty is part of life in late modernity. As future legal professionals, our students will need to question the correctness of, for example, forensic science in legal cases and will face uncertainty and doubt with regard to the content of law provisions and with regard to “common” knowledge and their personal convictions. Doubting is an uncomfortable endeavor, because reflection is often accompanied by some self-disillusion. But doubt is also an important, liberating strength in late modernity, because – according to Beck – *reflexive doubt* is a starting point for relativism, tolerance and flexibility.¹⁶ How would this play out in the practice of legal education? For example, student Eva enters a discussion convinced that law offenders should always be punished. Then she encounters a case where someone illegally gained money to pay for his cancer treatment. Eva starts to question her initial conviction: is she right to think that all law offenders should be punished? Instead of concluding that *not* all law offenders should be punished, and finding solace in a new certainty, Eva should be open to keep doubting also that conclusion. This ongoing doubt will empower her because Eva’s initial uncertainty reshapes through the second doubt’s critique. Beck describes this *complete doubt*¹⁷ as a way of managing the uncertainty inherent to doubt and as an opportunity for personal growth. Any conviction should be fluid and personal, because the doubter *herself* has to decide what she believes at that moment and through that, she designs herself. Consequently, the responsibility for her convictions is her own.¹⁸

Doubting your convictions will raise your inclination to give someone else’s ideas the benefit of the doubt. In academic legal education, this will translate in students being able to create room for other opinions and also to being able to acquire knowledge that is more open to questioning. As such, “*the art of doubt*” will create space for creativity, collaboration and problem-solving behavior. This mindset is invaluable for living in late modernity and we should introduce our students to this mindset. Encouragement could be provided by creating a learning atmosphere in which students can be curious, open to contrary ideas and tolerant.¹⁹

This implies that lecturers should not teach their students that there are right or wrong answers, but let their students experience that all knowledge is subject

to change. Especially in courses on “black letter” law, it is highly desirable that students learn to doubt and develop a critical attitude towards their field of study. To corroborate the above, why not introduce our students to our own ongoing, and therefore incomplete, research? This confronts students with the fact that uncertainty and risk are a part of education as they are a part of life. Moreover, we should teach our students to doubt confidently and develop a critical attitude by asking questions, organizing debates and prescribing articles containing contrary ideas followed by a discussion. Lecturers could also introduce classroom activities focused on discussion and reflection, so that students train skills such as critical and independent thinking. Even though these suggestions might in some countries, such as the UK, already be common practice, this is not the case in, for example, the Netherlands. My plea is that these practices should be given center stage in legal academic education, by incorporating them into our curriculum, learning objectives, learning materials, teaching methods, exams and the professional attitudes of lecturers and students. By embracing a level of uncertainty and doubt in law schools as a part of academic education we will promote the *re-mystification* of education.

Process 2: Globalization

The second societal process in late modernity is globalization, where the state is accompanied by a fierce global dimension.²⁰ In social science, globalization is often described as increasing worldwide interconnectedness that manifests itself in four trends. First, a growth in the competition between countries because of the increase of internationalization of markets. Second, the intensification of that competition between countries which results in policies such as reducing taxes for corporations; third, a growth in the global networking between people, companies and countries with the use of communication technologies, which leads to increased global interdependence. And finally, the increasing importance of globally networked markets which leads to an increasing interdependency and insecurity of local markets, vulnerable to unforeseen changes in global politics and the world economy.²¹ More concretely, globalization can be depicted by its positive attributes by arguing that it enables progress, wealth and freedom. In this sense, globalization empowers international collaboration and is beneficial for economic trade. Moreover, interactions between different cultures establish common ground and shared beliefs.²² These positive attributes of globalization are strengthened by the increase of technological possibilities for traveling and communication. On the negative side, people argue that globalization widens the gap between the global North and Global south since it enables economic trade and economic wealth almost exclusively for developed, western countries.²³ In the globalized world, wealthy states control the underdeveloped countries, thus making global inequality a serious issue. Moreover, the interactions between countries and imperialism of transnational

corporations such as Shell, McDonald's or H&M could result in a loss of cultural diversity and globalization has harmful consequences for the environment.²⁴ Connected to these unfavorable aspects of globalization, the man-made, contemporary risks that Beck categorizes in dimensions of ecological crises, financial crises, the terrorist threat and biographical risks²⁵ have globalized. Seemingly small life decisions made by an individual in the Netherlands might influence a vast number of people somewhere else in the world. For instance, the decision to drive a car or use plastic packaging has consequences for air and water conditions around the globe in the future. Almost every individual decision and act could have (yet) unknown but far reaching consequences in the realms of time and space. The globalized risks are the unknown but truly frightening threats of life in late modernity and they cannot be conquered by modernity's mode of operation due to their unprecedented scale and nature.²⁶ Therefore, citizens need coping strategies and on the meta-level new strategies are also required, since nation states can only battle global threats together.²⁷ However, on this international level, differences between cultures and histories become clearly visible and could form obstacles in negotiations. Interestingly, globalization generates counter reactions, like nationalism, xenophobia and ethnocentrism,²⁸ which could potentially pose another threat to society. These challenges generate the need for fitting skills that enable people to cope.

Lawyers and globalization

Law and lawyers are to a large extent affected by globalization. Even though globalization might not affect all legal professionals equally, global interactions cause significant structural changes in law.²⁹ Business law, international law, humanitarian law, intellectual property law and international organizations such as the UN, the International Court of Justice and the EU have all been altered, extended or have come into existence as a result of globalization,³⁰ and are becoming more central to the legal field which is struggling to incorporate globalization into its (modern) foundations.³¹ My argument is that the man-made, globalized threats can only be averted through intense *communication* and *collaboration* and that legal professionals are often involved in these processes because they operationalize the (legal) connections and relations between globalized people. The world, however, is inhabited by diverse cultures that do not always recognize the same problems as direct threats in need of immediate solutions. Due to this clash of risk cultures³², new and *creative* solutions for late modernity's global risks are required and can be realized by making true connections with and establishing understanding between people from radically different cultures and backgrounds. Therefore, legal professionals involved in these processes, like politicians, diplomats, business lawyers and NGO employees will need to negotiate and understand and be understood by professionals from different backgrounds. These lawyers need to communicate effectively in various universal languages, such as English, Spanish or Chinese.

Moreover, these legal experts need to be able to understand and relate to other cultures that may differ radically from their own. Also, almost all legal professionals will find themselves in a work environment with a diversity of co-workers and should be able to collaborate with them.

Law schools and globalization

Legal education is equally confronted with the consequences of globalization. Not only are we welcoming students from diverse cultures into the academy,³³ but the skills our students need to develop have altered and changes have been made in the content of our curriculum. For example, we increasingly incorporate courses on international legal provisions and human rights into our curriculum. Alongside these effects of globalization on legal education's Bachelor and Master programs, our students need to develop specific skills to flourish in the globalized professional field.³⁴ They will need training in culture-awareness, communication skills, collaboration skills and creativity. I argue that we should incorporate these skills into our current courses. With regard to culture-awareness, we should make our students aware of differences between cultures and backgrounds by advocating and facilitating studying abroad; including foreign law systems into our curriculum; offering a broad education in which students gain more than just legal knowledge and skills and by encouraging and supporting group work between a diversity of students. The latter also enables students to develop communication and collaboration skills. These skills can be trained simultaneously by prescribing and mentoring group work in which students of different backgrounds share responsibility for research, papers and presentations. Communication skills can also be developed without executing group work, for example instructing individual students to write a paper or present an argument. Moreover, the curriculum should prescribe that a certain amount of the examinations, such as written exams, papers and presentations must be completed in another language than the student's first language. Students can practice collaboration and communication skills in study activities that touch upon the legal practice or training simulations. For example, facilitating and stimulating students to apply for internships and organizing moot court events in which students of diverse backgrounds (possibly even from out of the legal faculty) collaborate. However, it is important to acknowledge that communication methods have altered due to technological innovations and globalization. Contemporary – digital, fast and social – communication methods are our student's natural habitat, but often pose a challenge for lecturers. To understand our students and in order to help them prepare for contemporary professional life, we need to develop our skill in using these methods.³⁵ Finally, the ability to think and act creatively is essential to be able to find solutions to unprecedented global risks. Creativity can be viewed as the process of having original, valuable ideas.³⁶ This demands liberty, autonomy and possibility. Moreover, creativity

is interlaced with art. Once known as *ars iuris*,³⁷ law, like art, is aesthetical and art might help lawyers see beyond the borders of legal, rational fictions and constructions by reminding them of the “mess of life”.³⁸ Art forms such as storytelling and constructing an original argument are surely part of the legal profession. In art education, it is understood that incorporating artwork in class gives students the opportunity to think creatively and develop skills in risk taking, agency, problem solving and collaboration.³⁹ Therefore, we should approach teaching, learning and problem solving as an individual art and we should integrate arts, creativity and uniqueness in our curricula and classrooms.⁴⁰ This form of multidisciplinary education will broaden our students’ education while increasing the understanding of their own field of study.⁴¹ Moreover, it will strengthen their ability to employ a critical attitude and to be tolerant of different opinions because contact with art teaches students that perception is fluid and can change after criticism.⁴²

The challenge: allocating responsibility

The processes of demystification of science and globalization result in an increasing complexity of society. Technological developments and the globalized world are the source of many possibilities and add to the complexity of contemporary life by offering freedom of choice. Those possibilities also *require* choice, because they cannot all be realized.⁴³ Selection is the source of uncertainty, since making choices is frightening. No selection can be made without exclusion, knowing that the decision is based on uncertain and incomplete data and fearing the realization of risks.⁴⁴ Although we will *all* be confronted by these risks, they are mostly unequally distributed, favoring the rich, who are dominant in acquiring knowledge and thus better equipped to take precautions. We all want the goods made possible by modernity’s technology but we are reluctant to pay the accompanying price. In the end, however, it is not so much a question of an equal distribution of risks, but of distributing and attributing the *responsibility* of risks.⁴⁵ Now that attributing risks can be viewed as the distribution of certainty, which is a highly desired good in late modernity,⁴⁶ the allocation of responsibility could be one solution to late modernity’s moral peril.

In itself, responsibility⁴⁷ is a multifaceted concept that raises many questions on the nature, the owner, the object and the consequences of that responsibility, often regulated by law. According to Bauman, however, moral responsibility begins and exists between one Self and one Other. In this relationship, the Self is not the asocial, legally defined individual as depicted by modernity,⁴⁸ but an intersubjective agent. The Other, is not the Self’s prey or threat but the start of the Self’s moral life because moral demands and responsibility start with the existence of the Other.⁴⁹ Unfortunately, this relationship ends when a third party enters the stage. After all, within the great numbers of society the Self cannot connect in the same way as it was able to with one Other.

Moreover, the Self seems incapable of taking on all the responsibility required for so many Others. Thus, all Others become faceless and, therefore, unknown and feared. The structures of society, the classification and differentiation that it provides by distributing temporal and elusive identities or roles to its members, help to alleviate the constant ambivalence of trust and mistrust that arises between these strangers.⁵⁰ In that society, the *moral* responsibility that once existed between the Self and the Other changes into a *legal* responsibility.

Still, it seems just as difficult to allocate *legal* responsibility to companies, states or persons in the case of global risks. Indeed, these risks are the result of the actions of countless actors, which makes it difficult to determine the causality between the actor's action and the risks.⁵¹ We need to approach this challenge of responsibility in two ways. First, lawyers should rethink the current (modern) legal regulations that allocate responsibility to actors and, second, we have to be prepared to take our own, personal and moral responsibility.⁵² As to the former, the new era demands a rethinking of modern policies and legal provisions on responsibility for risks. As to the latter, the moral and legal responsibility of *individual* agents, due to forced individualization⁵³, the individual is compelled to take matters into her own hands. Based on multi source data, individuals will have to make choices that demand they take responsibility.⁵⁴ In the case of global risks, we are simply not in the position to merely hold on to our roles as cloaked spectators. In contrast to Bauman's short-term and passive mismetings in cloakroom communities,⁵⁵ the nature of our current predicament denies us the luxury of inaction. Ours is a long-term situation in need of a solution and shared responsibility. However, that responsibility comes with moral ambivalence, anxiety and agony because of the absence of guidelines.

Lawyers and the challenge of attributing responsibility

To legal professionals, taking responsibility for the consequences of their choices and allocating responsibility should be second nature. Questions of responsibility are often central to the lawyer's occupation. For instance, regulators and judges are often the ones to make decisions in risk related issues.⁵⁶ Furthermore, diplomats and lawyers working in international law are able to negotiate agreements and treaties in which nation-states describe and distribute responsibility. Allocating responsibility for global risks is problematic but if legal experts rethink and rewrite the current rules in legal provisions and decisions, part of the uncertainty may disappear.⁵⁷ In this way, lawyers could provide society with an answer to the constant ache of uncertainty regarding responsibility for the global risks.

The legal professionals' practice is central to society and lawyers are therefore able to develop change in new, creative ways.⁵⁸ This ability gives them a freedom of choice that entails making decisions and taking responsibility, which is

described by Elmore and Roth as the competence for self-determination and participation in society.⁵⁹ However, every choice has consequences for which the decision maker is responsible. Professionals cannot transfer this responsibility and it is important to accept the uncertainty as a part of life and find coping strategies.

Law schools and the challenge of allocating responsibility

The uncertainty that comes with possibilities is also present in law schools, where students encounter possibilities like potential specializations, study schedules, studying abroad, enrolling in specific minors, engaging in part-time employment or membership of student associations. For further preparation in taking responsibility as lawyers, students need to develop ways to manage uncertainty. This is where the *re-mystification* of legal education plays its part: by introducing uncertainty and offering a safe place for doubt. Students will learn strategies on *how* to make practical and moral choices by practicing the art of doubt. Another way to train students in taking responsibility is to create a learning environment where students are explicitly attributed the responsibility for their own learning process and study success. Taking responsibility for choices can also be encouraged by practicing with moral and professional dilemmas in the classroom. For example, we can challenge our students in lectures by discussing difficult situations related to professional ethics.

To be able to reconsider the modern legal rules on allocating responsibility in the context of late modernity, legal professionals need to develop a critical view on contemporary laws. To do so, our students need the ability to view the world in a wide context, which again, pleads for a broad education that includes courses in various disciplines. Furthermore, we should encourage critical thinking in our students by challenging them to criticize valid legislature, for instance, by offering legal provisions that they can discuss during lectures. This, too, calls for a *re-mystification* of legal education, where students are confronted with uncertainty and encouraged to doubt existing legal rules. Moreover, our students need to communicate their findings and their solutions effectively to the global community, and therefore need excellent communication and collaboration skills. The solutions presented will often need to be original and creative and this is where the introduction of the concept of art in legal education is of importance. Late modernity offers no ready-made answers and presents legal experts with new situations that require out-of-the-box thinking and collaboration in finding possible solutions. In our classrooms, we should attempt to create room for creativity by challenging our students to find solutions in difficult situations and cases and leave them the liberty to complete the task at hand as they see fit. This challenge and the freedom in its execution might inspire much-needed creativity.

It is important to recognize that the current generation of students needs a more timely teaching method than the traditional instruction model where the teacher transmits a fixed body of knowledge that is passively received by her students. Instead, we have the responsibility to create a more fluid learning environment where students are challenged and enabled to make information meaningful and where they have to critically evaluate it. Here, the lecturer takes on a new role: she becomes, for instance, a facilitator of this learning process and a coach for her students.⁶⁰ So, these suggestions for broader, creative, reflexive education demand lecturers to take their responsibility for continuous professional development. The faculty, in turn, has a responsibility in allowing lecturers time and opportunities to enhance their skills and knowledge through courses, workshops and feedback among colleagues. This way, lecturers are enabled to use effective teaching methods for the late modernity, and they will also role-model the importance of life-long learning to their students.

Concluding remarks

The challenges that legal professionals face in late modernity demand them to acquire relevant knowledge and a fitting set of skills. Law schools should be on top of these changes in the legal profession and need to include the needed knowledge and required skills into their curricula. This entails alterations in the professional education of lecturers, because they will need to develop relevant skills, knowledge and teaching methods that match the needs of students in the late modernity.

In short, I argue that we need to incorporate broad education and relevant skills education *within* existing courses, through thoughtful course design and through activating and relevant teaching methods. We also should offer a certain level of knowledge from other academic fields within our existing black letter courses. This integration will enable students to reflect on legal problems from within but also from outside the legal field. Moreover, a broad education will help students to develop culture-awareness which is important in globalized society. With regard to the required *skills* in the late modernity, I argue that first, legal professionals need to be able to handle uncertainty that comes with making choices and we can help our students develop this skill by the *re-mystification* of legal education and training them in the art of doubt. Second, lawyers need to be creative in finding original solutions to contemporary difficulties. In law schools, we can cultivate creativity and we should incorporate art to inspire creativity in our students. Third, the uncertainty of truth demands lawyers to regard information from a critical position. This reflection should take center stage in legal education and we could see the *re-mystification* of legal education and the art of doubt as a starting point for the development of such a critical attitude. Finally, communication and collaboration skills have become more important than ever in the globalized society. Therefore, we

should offer our students the opportunity to collaborate in diverse groups consisting of dissimilar students.

These suggestions will enable students to cope with the difficulties of late modernity. Not only will they be well-informed in the legal field and have knowledge of other professional disciplines but they will be able to individually or collectively reflect on and criticize current practices and articulate their opinions. Moreover, they will be more equipped to act upon those opinions in creative ways.

Notes

1. This article draws on the work of Beck and Bauman and presents in the context of the late modernity the first contours for practical suggestions to be implemented in legal education. In follow-up research these preliminary suggestions will be more closely examined and further developed for practical use in legal education. This article is written against the background of Dutch academic educational practice. However, the problems that legal professionals and legal education encounter in the Netherlands are not exclusively Dutch. They hold true for legal education outside the Dutch boundaries as well, although specific domestic circumstances might slightly differ.
2. Elmore and Roth (2005, p. 1).
3. Francot and De Vries (2009, p. 205).
4. See: Hildebrandt (June 24th 2011). Digitalized judgements are already a reality in the Netherlands: a privately established 'E-court' (www.e-court.nl) judges in many cases of unpaid insurance premiums. In January 2018, this development received criticism because, although it is cheaper and quicker than starting a traditional (and official) procedure, the e-court most likely does not ensure the safeguards the *Rechtsstaat* demands. See: <https://nos.nl/nieuwsuur/artikel/2212374-robotrechter-e-court-is-een-groot-en-niet-transparant-zwart-gat.html>, visited January 25th 2018.
5. See also: Van der Loo and Van Reijen (1997, pp. 157–158).
6. Beck (1997, p. 163), See also: Beck (2007, p. 156).
7. Beck (2007, p. 156).
8. Beck (2007, p. 46).
9. Elmore and Roth (2005, p. 3).
10. See: Van Klink (2012, pp. 263–265). See on the changing circumstances and consequent crises of the judiciary in the Netherlands also: Francot and Mommers (2017, pp. 276 & 285).
11. Infamous miscarriages of justice in the Netherlands are the 'Puttense moordzaak' (1994), 'schiedammer parkmoord' (2000) and the case of Lucia de Berk (2003). These cases are often discussed in the press (for example: <https://nos.nl/artikel/486628-vijf-dwalingen-sinds-2000.html> and <https://www.nrc.nl/nieuws/2016/11/20/onschuldig-en-veroordeeld-zie-dan-maar-eens-vrij-te-komen-5381805-a1532735>).
12. Paterson (2003, pp. 534–535).
13. Elmore and Roth (2005, p. 5).
14. Paterson (2003, p. 526).
15. See on the advantages of a multidisciplinary approach in the study of law also: Francot and De Vries (2006, p. 13).
16. Beck (1997, p. 162).
17. Beck (1997, p. 165).

18. Beck (1997, p. 166).
19. Beck (1997, p. 162).
20. Bauman (2005, p. 303).
21. Buchholz et al. (2009, p. 54). See also: Halliday and Osinsky (2006, p. 448).
22. Kellner (2002, pp. 285–286).
23. See: Pogge (2002, pp. 15–20, 197–198).
24. Kellner (2002, pp. 285–286).
25. Beck (2015, p. 21).
26. Beck (2015, p. 33). See also: Bauman (2006, p. 97).
27. Bauman (2006, p. 97).
28. Notwithstanding the process of globalization, we can also witness a rise of populism and nationalism. See: Corrias (2016, pp. 6, 12–13) and Pogge (2002, p. 129). See also: Beck (2015, p. 24) and Bauman (2006, p. 97).
29. Halliday and Osinsky (2006, p. 449).
30. Halliday and Osinsky (2006, p. 447).
31. Think of the discussion on the sovereignty of nation-states: due to commitments to transnational regulations, treaties and supranational organizations such as the EU, nation-states no longer seem to hold unquestionable sovereignty.
32. Beck (2015, p. 19).
33. Wagner (2004, pp. 9–10).
34. See: Buddeberg and Hornberg (2017, p. 52).
35. Odin (2004, p. 153).
36. Robinson and Aronica (2016, p. 118).
37. Ben-Dor (2011, p. 2).
38. Ben-Dor (2011, pp. 1–2, 4).
39. Dewhurst (2016, p. 96).
40. For example, by incorporating learning activities that incorporate the imagination (see: Thomas & Brown, 2011) and emotion (see: Quinlan, 2016). See on incorporating creativity in higher education: Jahnke et al. (2017).
41. Dewhurst (2016, p. 98).
42. Rowe (1991, p. 272).
43. Francot (2014, pp. 204–205).
44. Francot (2014, p. 205).
45. Francot and De Vries (2009, pp. 204–205).
46. Francot and De Vries (2009, pp. 204 (footnote 23)).
47. I draw on Bauman for the conception of responsibility. It might be fruitful to map out the legal, moral and social conceptions of responsibility, but that is beyond the scope of this article.
48. The modern view on the relation between the Self and the Other can metaphorically be described by the *hominum homini lupus*-metaphor, in which every person is a threat to the other. In this view individuals have conflicting interests which result in a constant social threat and individuality. See: Bauman (1993, p. 83).
49. Bauman (1993, pp. 83–85).
50. Bauman (1993, pp. 115–116, 120).
51. Francot and De Vries (2009, p. 206).
52. See also: Francot and De Vries (2011, pp. 213–214).
53. Beck (2015, p. 188 (chapter one, footnote six)).
54. Beck (2015, pp. 38–39).
55. Bauman (2000, pp. 200–201).
56. Paterson (2003, p. 525).

57. For instance, see: Francot and De Vries (2011, pp. 215–216).
58. See also: Beck (2015, pp. 56–57).
59. Elmore and Roth (2005, p. 12).
60. Odin (2004, pp. 154–155).

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References

- Bauman, Z. (1993) *Postmodern Ethics* (Oxford, Blackwell Publishing).
- Bauman, Z. (2000) *Liquid Modernity* (Cambridge, Polity Press).
- Bauman, Z. (2005) Education in liquid modernity, *Review of Education, Pedagogy, and Cultural Studies*, 27(4), pp. 303–317.
- Bauman, Z. (2006) *Liquid Fear* (Cambridge, Polity Press).
- Beck, U. (1997) *The Reinvention of Politics. Rethinking Modernity in the Global Social Order* (Cambridge, Polity Press).
- Beck, U. (2007) *Risk Society. Towards a New Modernity* (London, Sage Publications).
- Beck, U. (2015) *Wereldrisicomaatschappij. Op zoek naar verloren zekerheid* (Amsterdam, Wereldbibliotheek).
- Ben-Dor, O. (2011) Standing before the gates of the law? in: O. Ben-Dor (Ed) *Law and Art. Justice, Ethics and Aesthetics* (New York, Routledge), pp. 1–29.
- Buchholz, S. (et al.) (2009) Life courses in the globalization process: the development of social inequalities in modern societies, *European Sociological Review*, 25(1), pp. 53–71.
- Buddeberg, M. & Hornberg, S. (2017) Schooling in times of acceleration, *British Journal of Sociology of Education*, 38(1), pp. 49–59.
- Corrias, L.D.A. (2016) Populism in a constitutional key: constituent power, popular sovereignty and constitutional identity, *European Constitutional Law Review*, 12(1), pp. 6–26.
- Dewhurst, M. (2016) Nurturing the intersections of arts and non-arts disciplines: lessons from art education, in: J. Hoffmann Davis (Ed) *Discourse and Disjuncture between the Arts and Higher Education*, The Arts in Higher Education (Boston, Palgrave Macmillan), pp. 95–113.
- Elmore, S. & Roth, W.M. (2005) Allgemeinbildung: readiness for living in risk society, *Journal of Curriculum Studies*, 37(1), pp. 11–34.
- Francot, L. (2014) Dealing with complexity, facing uncertainty. morality and ethics in a complex society, *Archiv für Rechts- und Sozialphilosophie*, 100(2), pp. 210–218.
- Francot, L. & De Vries, B. (2006) Legal education re-enchanted, *European Journal of Legal Education*, 3(1), pp. 3–20.
- Francot, L. & De Vries, B. (2009) No way out – contracting about modern risks, *Archiv für Rechts- und Sozialphilosophie*, 95(2), pp. 199–215.

- Francot, L. & De Vries, B. (2011) Justice unbound – responsibility in the second modernity, in: B. De Vries & L. Francot (Eds) *Law's Environment: Critical Legal Perspectives* (The Hague: Eleven International Publishers), pp. 201–220.
- Francot, L. & Mommers S. (2017) Picking up the pace– legal slowness and the authority of the judiciary in the acceleration society (a Dutch case study), *International Journal of the Legal Profession*, 24(3), pp. 275–293.
- Halliday, T.C. & Osinsky, P. (2006) Globalization of law, *Annual Review of Sociology*, 32, pp. 448–470.
- Hildebrandt, M. (June 24th 2011) *Oordeelsvorming door mens en machine: heuristieken, algoritmes en legitimatie*. Symposium Juridische Argumentatie.
- Jahnke, I., Haertel, T. & Wildt, J. (2017) Teachers' conceptions of student creativity in higher education, *Innovations in Education and Teaching International*, 54(1), pp. 87–95.
- Kellner, D. (2002) Theorizing globalization, *Sociological Theory*, 20(3), pp. 285–286.
- Van Klink, B.M.J. (2012) Waarom zouden we ons aan de wet houden? Een pleidooi voor versterking van het staatsgezag, in: T. Jansen, G. Van den Brink & R. Kneyber (Eds) *Gezagsdragers. De publieke zaak op zoek naar haar verdedigers* (Amsterdam, Boom), pp. 263–276.
- Van der Loo, H. & Van Reijen, W. (1997) *Paradoxen van Modernisering. Een sociaal-wetenschappelijke benadering*, 3rd ed. (Bussum, Dick Countinho).
- Odin, J.K. (2004) New technologies and the reconstitution of the university, in: J.K. Odin & P.T. Manicas (Ed) *Globalization and Higher Education* (Honolulu, University of Hawai'i Press), pp. 147–162.
- Paterson, J. (2003) Trans-science, trans-law and proceduralization, *Socials & Legal Studies*, 12 (4), pp. 525–545.
- Pogge, T. (2002) *World Poverty and Human Rights. Cosmopolitan Responsibilities and Reforms* (Cambridge, Polity Press).
- Quinlan K.M. (2016) How emotion matters in four key relationships in teaching and learning in higher education, *College Teaching*, 64(3), pp. 101–111.
- Robinson, K. & Aronica, L. (2016) *Creative Schools. The Grassroots Revolution that's Transforming Education* (New York, Penguin Books).
- Rowe, M. (1991) The definition of 'art', *The Philosophical Quarterly*, 41(164), pp. 271–286.
- Thomas, D. & Brown J.S. (2011) *A New Culture of Learning. Cultivating the Imagination for a World of Constant Change* (CreateSpace Independent Publishing Platform).
- Wagner, P. (2004) *Higher education in an era of globalization: what is at stake?* in: J.K. Odin & P.T. Manicas (Eds) *Globalization and Higher Education* (Honolulu, University of Hawai'i Press), pp. 7–23.