

Nikol Žiha*

Original scientific paper

UDK 378.174:34

DOI: <https://doi.org/10.25234/pv/28586>

Paper received 29 November 2023

Paper accepted: 22 April 2024

VALUE EDUCATION IN LAW SCHOOL CURRICULUM: CULTIVATING MORAL AUTONOMY

Summary: *According to the EU Justice Scoreboard reports, over 70% of Croatian citizens are dissatisfied with the Croatian judiciary, particularly its independence and efficiency. This paper addresses the deep-rooted challenges in the country's legal education system. Despite reform initiatives, the current system serially produces 'legal technicians' lacking values, critical thinking capacity, and active student engagement. This echoes Montesquieu's depiction of legal practitioners as 'mouths that pronounce the words of the law.' Acknowledging the pivotal role of legal education methodology in the creation of future legal practitioners and legal culture, this contribution explores how an average regular educator can support the development of students' moral reasoning and values awareness. Through predominantly analytical research methods, we critically examine whether higher education environments should incorporate value education, the feasibility of teaching values in the traditional sense, and the potential of ethical analysis in a classroom to truly influence ethical behaviour in practice. Furthermore, we explore the complex matter of authority to decide on values to be imparted and delve into value education methodology. Concluding with practical suggestions, we propose the integration of the Evocation-Realization of meaning-Reflection (ERR) framework into lectures, as well as various creative tools to enhance moral reasoning.*

Keywords: *ERR framework, legal education, moral reasoning, critical pedagogy, value education, values*

* Nikol Žiha, PhD, Associate Professor, Faculty of Law, Josip Juraj Strossmayer University of Osijek, S. Radića 13, 31000 Osijek, E-mail address: nikolz@pravos.hr. ORCID: <https://orcid.org/0000-0003-4105-5940>.

1. INTRODUCTION

*The only education that has any sense at all is an education toward critical self-reflection.*¹

According to the EU Justice Scoreboard, which monitors the EU member states' judicial systems, Croatia consistently languishes at the bottom in terms of judiciary independence and efficiency.² This is hardly startling as it merely reflects widespread concerns about issues such as ethical deficits, political interference, and the sway of economic interests over state institutions.³ Given Croatia's historical backdrop, attempts at infusing democracy and legal culture into society without considering cultural heritage are a challenge.⁴

In our perspective, the linchpin to achieving enduring structural transformations lies in reshaping the new generations' mentalities through value education. Recognizing that we are hardly alone in navigating this terrain,⁵ this paper will explore characteristic, bottom-up pathways to such transformations.

The education of future legal minds should only be reshaped in alignment with the future we envision. If its aim is to cultivate conscientious legal minds committed to genuine system reform and challenging the status quo, the pedagogy should focus on fostering their moral courage instead of squaring them with existing paradigms.⁶ Regrettably, contemporary higher education policies often prioritize conformity over values, in turn sparking frequent law school curriculum reforms.⁷ Aptly terming this phenomenon an anti-reform movement,

- 1 Theodor W Adorno, 'Education after Auschwitz' (1998) 191 *Critical models: Interventions and catchwords*, 204. Originally a 1966 radio talk, this follow-up essay by Theodor Adorno focuses on the debate on the education system's function in the Federal Republic of Germany. The discussion around education in the pedagogical sense as upbringing (*Erziehung*), aiming for awareness and enlightenment development (*Aufklärung*), remains relevant to this day.
- 2 Despite minor fluctuations, the consistently high percentages (76% in 2019, 68% in 2020, 79% in 2021 and 75%, 2022, 78% in 2023) in the observed period indicate the persistently negative perception of Croatian citizens toward the judiciary. EU Justice Scoreboard, available at: <https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/eu-justice-scoreboard_en> accessed 13th September 2023
- 3 Bruno Škrinjaric, 'Povjerenje građana u institucije i percepcija korupcije' ['Citizens' trust in institutions and perception of corruption'] (EIZ commentary 26th January 2023, Ekonomski institut Zagreb) <<https://eiz.hr/povjerenje-gradjana-u-institucije-i-percepcija-korupcije/6276>> accessed 15th September 2023
- 4 Marko Babić, 'Between National Identity and National Culture. A View from the Balkans' in Adamczyk A and others (eds) *Balkan Ambitions and Polish Inspirations* (Centre for Europe, University of Warsaw, Warsaw, 2022) 173 – 184; Jelena Kasap and Višnja Lachner and Nikol Žiha, 'Through legal education towards European Education Area' in Duić D and Petrašević T (eds), *EU and comparative law issues and challenges series ECLIC* (Faculty of Law, Josip Juraj Strossmayer University of Osijek, Osijek, 2018) 260–264; Anat Bardi and Shalom H. Schwartz, 'Relations among sociopolitical values in Eastern Europe: Effects of the communist experience?' (1996) 17(3) *Political Psychology*, 525–549; Kurtis S Meredith and Jeannie L Steele and Sona Kikušová, 'Critical issues: Democracy, community, self, literacy, and the value of global conversation' (2001) 33(1) *Journal of Literacy Research*, 169–202
- 5 The need to develop law students' understanding of the interplay between morality and law, the underpinning values of the legal system and the role of legal practitioners in relation to these values is emphasized and further recognized in various studies. See Graham Ferris, 'Uses of value in legal education' (Intersentia, Cambridge, 2015), vii; Josip, Berdica, 'Obrazovanje za vrline, ili: Kakvo nam obrazovanje (ne) treba?' ['Education for virtues, or: What kind of education do we (not) need?'] in Koprek I (ed), *Vrline i poslovna etika* (FTI Družbe Isusove Zagreb, Zagreb, 2015), 39–55; Janez Kranjc, 'Towards Creating the Bologna Curricula Some Thoughts on the Bologna Reform' (2005) 2(2) *Slovenian Law Review*, 157–166.
- 6 Henry A Giroux, 'Critical Theory and Rationality in Citizenship Education', in Giroux H A, David E P (eds), *The hidden curriculum and moral education: Deception or discovery?* (McCutchan Publishing, Berkeley, 1983), 351.
- 7 In the pursuit of economic efficiency, there is a glaring trend of limiting the role of Legal history and Roman law (along with other subjects offering a broader cultural framework such as sociology etc.) within the law school curriculum. This is often reasoned with student overload and the need to streamline study programmes in favour of courses considered 'central' to the

Giroux finds that it leads to intellectual dead zones, increasingly inhabited by demoralized teachers and bored students.⁸ This inevitably sparks controversy, as every regime, in education, inherently rears its own critics.⁹

One might argue that the current political landscape gravitates toward more standardized education, limiting professional discretion and hindering critical thinking. Students are rewarded for achieving abstract learning outcomes rather than cultivating independent thought. In essence, rational application of regulations outweighs questions of taught value. As Lewin noted, it appears easier for society to change education than for education to change society.¹⁰ At the advent of autonomous AI, the observation could hardly resonate more.¹¹

Standing by the importance of future legal practitioners' theoretical knowledge and specific professional competences, if our aim is to mould not just (ethical) legal minds but active citizens, the system must be set up to empower them to take charge of their education instead of being mere (by-)products of the system.¹²

The complexity of the issue at hand surpasses the confines of this paper. A comprehensive solution would span primary and secondary education and education policy, as well as many layers in between. Our focus here, rather, is to determine how an average law professor, within the bounds of their responsibility, can actively contribute to the development of students' moral reasoning and awareness of values.

To start, the paper will explore the definition of value education. Next, using a predominantly analytical research method, the paper will ponder the place of value education in higher education environments. It will probe questions such as: Can values be taught in the traditional sense? Could the fostering of ethical analysis in the classroom truly effect ethical behaviour in real life? What does authority to decide on values mean and who holds it? To conclude, following an outline of the methodologies and strategies for implementing value education, the paper will offer practical suggestions on integrating the Evocation-Realization of meaning-Reflection (ERR) framework into lectures along with an array of creative tools to foster development of moral reasoning.

legal profession. However, the exact courses merit that central position is highly subjective and contingent on the perspectives of those in power during the given curriculum revision. This state of play appears to be shared with other comparable institutions. Cf. Reinhard Zimmermann, 'Roman and Comparative Law: The European Perspective (some remarks apropos a recent controversy)', (1995) 16(1) *The Journal of Legal History*, 21–33; Christian Baldus and Thomas Finkenauer and Thomas Ruffer, 'Juristenausbildung in Europa zwischen Tradition und Reform' (Mohr Siebeck, Tübingen, 2008), 64–72; Caroline Nicholson, 'The relevance of the past in preparing for the future: A case for Roman law and legal history' (2010) 17(2) *Fundamina: A Journal of Legal History*, 101–114; Du Plessis P, 'Legal history and method(s)' (2010) 16(1) *Fundamina: A Journal of Legal History*, 64–72.

8 Henry A Giroux, 'Education and the Crisis of Public Values: Challenging the Assault on Teachers, Students, and Public Education' (Counterpoints: Studies in the Postmodern Theory of Education 400, Peter Lang, New York, 2011), 18.

9 Jonathan L Larson, 'Critical thinking in Slovakia after socialism' (University of Rochester Press, Rochester, 2013), 21

10 Kurt Lewin, 'Some social-psychological differences between the United States and Germany' (1936) 4 *Character & Personality: A Quarterly for Psychodiagnostics & Allied Studies*, 267.

11 In an empirical study at the University of Minnesota, ChatGPT was used to generate answers to four separate final exams in law school courses. Having passed all exams, the research team concluded that the tool offers both considerable promise and significant peril. Cf. Jonathan H Choi and others, 'ChatGPT Goes to Law School' (2023) *Journal of Legal Education* (Forthcoming), 1–16, available at: <<https://ssrn.com/abstract=4335905>> accessed 18th September 2023.

12 Berdica (n 5) 45.

2. IS THERE A SINGULAR DEFINITION OF VALUE IN EDUCATION?

The challenge in identifying specific starting terms stems from the expansive nature of values in the education system. On its flipside is an entire sea of concepts spanning, inter alia, moral education, character education, moral reasoning, critical thinking, teaching values, critical pedagogy, and ethical education. As Rakić and Vukušić rightly highlight, these concepts tend to evolve independently, lacking a cohesive foundation for value-based educational practices to germinate.¹³ The diversity in approaches is a by-product of the multidisciplinary nature of values research. Researchers are wont to explore values from the niche of their field.¹⁴ Even when their research shares a focus, the diverging nomenclature stymies consensus on results.¹⁵

The present analysis will anchor itself in the definition of ‘ethics and values education’ (EVE) as outlined in the Encyclopedia of Educational Philosophy and Theory. Per the source, EVE encompasses “all aspects of the process of education, which either explicitly or implicitly relate to ethical and axiological dimensions of life and are such that can be structured, guided, and monitored with appropriate educational methods and tools.”¹⁶ A step further, per Strahovnik, values education, in the strictest sense, is the educational transmission of prevalent social values to individuals, aiming to integrate them into society.¹⁷

As unveiled by the EU project *Ethika*, values education should not only transmit values, but also spark ethical reasoning, awareness, autonomy, responsibility, and compassion in students. Values education should equip them with intellectual prowess – critical thinking and evaluation, reflection, discovery, understanding, decision-making, and more – that is necessary for responsible moral judgments and contributing to the greater good. Ultimately, students should be emboldened to raise awareness, dismantle their own prejudices, and shape healthy attitudes towards themselves, their community, and the environment.¹⁸

Considering the specified objectives, the task at hand poses challenges, especially in terms of result measurement. The capacity for independent thought and the ability to justify one’s views resists straightforward quantification through standardized tests. As Nussbaum points out, only an insightful qualitative assessment of classroom interactions can truly gauge the extent to which students have developed critical argumentation skills. However, the imperative of standardized tests as the measuring norm directly side-lines the Socratic dimension of the curriculum.¹⁹

13 Vini Rakić and Sijetlana Vukušić, ‘Odgoj i obrazovanje za vrijednosti’ [‘Education for values’], (2010) 19(4-5) Društvena istraživanja: časopis za opća društvena pitanja, 774–775.

14 Ivana Ferić, ‘Vrijednosti i vrijednosni sustavi: psihologijski pristup’ [‘Values and value systems: a psychological approach’] (Alinea, Zagreb, 2009) 12.

15 Marvin Berkowitz and Viktor Battistich and Melinda Bier, ‘What works in character education: What is known and what needs to be known’, in Nucci S, Narvaez D (eds), *Handbook of moral and character education* (Routledge, New York, 2008), 414–415; James Arthur, ‘Education with character: The moral economy of schooling’ (Routledge, London - New York, 2003), 2

16 Vojko Strahovnik, ‘Ethics and values education’ in Peters M A (ed), *Encyclopedia of Educational Philosophy and Theory* (Singapore, Springer, 2016), 770.

17 *Ibid.* 771.

18 Bruno Ćurko and others, ‘Ethika. Ethics and Values Education - Manual for Teachers and Educators’, (2015) available at: <https://ec.europa.eu/programmes/erasmus-plus/project-result-content/78cf8290-e6f6-4f2e-bfb6-b6dc88d71100/Ethika_O1a_%20Manual%20for%20Teachers_HR.pdf> accessed 27th September 2023.

19 Martha C Nussbaum, ‘Not for profit: Why democracy needs the humanities’ (Princeton university press, Princeton, 2010), 48.

3. DOES VALUE EDUCATION BELONG IN HIGHER EDUCATION?

The integration of value education into higher education is a point of debate. While some argue that education inherently transmits values,²⁰ others contend that the emphasis should remain on the acquisition of professional knowledge and competences.²¹ The notion of value-free education that prioritizes knowledge dissemination has dominated the discourse since the 1970s. In a secularized, pluralistic society, teaching values was deemed inappropriate, particularly through the lens of post-modernism. After all, how does one determine the right values to teach?

Instead of modelling and inculcating values, teachers were advised to steer clear of imposing their own values. They were encouraged to help liberate students in developing skills in value analysis, defining their personal attitudes, and elevating their moral reasoning—standing as facilitators rather than enforcers.²²

Concerns arise regarding the over-effectiveness of moral instruction and its potential for moral indoctrination. These concerns are more pronounced where education is perceived merely as transmission of value content rather than cultivation of independent thought on values. When classrooms become pulpits, teaching professional responsibility can inadvertently transform into an opportunity for teachers to impose their morals and penalize students with differing perspectives.²³

The concerns are valid given that the teacher's position of authority provides room to impose exclusive attitudes, whether individual or institutional. The balance of value neutrality can be disrupted by an inept facilitator who shies away from presenting contrary views or restricts open discussion. The consequences of such indoctrination are not negligible; research confirms that it stifles moral growth. In adult learners, it may lead to "a kind of moral unlearning or un-growth of morality".²⁴

Yet, as Rhode argues, the potential for dictatorial pedagogy is always present and not exclusive to ethics.²⁵ Upon entering legal studies, each student carries a unique set of predisposed values formed by a slew of influences—familial, cultural, political, religious, and otherwise.

20 E.g. Lawrence Kohlberg and Rochelle Mayer, 'Development as the aim of education' (1972) 42 *Harvard Educational Review*, 464sq; Katharine T Bartlett, 'Teaching Values: A Dilemma' (1987) 37 (4) *Journal of Legal Education*, 519; Deborah Loewenberg Ball and Suzanne M Wilson, 'Integrity in Teaching: Recognizing the Fusion of the Moral and Intellectual' (1996) 33(1) *American Educational Research Journal*, 156; Elisabeth Campbell, 'Connecting the Ethics of Teaching and Moral Education' (1997) 48 (4) *Journal of Teacher Education*, 255; Margit Sutrop, 'Can values be taught? The myth of value-free education' (2015) 19(2) *Trames*, 189–202; Vojko Strahovnik, 'Ethical education and moral theory' (2018) 25(2) *Metodički ogledi: časopis za filozofiju odgoja*, 12.

21 Eisgruber asserts that law school courses are no guarantee against crime prevention, even in legal practitioners. He expresses scepticism about the teachers' ability to rehabilitate students with compromised moral compasses, suggesting as a more effective means against illegal behaviour a 'more aggressive regulatory structure.' Cf. Christopher L Eisgruber, 'Can Law Schools Teach Values' (2002) 36 (3) *University of San Francisco Law Review*, 603–604.

22 Howard Kirschenbaum, 'A Comprehensive Model for Values Education and Moral Education' (1992) 73(10) *The Phi Delta Kappan*, 772.

23 Debrah L Rhode, 'Ethics by the Pervasive Method' (1992) 42(1) *Journal of Legal Education*, 48–49.

24 Rauno Huttunen, 'Indoctrination and the Un-growth of Morality' in Peters M A (ed), *Encyclopedia of Educational Philosophy and Theory* (Singapore, Springer, 2016) 1135–1136.

25 Rhode (n 23) 50.

These influences intersect with the explicit and implicit messages conveyed to the student, often in unintended ways that should be humbling in relation to the prospect of moulding students strictly according to our (teachers') own values.²⁶

Therefore, we align with Strahovnik's perspective that the idea of value-neutral education is but a mirage. Education is innately a value-imbued practice, especially concerning its content, transmission methods, and, consequently, outcomes.²⁷ While operational thinking is irrefutably the pinnacle of critical thought, it alone falls short in preventing unethical practices.²⁸

While the law is essentially a set of regulations demanding practitioners' adherence to a legal framework, real-world situations often demand decisions grounded in subjective assessments and individual sets of (ethical) values. A most blatant example is the attorney-client crossroad—navigating within the system in the client's favor can inevitably spark a clash of values between the attorney's personal convictions and those they are obligated to represent.²⁹

Moreover, the teleological interpretation of legal norms – a task inherent to all pores and planes of legal practices – requires considerations of values and cannot rely solely on objective facts. Thus, as we see it, legal education bears the responsibility of rearing autonomous moral thinkers, offering an education rooted in values without being overly ideological.

4. CAN VALUES BE TAUGHT AND GENUINELY SHAPE ETHICAL BEHAVIOUR?

Even if conceding that education is inherently value-imbued, can we genuinely teach values in the traditional sense? How much does the ability to conduct ethical analysis in a classroom setting truly impact ethical behaviour in real life?

Any skepticism here is understandable, as it is fuelled by the assumption that professional responsibility is predominantly a facet of moral character. Influencing what was ingrained by family upbringing, societal norms, media, religious institutions, and peer circles is a near-impossible task for an average teacher.³⁰ As Stipić would have it, human nature tends to react quite differently to real-life situations than to hypothetical ones presented within the controlled confines of a research environment.³¹

26 Jukka Husu, 'Real-world pedagogical ethics: mission impossible?' (2003) 7(2) *Teacher Development*, 311–326, Bartlett (n 20) 520.

27 Strahovnik (n 16) 769–774; Strahovnik (n 20) 12.

28 David W Hornbeck, 'Does Values Education Belong in the Curriculum?' (1987) 8 *Curriculum*, 6.

29 This differentiation in value viewpoints was noticed and described by Geoffrey C Hazard, 'The Legal Profession, The Impact of Law and Legal Theory, Foreword' (1998) 67(2) *Fordham Law Review*, 239–248.

30 Posner argues that law schools show little interest in teaching ethical considerations for future legal practice, and instead prioritize 'law theories' from economics and philosophy. Law firms, he continues, driven by profits, are even less concerned with maintaining ethical standards. Regarding attempts to inculcate legal ethics in law students, Posner states: "I can think of few things more futile than attempting to teach people to be good." Richard A Posner, 'The deprofessionalization of legal teaching and scholarship' (1992) 91(8) *Michigan Law Review*, 1921.

31 Ivana Stipić, 'Uloga Kohlbergove teorije moralnog razvoja u kontekstu odgoja za vrijednosti' ['The role of Kohlberg's theory of moral development in the context of values education'] (Master's thesis, Faculty of Humanities and Social Sciences, University of Split, 2021) 11.

While the classroom experience cannot fully replicate the pressures of practice, it does offer an environment for individuals to explore and prepare for real-life scenarios.³² Considering the substantial shifts in individual's approaches to moral challenges during early adulthood, psychological research indicates that such environments may serve the developmental process.³³

Drawing on Piaget's framework, according to which children's cognitive processes develop through sequential phases,³⁴ Kohlberg developed a moral development theory.³⁵ Using children's responses to moral dilemmas (Moral Judgment Interview), he identified six (though empirically proven to be five) qualitatively different stages in the evolution of moral reasoning.³⁶ Notably, post-conventional thinking, the pinnacle of this development, appears for the first time during adolescence. Attainment of operational thinking – a prerequisite for the developmental path – requires a grasp of abstract moral principles and empathizing with others' attitudes and emotional reactions.³⁷

Collaboration between neuroscientists and moral developmental researchers has propelled progress in the field, as noticeable from more precise assessments of moral development. It has demonstrated that morality development is neither linear nor biologically predetermined nor entirely shaped by socialization.³⁸

Central to our study are findings demonstrating that examples of moral reasoning empower individuals to progress and transition to higher stages.³⁹ Given that moral reasoning

32 Deborah L Rhode, 'Legal Ethics in Legal Education' (2009) 16(1) *Clinical Law Review*, 49.

33 Andre Schlaefli and James R Rest and Stephen J Thoma, 'Does moral education improve moral judgment? A meta-analysis of intervention studies using the Defining Issues Test' (1985) 55(3) *Review of educational research*, 319–352; Rhode (n 23) 46–47; Marcia Mentkowski and others, 'Learning that lasts: Integrating learning, development, and performance in college and beyond' (Jossey-Bass, Hoboken, NJ, 2000), 120–121; Laura E Berk, 'Dječja razvojna psihologija' ['Child development'] (8th edition, Naklada Slap, Jastrebarsko, 2015), 501

34 Jean Piaget, 'The Moral Judgement of a Child' (The Free Press Glencoe, Illinois, 1948)

35 The notion of education as the attainment of higher stages of development, involving an understanding of principles, is no new notion; it traces its origins back to the 'aristocratic' Platonic doctrines of liberal education. See Kohlberg and Mayer (n 20) 493.

36 The phases follow a clear progression from the pre-conventional stage ((1) Heteronomous Morality and (2) Individualism, Instrumental Purpose, and Exchange) to the conventional stage ((3) Mutual Interpersonal Expectations, Relationships, and Interpersonal Conformity and (4) Social System and Conscience) and, finally, the post-conventional stage ((5) Social Contract or Utility and Individual Rights and (6) Universal Ethical Principles). The stages correlate with age and education. Responding to objections that the sixth stage reflected his personal ideas rather than a universally natural stage of development, Kohlberg subsequently excluded it from his theory. See Lawrence Kohlberg, 'The Psychology of Moral Development: The Nature and Validity of Moral Stages' (Essays on Moral Development, 2, Harper & Row, 1984), 174–176 and *passim*. Liisa Myrsky 'Moral Judgments and Values', in' Kurtz L R (ed), *Encyclopedia of Violence, Peace, & Conflict* (3rd Edition, Academic Press, 2022), 331–338, available at: <<https://www.sciencedirect.com/topics/social-sciences/moral-judgement>>, accessed 23rd September 2023. Meanwhile, other instruments for measuring moral development (as Rest's Defining Issues Test (DIT), Gibbs' Sociomoral Reasoning Measure (SRM) and Moral Competence Test (MCT)) have been created. Cf. Georg Lind, 'The meaning and measurement of moral judgment competence. A dual-aspect model', in Fasko, Jr D and Willis W (eds), *Contemporary philosophical and psycho-logical perspectives on moral development and education* (Hampton Press, Cresskill, 2008), 185–220, available at: <https://www.researchgate.net/publication/45817666_The_meaning_and_measurement_of_moral_judgment_competence_A_dual-Aspect_model> accessed 25th September 2023.

37 John H Flavell, 'Cognitive Development' (Prentice-Hall, New Jersey, 1977) 158–162.

38 Melanie Killen and Judith G Smetana, 'Origins and development of morality' in Lamb M E (ed), (2015) 3(7) *Handbook of child psychology and developmental science*, 727 and 740.

39 Individuals exposed to examples both above and below their current moral reasoning level usually incline towards a higher level. Those at a higher moral reasoning level did not regress to a lower stage in response to exposure. Cf. Spencer A Rathus, 'Temelji psihologije' ['Essentials of Psychology'] (5th edition, Slap, Zagreb, 2001) 445; Kohlberg and Mayer (n 20) 491; Berkowitz and Battistich and Bier (n 15) 429, Berk (n 33) 498.

matures during adolescence and into adulthood,⁴⁰ teachers, inspired by cognitive developmentalist theories, have experimented with various methodological approaches to support and accelerate the natural progression of moral judgment development.⁴¹ Contrary to the notion that moral conduct is guided by personal integrity or developed in early socialisation,⁴² Schlaefli, Rest and Thoma's review of fifty-five studies on educational interventions designed to stimulate moral judgment development reveals that value education programs in adults, particularly dilemma discussions, yield better outcomes than in younger subjects. Notably, when these programs extend beyond a few weeks and involve active student engagement in problem-solving and interactive exchanges on controversial moral dilemmas with peers, they accelerate the natural development of moral judgment.⁴³

Additionally, Schwarz calls attention to the challenge of cultivating value awareness. Considering that many individuals may be unaware of their values (due to lacking sufficient cognitive support or having assimilated them as universally accepted truths during early socialization), they only begin to question them once confronted with a conflicting situation. It is therefore crucial to provide conditions for individuals to participate in simulated situations to allow for reconsiderations of their value concepts.⁴⁴

While it remains debatable whether research subjects would reproduce their thoughts and actions in real life,⁴⁵ Kohlberg and Mayer see a crucial link between 'moral reasoning stages' and subsequent actions.⁴⁶ Hence, a pedagogy rooted in contextual, rich, emotionally resonant role-based problem-solving, together with ongoing reflective discourse, holds the potential to enhance the law students' active engagement in ethics and their grasp of the ethical practitioner's role.⁴⁷

5. WHO HOLDS THE AUTHORITY TO DECIDE THE VALUES?

In the literature, value definitions, functions, classifications, and hierarchies are as differing as the researchers and their perspectives.⁴⁸ Kluckhohn and Rokeach, pioneers of value

40 E.g. Howard Kirschenbaum, '100 ways to enhance values and morality in schools and youth settings' (Allyn and Bacon, Boston, 1995); Ferić (n 14) 45.

41 Cf. Schlaefli and Rest and Thoma (n 33) 505–540.

42 Rhode (n 23) 44

43 Interventions lasting longer than twelve weeks showed no more impact than those lasting three to twelve weeks. Shorter interventions tend to be ineffective when assessing moral judgment using the DIT. See Schlaefli and Rest and Thoma (n 33) 319–320 and 347

44 Shalom H Schwartz, 'Universals in the content and structure of values: Theoretical advances and empirical tests in 20 countries' (1992) 25 *Advances in experimental social psychology*, 1–65; See also Ferić (n 14) 52–53.

45 The evidence in this regard is inconclusive. See Morris A Sheffield and others, 'Adolescent Moral Development' in Brown B B and Prinstein M J (eds), *Encyclopedia of Adolescence, Normative Processes in Development*, (1, Academic Press, 2011) 49

46 Kohlberg and Mayer (n 20) 491

47 Berkowitz and Battistich and Bier (n 15) 429; Alan M Lerner, 'Using Our Brains: What Cognitive Science and Social Psychology Teach Us about Teaching Law Students to Make Ethical, Professionally Responsible, Choices' (2004) 23(3) *Queensland Law Reporter*, 706

48 Vjera Brković and Rona Bušljeta Kardum and Snježana Mališa, 'Odgoj za vrijednosti u okvirima kurikula predmeta društveno-humanističkoga područja' ['Values Education with respect to Subjects in the Fields of the Humanities and Social Sciences'] (2021) 76 (2) *Obnovljeni život*, 188.

research, conceptualized values generally as desired goals of varying importance, serving as guiding principles in individual's lives.⁴⁹

Despite the said differences, certain commonalities are discernible. Through an extensive literature review, Ferić identifies five key characteristics associated with the concept of values. Per Ferić, values are ideas or beliefs (1) about desirable goals or behaviours (2) extending beyond specific situations (3), guiding the selection and evaluation of behaviour (4), and are hierarchically organized with regard to their relative importance for the individual (5).⁵⁰ While individuals may differ in the importance they assign to specific values within their personal hierarchy, there is general consensus that the structure of the human value system is universal.⁵¹

In a pluralistic world, where differing interpretations of values co-exist placidly, the challenge extends beyond the very definition of the concept of values. The greater issue lies in determining which set of values to transmit.⁵² Even at an individual level, values can conflict, producing ethical dilemmas with no clear resolution. This complexity is at the heart of academic resistance to teaching values,⁵³ as the question of who holds the authority to decide the curriculum values has yet to be answered.

Nevertheless, given the impossibility of establishing common societal institutions without a foundational consensus on common values and behavioural standards, a case can be made for a consistent set of universal values, such being human dignity, freedom, democracy, equality, rule of law and human rights.⁵⁴ Moreover, as Strahovnik underscores, this should include not only basic ethical norms and values (liberty, dignity and respect for life, equality, truthfulness, nonviolence, social justice, solidarity, moderation, humility, non-discrimination, well-being, and security) but also those integral to individual and community development.⁵⁵

While these values may be relative and vary in importance across individuals or societies, Kohlberg advocates for taking the existing values of society as a starting point and suggests

49 Clyde Kluckhohn, 'Values and value-orientations in the theory of action: An exploration in definition and classification' in Parsons T, Shils E (eds), *Toward a general theory of action*, (Harvard University Press, Cambridge, 1951) 5.

50 Ferić (n 14) 14. See also Shalom H Schwartz, 'Are there universal aspects in the structure and contents of human values?' (1994) 50(4) *Journal of social issues*, 19–45; Brković and Kardum and Mališa (n 48) 190; Milton Rokeach, 'The nature of human values' (Free press, New York, 1973) 5–10.

51 Meg J Rohan, 'A rose by any name? The values construct' (2000) 4(3) *Personality and social psychology review*, 258.

52 Halstead highlights a clash between economic and political liberalism in the realm of education, where the curriculum is contested between groups advocating alignment with industry and those who want it to promote personal autonomy. Their variance revolves around diverging metrics for evaluating educational performance, with some measuring quantifiable outputs and others valuing critical understanding, imaginative insight and human relationships. While acknowledging the traditionally perceived mutual exclusiveness of liberal and utilitarian education, Halstead suggests that they may not be entirely incompatible. Broadly educated students, equipped with an understanding of social problems and moral issues, may ultimately be more valuable to business than those with narrower work-related skills. Mark J Halstead, 'Liberal Values and Liberal Education', in Halstead J M, Taylor M J (eds) *Values in education and education in values* (The Palmer Press, New York, Washington, 1996) 34–35.

53 Ferris argues that teachers refrain from discussing values due to fear of indoctrination allegations or even temptations. Furthermore, the absence of a consensus on a value-informed centre in society poses a challenge, along with uncertainties about whether such pedagogy can truly influence students' behaviour toward larger ethical considerations. Ferris (n5) 65 and 147. See also James E Moliterno, 'An analysis of ethics teaching in law schools: replacing lost benefits of the apprentice system in the academic atmosphere', (1991) 60 *University of Cincinnati Law Review*, 111; Darcia Narvaez, Daniel K Lapsley, 'Teaching moral character: two alternatives for teacher education' (2007) 43 *The Teacher Educator*, 157.

54 The listed values are laid out in Article 2 of the Lisbon Treaty and the EU Charter of Fundamental Rights, representing the foundational values of the European Union.

55 Strahovnik (n 16) 770.

an ‘adjustment’ to the culture or achievement in it as the educational objective.⁵⁶ Further yet, he renounces conventional character education approaches centred on transmitting an inventory of virtues and vices. Instead, he promotes reasoning through moral dilemmas as the ideal setting for moral education.⁵⁷

The responsibility of teachers and the educational establishment extends beyond what students should deem virtuous— the point is not promoting blind compliance. Instead, the emphasis should be on granting teachers the freedom and creativity to foster students’ independent moral judgements through cultivating such dialogue and empathy throughout the educational process.⁵⁸

The beauty of value pluralism is that it allows the exact opposite of imposing specific values onto students (or even teachers). Viewed as such, it becomes imperative, paving the way for rational discourse. Per Ferris’s insights, this view not only yields cognitive learning outcomes and hones reasoning abilities, but also sparks self-reflection leading to character formation and identity development.⁵⁹

Considering that students often lack the agency to thoroughly define the educational experiences, values should be presented to them as “worthwhile possible personal values,” as Ferris puts it. Moreover, they should be given a platform to explore those values against alternatives to master the vocabulary. Importantly, a reasoned rejection of underlying values should be considered an equally favourable educational outcome.⁶⁰ If for no other reason, then for encouraging critical thinking and nuance.

6. METHODOLOGY

Under the notion that values are ‘caught, not thought’, scepticism often surrounds the feasibility of a systematic methodological approach to values development.⁶¹ In a landscape where higher education institutions lack coherent intervention strategies, Hornbeck urges for a purposeful stand on character education. As he argues it, if no other essential aspects of education are left to chance (such as learning a foreign language), why should not values be approached methodically?⁶² While this may hold true, in our view, teaching values through the traditional method of imparting knowledge has proven inefficient.

In law school practices, the traditional method often leans towards behaviour conformity through indoctrination. However, this method is contrary to the need for reasoned thinking

⁵⁶ Kohlberg and Mayer (n 20) 465.

⁵⁷ Sheffield and others (n 45) 54.

⁵⁸ Janez Kranjc, ‘Les réformes de l’université et des études de droit pendant la Yougoslavie socialiste: le cas de la Faculté de droit de l’Université de Ljubljana’ (2015) 35 *Revue d’histoire des facultés de droit et de la culture juridique, du monde des juristes et du livre juridique*, 191–220 ; *Strahovnik* (n 16) 770.

⁵⁹ Ferris (n 5) 68–70.

⁶⁰ Ferris (n 5) 44 and 112.

⁶¹ Edwin Cox ‘Explicit and Implicit Moral Education’ (1988) 17 (2) *Journal of Moral Education*, 96; Moliterno (n 53) 83.

⁶² Hornbeck (n 28) 8.

that is crucial for navigating the complexities of real social dynamics. Nucci and Turiel challenge this approach by proposing ‘capacity building’ in moral reasoning. Their position encourages students not to be bound by predetermined goals and expectations of final solutions, but, instead, to openly question and develop their own moral judgments.⁶³

Ferris subscribes to this perspective, arguing the impossibility to logically demonstrate moral reasoning: ethical dilemmas notoriously defy conclusive arguments.⁶⁴ In the normative domains of law and ethics, law demands compliance, while ethics leans toward endorsement.⁶⁵

In the realm of value education, the teacher assumes a critical role— to encourage students’ awareness of their own value systems and to equip them with the reflection skills. The formidable task implies that teachers not only guide students but also engage in self-reflection on their own attitudes and values. This assumes a level of experience for such teaching, a facet often overlooked, particularly in Croatian legal education.

Contrary to the predominant emphasis on professional knowledge of the subject, often at the expense of limited didactic abilities, evidently, at least in Croatian legal education, the preparation of teachers for the role of values teachers is largely non-existent. It amounts to sporadic individual initiatives. Educating the teachers is the prerequisite for any meaningful progress.⁶⁶ Systemic shifts are imperative. Until then, teachers will continue to work within institutions where the focus tends to centre on scientific projects rather than the quality of lectures and pedagogical approaches.⁶⁷

Enabling students to explore moral controversies through a variety of activities and courses (be it legal clinics, *pro bono* work, elective courses, debates, community engagement, or specialized summer sessions) sends a strong message. It signifies that ethical considerations are not isolated issues but rather integral parts of both the legal profession and everyday life.⁶⁸ Limiting discussions on values to only one course, typically legal ethics, marginalizes their significance in the broader curriculum.⁶⁹

Among the myriad tools employed to develop students’ moral reasoning, a positive correlation was found specifically between engaging in discussions about value choices and the development of moral reasoning.⁷⁰ While elusive, the reason may lie in the efficacy of group

63 Lary Nucci and Elliot Turiel, ‘Capturing the complexity of moral development and education’ (2009) 3(3) *Mind, brain, and education*, 158.

64 Ferris (n 5) 168–169.

65 *Ibid.* 182.

66 Rhode (n 23) 50; Mark J Halstead, ‘Values and values education in schools’, in Halstead J M and Taylor M J (eds), *Values in education and education in values* (The Palmer Press, New York, Washington, 1996) 12; Sutrop (n 20) 191

67 As Vican reminds us, “the ethical reflection of a school is also its pedagogical reflection”. See Dijana Vican, ‘Odgoj i obrazovanje u Hrvatskoj u kontekstu europskih vrijednosti’ [‘Education in Croatia in the context of European values’] (2006) 3(1) *Pedagogijska istraživanja*, 17.

68 Derek C Bok, ‘Can Ethics Be Taught?’, (1976) 8(9) *Change: The Magazine of Higher Learning*, 27.

69 There seems to be a consensus that directly teaching particular ethical theories as the primary content of values education is inefficient. See Strahovnik (n 16) 771–772; Ferris (n 5) 194.

70 James R Elkins, ‘The Pedagogy of Ethics’ (1985) 10 *Journal of the Legal Profession*, 46; Steven Hartwell, ‘Promoting Moral Development through Experiential Teaching’ (1995) 1(3) *Clinical Law Review*, 522; Ferris (n 5) 191.

discussions, as evidenced by numerous Defining Issues Tests (DIT).⁷¹ Although the DIT, akin to any other developmental scheme, can hardly claim absolute accuracy, the valuable insights it unearths support its validity.⁷²

In their noteworthy research conducted at the Faculty of Law, University of Utrecht, from 2019 to 2021, van Dongen and Raaijmakers explored the impact of four teaching methods on moral development. The methods, as subjected to DITs, encompassed discussions on moral dilemmas (both hypothetical and real-life ones), in-class reflection papers, experiential learning through simulations, and clinical teaching. While the sample was limited in size, the research showed that discussions on moral dilemmas and active, sustained involvement in resolving ethical challenges appear to be effective interventions. The results indicated a numerical improvement, pointing toward a higher stage of moral thinking.⁷³

Acknowledging the intricate nature of moral reasoning, a complex competence that defies comprehensive cultivation through a single educational activity, and recognizing that values cannot be taught in the traditional sense of 'teaching,' we will explore the many direct and indirect options available to the individual teacher, irrespective of their field within the law school curriculum.

6.1. (UN)CONSCIOUS TEACHING BY EXAMPLE: THE SIGNIFICANCE OF THE HIDDEN CURRICULUM

In contrast to the direct methods of value teaching, which entail specific pedagogical approaches, there exists a more subtle, indirect one. Whether consciously aware of it or not, teachers are all in a way character educators. As Rhode notes, we model values on multiple planes in our individual interactions and collective priorities.⁷⁴ The so-called hidden curriculum, where rules, values and preferred behaviours are indirectly transmitted, tends to be more impactful than intentionally distributed knowledge.

The concept of the hidden curriculum – also known as the unstudied, covert or latent curriculum, non-academic outcomes, or even the by-products of education – encompasses the underlying norms, values, and attitudes tacitly communicated through the social fabric of

71 The test was designed to evaluate moral development within Kohlberg's theory. Students are asked to consider and chose brief arguments for or against morally dubious decisions. Their responses determine their placement on the Kohlberg scale. A revised version of the DIT2 is available at: <<https://ethicaldevelopment.ua.edu/about-the-dit.html>> accessed 10th September 2023.

72 James R Rest, 'Development in Judging Moral Issues' (University of Minnesota Press, Minneapolis, 1992) 17.

73 Emanuel Van Dongen and Steven Raaijmakers, 'The Development of Moral Reasoning in the Law Curriculum – An Exploration of Various Teaching Activities' (2022) *Law and Method*, 13. The research aligns with the earlier recommendations, supporting the promotion of 'applied ethics' in line with Campbell' urging to incorporate everyday moral issues rather than abstract philosophical approaches. Cf. Campbell (n 20) 257. Similarly, Hartwell underscores the importance of encouraging moral discourse between students, focusing on self-revelation and self-knowledge rather than persuasive argumentation. Cf. Hartwell (n 70) 530–532.

74 Rhode (n 23) 55. Opposing views exist, and Moliterno represents one perspective. He holds that only generic character traits are likely to be transferred from a university professor to students, underscoring the need for interaction with a legal practitioner as a real role model to enhance modelling effectiveness. Moliterno (n 53) 111–113.

an institution.⁷⁵ Occasionally, it may reinforce the messages from the formal curriculum, but also equally contradict it, exposing inconsistencies and hypocrisy in its regard. In historical contexts, the curriculum need not have been hidden; it represented the visible objective of educational institutions for most of their existence.⁷⁶

Nowadays, values are often left unarticulated, relegated to the margins of higher education concerns ('technocratic ideal'⁷⁷). Halstead adds that values are difficult to anatomize, ingrained in teachers' presupposed viewpoints, and potentially even compounded by inadequate training in critical thinking, administrative workload burdens, or a lack of self-reflection capacity.⁷⁸ Therefore, the primary task is the identification and the acknowledgement of the existent dichotomy between the formal and the hidden curriculum.

This inadvertent transmission of values can be nurtured by means such as careful selection (or exclusion) of topics and/or emphasis on specific content or course materials. Its primary avenue is the communication dynamics teachers cultivate in the classroom: how they address students, the routines and rules they set, their approach to discipline, and encouragement of critical thinking. Notably, it may extend to whether they prefer correct answers (and likely intimidate students) or promote exploration of ideas. Surprisingly, it may even relate to their sartorial choices and their physical position in the classroom.⁷⁹

The 'real' values educational institutions uphold may or may not be inked in statutes, ethical codes, and mission statements – in reality, they are read from everyday practice. Behind the curtain, values are demonstrated in actions that either perpetuate gender inequalities, discrimination, unethical employee activities, or disregard of student complaints against faculty conduct. The institution, along with its teachers, take the value test each time they step onto the media stage. Their response to pivotal legal matters and glaring injustice signal their capacity to be a beacon and resist or succumb to political influences. It is all the more important as research indicates that students can identify institutional injustices. The implications? Adolescents not only critically analyse, but also engage in challenging unfair practices within the system.⁸⁰

Considering these aspects, Townes's claim – that teaching ethics is good; living ethics before one's class is incomparably better – resonates.⁸¹ Under the assumption that teachers should lead by example, embody values, and foster respectful behaviour to facilitate student self-development, the gravity of their responsibility becomes evident. Moderating dilemma discussions and moral reasoning activities demands from teachers not only considerable self-reflection ability, but also strong pedagogical skills.⁸² Educators should possess a well-es-

75 Elizabeth Vallance, 'Hiding the hidden curriculum: An interpretation of the language of justification in nineteenth-century educational reform', in Giroux H A and Purpel D E (eds), *The hidden curriculum and moral education: Deception or discovery?* (McCutchan Publishing, Berkeley, 1983) 10.

76 Michael W Apple and Nancy King, 'What do schools teach?' in Giroux, H A, David E P (eds), *The hidden curriculum and moral education: Deception or discovery?* (McCutchan Publishing, Berkeley, 1983) 87; Cox (n 61) 96.

77 Ferris (n 5) 147.

78 Halstead (n 66) 12.

79 Narvaez and Lapsley (n 53) 157; Halstead (n 66) 11.

80 Nucci and Turiel (n 63) 158.

81 John C Townes, 'Organization and Operation of a Law School' (1910) 33 Annual Report of the American Bar Association, 971.

82 Nucci and Turiel (n 63) 158.

tablished set of values, and through an open and democratic approach allow students room for independent assessment, criticism and acceptance.⁸³ As Narvaez aptly notes, effective teachers have the qualities of good parents.⁸⁴ Undoubtedly, a teacher with positive expectations, offering supportive feedback to students is more likely to foster students' character and professional competences. While granting students the autonomy to actively engage in the educational process, teachers must also make them aware of the responsibility for their choices. Ultimately, since character education is a continuous process, the teacher must teach the subject matter with passion; otherwise, students will be unmotivated to acquire basic knowledge, let alone adopt values.

6.2. MORAL REASONING STRATEGIES WITHIN THE ERR FRAMEWORK IN EDUCATION

If the aspiration is for students to develop a sense of ownership over their learning journey, the teacher's role must grow from a mere transmitter of technical knowledge to that of a facilitator and coordinator, fostering students' active participation in the educational process. Placing the student at its centre requires an adaptation of the curricular content to the students' needs and potential. The move from the outdated paternalistic concepts to motivating the contemporary (and, often, passive) student body can be prompted through various approaches. As part of this research, we explore several tools within the ERR method that encourage active participation.

The ERR framework, designed to encourage critical thinking and in-depth information analysis, enables students to make connections between their past experiences and the new content being transmitted.⁸⁵ The 'evocation' (or 'setting the stage') phase stimulates curiosity and prompts inquisitiveness in students' approach to new knowledge, establishing a link between the lecture topic and their existing knowledge. By encouraging students to anticipate what they are about to learn by building on their existing awareness and beliefs on the subject, preparatory activities (such as Think-Pair-Share, Venn diagrams, brainstorming, Know-Want-to-know-Learned (KWL) table, clustering and more) are used to spark interest.⁸⁶

Moving into the central phase, termed the 'realization of meaning,' students delve into comprehension of new ideas through 15-to-20-minute lectures, complimented by tasks that foster active student involvement. This phase usually incorporates critical thinking activities, case studies, and moral reasoning exercises using various tools like moral dilemmas, debates,

83 According to Kohlberg, the alternatives would be the 'educator-king', who acts as behaviour modifier through controlling, or the 'teacher-psychiatrist' who strives for improvement of his students. Kohlberg and Mayer (n 20) 493

84 Narvaez and Lapsley (n 53) 159-160.

85 The initial framework called ARC (Anticipation, Realisation, Contemplation) for facilitating reading comprehension was introduced by Joseph Vaughan and Thomas Estes, 'Reading and reasoning beyond the primary grades' (Allyn & Bacon, Boston, 1986) 85-178 and later upgraded via Kurtis S Meredith and Jeannie L Steele, 'Learning and understanding' in Kollarikova A and others (eds) *Critical thinking II* (State Pedagogical Institute of Slovakia, Bratislava, 1997). See also a useful tool manual Vlasta Vizek-Vidović and Vesna Vlahović-Štetić, 'Aktivno učenje i kritičko mišljenje u visokoškolskoj nastavi' ['Active learning and critical thinking in higher education teaching'], *Priručnik za nastavnike – Aktivno učenje i ERR okvir za poučavanje* (1st ed, Forum za slobodu odgoja, Zagreb, 2020) 26-29.

86 Vaughan and Estes (n 85) 86.

academic controversies, discussion webs, role-play, Interactive Notation System for Effective Reading and Thinking (INSERT), and more. This shift from passive to active learning mode may initially prove difficult for students, requiring adjustment and relaxation. Given the time-intensive nature of these enhanced lectures and the considerable preparation required from the teacher, course material-wise, we prioritize depth over breadth, to allow for ample opportunity for self-reflection and contemplation.⁸⁷

The final phase, ‘revocation’, entails summarizing and integrating new information with the prior knowledge. Activities such as Read-Encode-Annotate-Ponder (REAP), inventory, Role-Audience-Format-Topic (RAFT), and more, are aimed at encouraging students to reconsider what they have learned.

Throughout the educational journey, moral reasoning interlaces content learning. ‘Thinking like a lawyer’ – a staple of the law school curriculum – is a method for teaching analytical thinking. Apart from overly emphasising cognition, it instils the notion that legal reasoning is a purely rational endeavour devoid of value judgements and broader contexts,⁸⁸ neglecting the intricate web of economic, political, historical, ideological influences shaping law.⁸⁹

To counter this limitation, discussions about the genesis of legal concepts should be incorporated whenever possible in the educational process. For instance, we successfully teach the concept of *fiducia* by opening with a discussion on its abandonment in Roman law and subsequent reintroduction in contemporary Croatian civil law; this usually includes anatomizing the socio-economic circumstances, considering its advantages and disadvantages, and identifying primary beneficiaries. Additionally, a comparative approach to various forms of securities, using the ‘corners’ method, encourages students to confront different viewpoints.⁹⁰

Interactive techniques, such as the ‘stand by your values’⁹¹ and ‘value line’ activities,⁹² prompt students to express their views physically and discuss their values and perspectives. The ‘moral dilemma discussion’, a technique pioneered by Kohlberg, teaches students to ver-

87 This approach is supported by listener concentration research, demonstrating that too much information without activating the listener does not contribute to a better acquisition of the teaching material. Cf. Karen Wilson and James H Korn, ‘Attention during Lectures: Beyond Ten Minutes’ (2007) 34(2) *Teaching of Psychology*, 85–89; John G Penner, ‘Why Many College Teachers Cannot Lecture: How to Avoid Communication Breakdown in the Classroom’ (Charles C. Thomas, Springfield, 1984).

88 Without disputing the indispensability of analytical skills in legal education, Morris argues that the current methods (such as the case method and Socratic dialogue) are primarily intellectual, lacking sufficient involvement of emotional components that generate emotional response. Cf. Grant H Morris, ‘Teaching with Emotion: Enriching the Educational Experience of First-Year Law Students’ (2010) 47(2) *San Diego Law Review*, 519. However, the importance of emotions in formation of our moral judgements was proved in a study by Joshua D Greene and others, ‘An fMRI Investigation of Emotional Engagement in Moral Judgment’ (2001) 293 *Science*, 2105–2108.

89 Cf. PhJ Thomas, ‘Dare to Bare: Get a Vision and Reveal It’ (1997) 30(2) *De Jure*, 365; Nicholson (n 7) 113; Ferris (n 5) 33.

90 In this technique, the teacher poses a question or thesis and offers several possible answers, typically three, with a fourth corner left open for their alternative suggestions. Students are asked to physically position themselves in the corners of the classroom based on their choice. Groups are then prompted to explain their point of view, fostering open dialogue and exchange of arguments. After thorough discussion, students may change their opinion and choose another corner, conditioned upon argumentation.

91 In ‘stand by your values exercise’, different areas of the room can represent possible options to the resolution of a particular issue and the students are required to identify the one they would find most difficult to live with as a future professional practitioner and discuss with each other about what that option says about their personal values. Cf. Paula M Young, ‘Teaching Professional Ethics to Lawyers and Mediators Using Active Learning Techniques’ (2010) 40(1) *Southwestern Law Review*, 165.

92 In ‘value line’, students are asked to position themselves physically along an imaginary line based on how strongly they agree or disagree with a statement. Formed groups discuss arguments within each other and against other groups, and are given the possibility to change their position on the line after considering all perspectives.

balize their moral reasoning, with an emphasis on the ‘how’ instead on the ‘what,’⁹³ offering valuable social context to abstract legal concepts.⁹⁴

Drawing on Kirschenbaum’s techniques rooted in Socratic dialogue, we have also incorporated activities that guide students to understanding not by instructing them but by questioning and identifying contradictions. In a society increasingly dominated by self-interest, posing ‘clarifying moral questions’ (such as: ‘How would this action affect others?’, ‘Is that fair?’, ‘How would you feel if you were on the other side?’) helps raise capacity for empathy by encouraging students to consider the impact of a sample situation.⁹⁵ Similarly, empathy can be trained using hypothetical moral choices which do not represent an abstract dilemma but cause students to imagine themselves in the situation⁹⁶ and the ‘role-play’ and ‘role-reversal’ techniques,⁹⁷ allowing students to step into various perspectives and broaden their understanding.⁹⁸

With these techniques, students are not pressured to find the definitive solution to value dilemmas. More relevant to their personal development than finding said solution, as customary in legal reasoning, is actively discussing ethical issues, embracing different perspectives, learning to respect others’ opinions, grappling with competing arguments, recognizing weaknesses in their own positions, attempting compromises, self-reflecting, and recognizing personal biases. Ultimately, these activities boost awareness of moral issues in students’ lives, enabling them to extract personal meaning, all within a secure classroom setting, unafraid of condemnations. Facilitating such an environment requires teachers who are both role models and skilled moderators capacious of commitment, self-reflection, and self-questioning of personal values. Reciprocally, the feedback the teachers receive from the students can be rewarding and contribute to their personal growth.

7. CONCLUSION

The law school curriculum can and should extend beyond mere job training. Value education that transcends mere learning outcomes should adopt an integrative approach, promoting moral reasoning throughout legal studies. The primary goal of this paper was to explore ways to enhance students’ moral reasoning and values awareness, all from the perspective of an average teacher. While we are not expecting these minor shifts to effect profound changes,

93 For instance, topics covered in our lectures include moral dilemmas relating to conception and termination of pregnancy, legal status of the deceased and the corpse, the legal position of corporate entities, the social and legal standing of women, spousal property regime, the legal principle of unity of real property (*superficies solo cedit*) and the impact of socialism on the Croatian property market, the status of the Croatian seashore as *rex communes omnium* and the degradation of the maritime domain, the *bona fide* principle in contract law, examples of legally permissible but ethically questionable practices (*non omne quod licet honestum est*), usury and more.

94 Ferris (n 5) 200.

95 Kirschenbaum (n 40) 114.

96 *Ibid.* 116.

97 Kirschenbaum aims at helping students internalize a set of ethical filters for evaluating ethical issues as they arise. *Ibid.* 118–122.

98 To exemplify, stepping into the role of a creditor and then shifting to the role of a debtor helps students understand others’ experiences, and take into account the implications of actions.

not to be overlooked is how historical transformations never occurred without prioritizing education in the eyes of the society, i.e., both within and beyond formal schooling. Our hope was to initiate a dialogue and foster a deeper understanding of the significance of value education.

In times of uncertainty, competition, and specialisation, shaped by changes, primarily the rapid artificial intelligence (AI) advancements, predicting career paths for future legal practitioners is challenging.⁹⁹ To be anticipated is a future that will bring unique ethical challenges, making it crucial for students to enhance their moral judgment capacities. However, instead of preparing students to enter society and the professional environment with critical thinking skills and the ability to reform the system for greater justice, higher education institutions lag far behind. By turning students into passive recipients of content, focused solely on creating legal technicians with skills relevant only to the instrumental market value, it is near certain that we are creating legal professionals easily replaceable by AI in the near future.

While higher education cannot (and should not) replace early moral development in families and schools, it is inherent to the development of moral reasoning as it matures through adolescence and into adulthood. In terms of legal education, it can be designed to broaden students' moral reasoning past their personal values and ethical principles, paving the way to responsible decisions in their future legal practice and the complex legal framework. Recognizing the teleological interpretation of legal norms, we argue that legal education should foster autonomous moral thinkers and provide a values-based education without leaning towards ideology.

While we firmly assert that education cannot be value-neutral, we strongly oppose a paternalistic approach that dictates predetermined values to students. Embracing value pluralism is essential to rational discourse and any consensus on universal values as a desirable educational goal. While the classroom experience cannot replicate the pressures of practice, grappling moral challenges in a secure (classroom) environment allows students to cultivate their identity, practice social responsibility, and determine the level of integrity they aim for in their professional journeys.

Considering that values cannot be transmitted in the traditional teaching sense and that the fostering of moral reasoning requires multiple activities, we explored the direct and indirect options available to the teacher. Of the myriad tools, group discussions on value choices, particularly moral dilemmas, proved in various DIT studies as the most effective. The ERR framework, originally a critical thinking development instrument, proved to be a robust underpinning for guiding students through the process of enhancing their moral judgment by means of the creative tools we have outlined. Given the lack of research in Croatia on legal teaching methodologies, particularly those oriented at values development, future studies are planned to target validation of these methods and their efficacy.

99 Predictions about the future of the legal profession are most comprehensively described in Richard Susskind, "Tomorrow's Lawyers: An Introduction to Your Future" (Oxford University Press, Oxford, 2023) 187 *sqq.*

BIBLIOGRAPHY

1. Adorno T W, 'Education after Auschwitz' (1998) 191 *Critical models: Interventions and catchwords*
2. Apple M W and King N R, 'What do schools teach?' in Giroux, H A, David E P (eds), *The hidden curriculum and moral education: Deception or discovery?* (McCutchan Publishing, Berkeley, 1983) 82–99
3. Arthur J, 'Education with character: The moral economy of schooling' (Routledge, London – New York, 2003)
4. Babić M, 'Between National Identity and National Culture. A View from the Balkans' in Adamczyk A and others (eds) *Balkan Ambitions and Polish Inspirations* (Centre for Europe, University of Warsaw, Warsaw, 2022) 173–184
5. Baldus C and Finkenauer T and Rűfner T, 'Juristenausbildung in Europa zwischen Tradition und Reform' (Mohr Siebeck, Tűbingen, 2008)
6. Ball D L and Wilson S M, 'Integrity in Teaching: Recognizing the Fusion of the Moral and Intellectual' (1996) 33(1) *American Educational Research Journal*, 155–192
7. Bardi A and Schwartz S H, 'Relations among sociopolitical values in Eastern Europe: Effects of the communist experience?' (1996) 17(3) *Political Psychology*, 525–549
8. Bartlett K T, 'Teaching Values: A Dilemma' (1987) 37(4) *Journal of Legal Education*, 519–521
9. Berdica J, 'Obrazovanje za vrline, ili: Kakvo nam obrazovanje (ne) treba?' ['Education for virtues, or: What kind of education do we (not) need?'] in Koprek I (ed), *Vrline i poslovna etika* (FTI DruŹbe Isusove Zagreb, Zagreb, 2015) 39–55
10. Berk L E, 'Djeća razvojna psihologija' ['Child development'] (8th edition, Slap, Jastrebarsko, 2015)
11. Berkowitz M and Battistich V and Bier M, 'What works in character education: What is known and what needs to be known', in Nucci S, Narvaez D (eds), *Handbook of moral and character education* (Routledge, New York, 2008) 414–431
12. Bok D C, 'Can Ethics Be Taught?', (1976) 8(9) *Change: The Magazine of Higher Learning*, 26–30
13. Brković V and Kardum R B and Mališa S, 'Odgoj za vrijednosti u okvirima kurikula predmeta društveno-humanističkoga područja' ['Values Education with respect to Subjects in the Fields of the Humanities and Social Sciences'] (2021) 76(2) *Obnovljeni život*, 185–201
14. Campbell E, 'Connecting the Ethics of Teaching and Moral Education' (1997) 48 (4) *Journal of Teacher Education*, 255–263
15. Choi J H and others, 'ChatGPT Goes to Law School' (2023) *Journal of Legal Education* (Forthcoming), 1–16, available at: <<https://ssrn.com/abstract=4335905>> accessed 18th September 2023
16. Cox E, 'Explicit and Implicit Moral Education' (1988) 17(2) *Journal of Moral Education*, 92–97
17. Ćurko B and others, 'Ethika. Ethics and Values Education – Manual for Teachers and Educators', (2015) available at: <https://ec.europa.eu/programmes/erasmus-plus/project-result-content/78cf8290-e6f6-4f2e-bfb6-b6dc88d71100/Ethika_O1a_%20Manual%20for%20Teachers_HR.pdf> accessed 27th September 2023
18. Du Plessis P, 'Legal history and method(s)' (2010) 16(1) *Fundamina: A Journal of Legal History*, 64–72
19. Elkins J R, 'The Pedagogy of Ethics' (1985) 10 *Journal of the Legal Profession*, 37–84
20. Eisgruber C L, 'Can Law Schools Teach Values' (2002) 36(3) *University of San Francisco Law Review*, 603–620
21. Ferić I, 'Vrijednosti i vrijednosni sustavi: psihologijski pristup' ['Values and value systems: a psychological approach'] (Alinea, Zagreb, 2009)

22. Ferris G, 'Uses of value in legal education' (Intersentia, Cambridge, 2015)
23. Flavell J H, 'Cognitive Development' (Prentice-Hall, New Jersey, 1977)
24. Giroux H A, 'Critical Theory and Rationality in Citizenship Education', in Giroux H A, David E P (eds), *The hidden curriculum and moral education: Deception or discovery?* (McCutchan Publishing, Berkeley, 1983) 321–360
25. Giroux H A, 'Education and the Crisis of Public Values: Challenging the Assault on Teachers, Students, and Public Education' (Counterpoints: Studies in the Postmodern Theory of Education 400, Peter Lang, New York, 2011)
26. Greene J D and others, 'An fMRI Investigation of Emotional Engagement in Moral Judgment' (2001) 293 *Science*, 2105–2108
27. Halstead J M, 'Values and values education in schools', in Halstead J M, Taylor M J (eds), *Values in education and education in values* (The Palmer Press, New York, Washington, 1996) 11–22
28. Halstead J M, 'Liberal Values and Liberal Education', in Halstead J M, Taylor M J (eds), *Values in education and education in values* (The Palmer Press, New York, Washington, 1996) 24–36
29. Hartwell S, 'Promoting Moral Development through Experiential Teaching' (1995) 1(3) *Clinical Law Review*, 505–540
30. Hazard G C, 'The Legal Profession, The Impact of Law and Legal Theory, Foreword' (1998) 67(2) *Fordham Law Review*, 239–248
31. Hornbeck D W, 'Does Values Education Belong in the Curriculum?' (1987) 8 *Curriculum*, 1–14
32. Husu J, 'Real-world pedagogical ethics: mission impossible?' (2003) 7(2) *Teacher Development*, 311–326
33. Huttunen R, 'Indoctrination and the Un-growth of Morality' in Peters M A (ed), *Encyclopedia of Educational Philosophy and Theory* (Singapore, Springer, 2016) 1135–1142
34. Kasap J and Lachner V and Žiha N, 'Through legal education towards European Education Area' in Duić D and Petrašević T (eds), *EU and comparative law issues and challenges series ECLIC* (Faculty of Law, Josip Juraj Strossmayer University of Osijek, Osijek, 2018) 252–274
35. Kirschenbaum H, 'A Comprehensive Model for Values Education and Moral Education' (1992) 73(10) *The Phi Delta Kappan*, 771–776
36. Kirschenbaum H, '100 ways to enhance values and morality in schools and youth settings' (Allyn and Bacon, Boston, 1995)
37. Killen M and Smetana J G, 'Origins and development of morality' in Lamb M E (ed), *Handbook of child psychology and developmental science* (3(7), 2015) 701–749
38. Kluckhohn C, 'Values and value-orientations in the theory of action: An exploration in definition and classification' in Parsons T, Shils E (eds), *Toward a general theory of action*, (Harvard University Press, Cambridge, 1951) 388–433
39. Kohlberg L and Mayer R, 'Development as the aim of education' (1972) 42 *Harvard Educational Review*, 449–496
40. Kohlberg L, 'The Psychology of Moral Development: The Nature and Validity of Moral Stages' (Essays on Moral Development, 2, Harper & Row, 1984)
41. Kranjc J, 'Towards Creating the Bologna Curricula Some Thoughts on the Bologna Reform' (2005) 2(2) *Slovenian Law Review*, 157–166
42. Kranjc J, 'Les réformes de l'université et des études de droit pendant la Yougoslavie socialiste: le cas de la Faculté de droit de l'Université de Ljubljana' (2015) 35 *Revue d'histoire des facultés de droit et de la culture juridique, du monde des juristes et du livre juridique*, 191–220

43. Larson J L, 'Critical thinking in Slovakia after socialism' (University of Rochester Press, Rochester, 2013)
44. Lerner A M, 'Using Our Brains: What Cognitive Science and Social Psychology Teach Us about Teaching Law Students to Make Ethical, Professionally Responsible, Choices' (2004) 23(3) Queensland Law Reporter, 643–706
45. Lewin K, 'Some social-psychological differences between the United States and Germany' (1936) 4 Character & Personality; A Quarterly for Psychodiagnostics & Allied Studies, 265–293
46. Lind G, 'The meaning and measurement of moral judgment competence. A dual-aspect model', in Fasko, Jr D and Willis W (eds), *Contemporary philosophical and psychological perspectives on moral development and education* (Hampton Press, Cresskill, 2008), 185–220, available at: <https://www.researchgate.net/publication/45817666_The_meaning_and_measurement_of_moral_judgment_competence_A_dual-Aspect_model> accessed 25th September 2023
47. Mentkowski M and others, 'Learning that lasts: Integrating learning, development, and performance in college and beyond' (Jossey-Bass, Hoboken, NJ, 2000)
48. Meredith K S and Steele J L, 'Learning and understanding' in Kollarikova A and others (eds) *Critical thinking II* (State Pedagogical Institute of Slovakia, Bratislava, 1997)
49. Meredith K S and Steele J L and Kikušová S, 'Critical issues: Democracy, community, self, literacy, and the value of global conversation' (2001) 33(1) Journal of Literacy Research, 169–202
50. Moliterno J E, 'An analysis of ethics teaching in law schools: replacing lost benefits of the apprentice system in the academic atmosphere', (1991) 60 University of Cincinnati Law Review, 83–134
51. Morris G H, 'Teaching with Emotion: Enriching the Educational Experience of First-Year Law Students' (2010) 47(2) San Diego Law Review, 465–520
52. Myyry L, 'Moral Judgments and Values', in Kurtz L R (ed), *Encyclopedia of Violence, Peace, & Conflict* (3rd Edition, Academic Press, 2022), 331–338, available at: <<https://www.sciencedirect.com/topics/social-sciences/moral-judgement>>, accessed 23rd September 2023
53. Narvaez D and Lapsley D K, 'Teaching moral character: two alternatives for teacher education' (2007) 43 The Teacher Educator, 156–172
54. Nicholson C, 'The relevance of the past in preparing for the future: A case for Roman law and legal history' (2010) 17(2) Fundamina: A Journal of Legal History, 101–114
55. Nucci L and Turiel E, 'Capturing the complexity of moral development and education' (2009) 3(3) Mind, brain, and education, 151–159
56. Nussbaum M C, 'Not for profit: Why democracy needs the humanities' (Princeton university press, Princeton, 2010)
57. Penner J G, 'Why Many College Teachers Cannot Lecture: How to Avoid Communication Breakdown in the Classroom' (Charles C. Thomas, Springfield, 1984)
58. Piaget J, 'The Moral Judgement of a Child' (The Free Press Glencoe, Illinois, 1948)
59. Posner R A, 'The deprofessionalization of legal teaching and scholarship' (1992) 91(8) Michigan Law Review, 1921–1928
60. Rakić V and Vukušić S, 'Odgoj i obrazovanje za vrijednosti' ['Education for values'], (2010) 19(4-5) Društvena istraživanja: časopis za opća društvena pitanja, 771–795
61. Rathus S A, 'Temelji psihologije' ['Essentials of Psychology'] (5th edition, Slap, Zagreb, 2001)
62. Rest R J, 'Development in Judging Moral Issues' (University of Minnesota Press, Minneapolis, 1992)
63. Rhode D L, 'Ethics by the Pervasive Method' (1992) 42(1) Journal of Legal Education, 31–56

64. Rhode D L, 'Legal Ethics in Legal Education' (2009) 16(1) *Clinical Law Review*, 43–56
65. Rohan M J, 'A rose by any name? The values construct' (2000) 4(3) *Personality and social psychology review*, 255–277
66. Rokeach M, 'The nature of human values' (Free press, New York, 1973)
67. Sheffield M A and others, 'Adolescent Moral Development' in Brown B B and Prinstein M J (eds), *Encyclopedia of Adolescence, Normative processes in development* (1, Academic Press, 2011) 48–55
68. Schlaefli A and Rest J R and Thoma S J, 'Does moral education improve moral judgment? A meta-analysis of intervention studies using the Defining Issues Test' (1985) 55(3) *Review of educational research*, 319–352
69. Schwartz S H, 'Universals in the content and structure of values: Theoretical advances and empirical tests in 20 countries' (1992) 25 *Advances in experimental social psychology*, 1–65
70. Schwartz S H, 'Are there universal aspects in the structure and contents of human values?' (1994) 50(4) *Journal of social issues*, 19–45
71. Stipić I, 'Uloga Kohlbergove teorije moralnog razvoja u kontekstu odgoja za vrijednosti' ['The role of Kohlberg's theory of moral development in the context of values education'] (Master's thesis, Faculty of Humanities and Social Sciences, University of Split, 2021)
72. Strahovnik V, 'Ethics and values education' in Peters M A (ed), *Encyclopedia of Educational Philosophy and Theory* (Singapore, Springer, 2016) 769–774
73. Strahovnik V, 'Ethical education and moral theory' (2018) 25(2) *Metodički ogleđi: časopis za filozofiju odgoja*, 11–29
74. Susskind R, 'Tomorrow's Lawyers: An Introduction to Your Future' (Oxford University Press, Oxford, 2023)
75. Sutrop M, 'Can values be taught? The myth of value-free education' (2015) 19(2) *Trames*, 189–202
76. Thomas PhJ, 'Dare to Bare: Get a Vision and Reveal It' (1997) 30(2) *De Jure*, 364–374
77. Townes J C, 'Organization and Operation of a Law School' (1910) 33 *Annual Report of the American Bar Association*, 966–989
78. Vallance E, 'Hiding the hidden curriculum: An interpretation of the language of justification in nineteenth-century educational reform', in Giroux H A and Purpel D E (eds), *The hidden curriculum and moral education: Deception or discovery?* (McCutchan Publishing, Berkeley, 1983) 9–27
79. Van Dongen E and Raaijmakers S, 'The Development of Moral Reasoning in the Law Curriculum - An Exploration of Various Teaching Activities' (2022) *Law and Method*, 1–16
80. Vaughan J L and Estes T H, 'Reading and reasoning beyond the primary grades' (Allyn & Bacon, Boston, 1986)
81. Vican D, 'Odgoj i obrazovanje u Hrvatskoj u kontekstu europskih vrijednosti' ['Education in Croatia in the context of European values'] (2006) 3(1) *Pedagoški istraživanja*, 9–19
82. Vizek-Vidović V and Vlahović-Štetić V, 'Aktivno učenje i kritičko mišljenje u visokoškolskoj nastavi' ['Active learning and critical thinking in higher education teaching'], Priručnik za nastavnike – Aktivno učenje i ERR okvir za poučavanje (1st ed, Forum za slobodu odgoja, Zagreb, 2020)
83. Young P M, 'Teaching Professional Ethics to Lawyers and Mediators Using Active Learning Techniques' (2010) 40(1) *Southwestern Law Review*, 127–174
84. Wilson K and Korn J H, 'Attention during Lectures: Beyond Ten Minutes' (2007) 34(2) *Teaching of Psychology*, 85–89
85. Zimmermann R, 'Roman and Comparative Law: The European Perspective (some remarks apropos a recent controversy)', (1995) 16(1) *The Journal of Legal History*, 21–33

INTERNET SOURCES

1. EU Justice Scoreboard, available at: <https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/eu-justice-scoreboard_en> accessed 13th September 2023
2. Defining Issues Test, The Center for the Study of Ethical Development, The University of Alabama, available at: <<https://ethicaldevelopment.ua.edu/about-the-dit.html>> accessed 10th September 2023
3. Škrinjarić B, 'Povjerenje građana u institucije i percepcija korupcije' ['Citizens' trust in institutions and perception of corruption'] (EIZ commentary 26th January 2023, Ekonomski institut Zagreb) <<https://eizg.hr/povjerenje-gradjana-u-institucije-i-percepcija-korupcije/6276>> accessed 15th September 2023

Nikol Žiha**

OBRAZOVANJE ZA VRIJEDNOSTI U PRAVNOM KURIKULU: NJEGOVANJE MORALNE AUTONOMIJE

Sažetak

Prema izvješćima EU Justice Scoreboarda, više od 70 % hrvatskih građana ima negativnu percepciju pravosuđa, posebice kad je riječ o njegovoj neovisnosti i učinkovitosti. Unatoč brojnim reformskim inicijativama, sadašnji sustav pravnog obrazovanja promiče formalno obrazovanje bez njegovanja vrijednosti, poticanja kritičkog mišljenja i aktivnog uključivanja studenata. Pritom promovira proizvodnju pravnih tehničara koji nalikuju Montesquieuovu opisu pravniku kao „usta koja izgovaraju riječi zakona“. Polazeći od pretpostavke da metodologija pravnog obrazovanja ima dominantan utjecaj na stvaranje budućih pravniku, a samim time i na formiranje pravne kulture, cilj je ovog rada kritički ispitati kako prosječan nastavnik, kao jedan djelić slagalice, može podržati razvoj moralnog rasuđivanja studenata i svijesti o vrijednostima. Pretežno analitičkom istraživačkom metodom kritički se procjenjuje, treba li okruženje visokog obrazovanja uključivati vrijednosno obrazovanje, je li poučavanje vrijednosti moguće u klasičnom smislu te riječi te može li razvijanje moralnog rasuđivanja u učionici doista utjecati na etičko ponašanje u praksi. Nadalje, raspravlja se kome pripadaju diskrecijske ovlasti odlučiti koje vrijednosti podučavati te koju metodologiju primijeniti. Zaključno s praktičnim prijedlozima, predložena je integracija ERR okvira u predavanja, kao i razni kreativni alati za poboljšanje moralnog rasuđivanja.

Ključne riječi: ERR okvir, pravno obrazovanje, moralno rasuđivanje, kritička pedagogija, obrazovanje za vrijednosti, vrijednosti



This work is licensed under a Creative Commons
Attribution-NonCommercial 4.0 International License.

* Dr. sc. Nikol Žiha, izvanredna profesorica Pravnog fakulteta Josipa Jurja Strossmayera u Osijeku, S. Radića 13, 31000 Osijek, E-adresa: nikolz@pravos.hr. ORCID: <https://orcid.org/0000-0003-4105-5940>.

