Fostering Systemic Thinking with Simulation Games in Legal Education

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To cite this paper:

Electronic copy available at: https://ssrn.com/abstract=4660394
Abstract
The following article deals with the use of simulation games in legal education. It answers questions of complex societies, law and participation of civil society to find solutions and make decisions. Central to this is the understanding of social systems and systemic thinking as well as knowledge of communication and negotiation.

Keywords: simulation game, legal education, social system, communication, problem-solving

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1 Challenges to Law

More than two decades ago, Katsh laid out in a groundbreaking analysis how law will change in the digital age. In doing so, he opened up a view of the jurisprudence of the digital world. His focus was on those processes that can be described as transformation through technologies. Katsh’s thesis was that law will be transformed in particular by the nature of communication. The complexity of communication through new media, he said, will be transformed, in particular by the many-to-many principle. In this context, law and jurisprudence are massively affected by the changes brought about by new technologies. Metaphorically speaking, the future of law lies in the countless networks and data streams that are not only expanding and growing into hypertext structures in the course of increasing computerization but are also becoming more and more condensed. In addition to the concept of communication, the concept of information is of central importance. Legal work is work with information. It is information in legal texts that (can) change incessantly, and thus the information contained in these texts also transforms. For example, the informational content of a legal text changes during the following process: a client presents his problem to a lawyer, the lawyer formulates the problem in writing and adds his legal expertise, transmits this text to the court, the court renders a judgment and applies the law, the public comments and reacts to this jurisprudence, and at most a petition is transmitted to the government. Today, different media transport information continuously from place to place. In the field of judiciary, judges draft judgments, which in turn are transmitted to professionals. Generally speaking, lawyers prepare documents and debate them, and citizens debate the law with other citizens and thus bring it to the public. Relevant forums and platforms can be found on the Internet, as can evaluation platforms and legal expert opinions. The new accessibility of

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1 Many thanks to David Gruber for his further remarks during the text preparation and for his assistance with the translation.
3 ibid 17.
information will have a particular impact on currents in civil society. The rapid development of new technologies has permanently changed the way information is handled. Mechanisms of social self-regulation are gaining more and more ground. Private law and private justice are becoming increasingly important, for example in the area of arbitration. Thus, despite strong juridification, more and more autonomous subsystems are emerging. In many Western-style oriented countries civil society is thus becoming much stronger. This also corresponds to the many-to-many communication structure in which information is processed. A growing civil society also means that different concepts of participation are increasing. Participatory research offers pragmatic, action- and application-oriented approaches for the scientific monitoring of participation processes. In nanotechnology, for example, citizen panels were an issue early on because of the high risk of the research field, and Switzerland in particular has been concerned with participatory democracy concepts in this regard. All of life science, education, culture, (cyber-)war and environmental hazards, is governed globally, just to be re-fragmented on a local level. The increasing complexity of global order is changing the world, and any crisis brings additional threats to society and challenges to the system of law. It is becoming increasingly apparent that many problems at the inter- and supranational level today can only be solved if the opportunities for discussion, participation and co-decision are expanded at the nation-state and sub-national levels. This requires knowledge of and willingness for cooperative, cross-system work, especially in legal professions.

5 Examples include norms in nature conservation law and in the area of environmental impact assessment, which explicitly standardize the participation of environmental protection associations in certain planning and legislative procedures, although the question of the formal legal dimension is open to debate. Examples include business, sports, science and culture. A particularly vivid example is the cooperation model between law and civil society in the field of environmental law. The principle of cooperation proves to be a manifestation of the idea that environmental protection is no longer an exclusive task of the state, but a joint obligation of state and society.


Legal education and systemic thinking

Legal education is oriented towards individual legal subjects and their (dogmatic) traditions and schools, as well as jurisprudence in these subjects (such as constitutional law, administrative law, civil law, criminal law, tax law, corporate law, international law, etc). The knowledge of the individual disciplines is elementary for students and researchers. At the same time, however, interdisciplinary perspectives are becoming increasingly relevant. Equally relevant, nevertheless, seems to us to be the fact that the law and the handling of legal matters are changing in such a way that the **processes of communication**, the **handling of information** and the **needs and perspectives of participants** must be understood in societies that are becoming more complex. The question here is how these massive changes should and can be dealt with. It seems fruitful to fall back on works that deal precisely with these topics from a societal perspective - which above all allow a systemic view, thus also the participation of civil society, communication and the globally changed handling of information, the emergence of autonomous subsystems. For us, the work of the sociologist **Niklas Luhmann** seems to offer a useful approach. We are aware of the academic discourse and the critical considerations that this approach has triggered in the scientific world for more than 50 years now. At the same time, however, it seems undisputed that the increasing complexity of society requires new tools and perspectives.

From a broadly *Luhmann*ian perspective, procedures are social systems that give participants who take on the role of others the opportunity to exert a certain influence on the decisions made in the procedure.8 One of the decisive features seems to be the fact that participants are nevertheless more willing to accept decisions that are not necessarily desirable for them if they have been able to exert some influence on them. *Luhmann* thus assumes that legally ordered procedures contribute to the legitimation of legally binding decisions.9 Procedure is defined here as a **social system** in such a way that it is synchronized with decision-making processes, but not identical with them.10 In particular, differentiations mobilise communication possibilities that would not exist with fixed ties to other, extra-procedural roles.11 In social systems, each individual is dependent on being able to take over

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9 ibid (Luhmann).
10 ibid 3.
11 ibid 23.
selection services from others. 12 An essential performance of communicative behaviour in many procedures is to group assured meaning in such a way that the scope for decision-making becomes small. Accordingly, power is also a mechanism for the transmission of selection services, specifically selection services that have been rendered through decisions. 13 And here the concept of procedure as a social system is also addressed because, according to Luhmann, it is not the predefined concrete form, the gesture, the right word that drives the procedure, but selective decisions by the participants. In this way, alternatives are eliminated and complexity is reduced. This open and self-controlled, complexity-reducing action context can be understood as a social system. 14 According to Luhmann, “legitimation by procedures” does not necessarily lead to real consensus, to communal harmony of views on right and wrong; rather, it is essentially a process of restructuring legal expectations, i.e. learning in the social system. 15 Relevant here is also the representation of uninvolved parties, through which non-involved parties participate in the proceedings. 16

Dealing with procedures, process management and decision-making in legal contexts therefore requires a basic understanding of social systems and their subsystems, the differentiation between environments.

12 ibid 23.
13 ibid 25.
14 ibid 41.
15 ibid 119.
16 ibid 123.
3 Social Systems

A system can be defined\(^\text{17}\) as a composite unit, made up of interacting elements, with emergent properties\(^\text{18}\) and whose functioning cannot be elucidated through linear causality but involves the interplay of system elements in feedback processes, resulting in a more circular causality loop. The most important aspects of systemic thinking\(^\text{19}\) are:\(^\text{20}\)

1. **Observer Perspective**: Every statement is made by an observer. One must recognize that the observer’s perception biases and previous experiences shape that observation. Objectivity stems from consensus among different observers on observation methods and their results.

2. **Distinguish descriptions from phenomena**: Statements about a phenomenon are not the phenomenon itself. Symbols, metaphors, and language are representations, not the phenomena or objects themselves. A map (designation) differs from the landscape (actual phenomenon).

3. **Delineations create information**: By drawing distinctions and delineations, objects are defined more clearly. Information is generated either independently of the observer or by the observers themselves. Knowing the defining criteria brings information about the defined object.

4. **Distinguish description from explanation and evaluation**: Mixing descriptions with explanations and evaluations hinders creative problem-solving and finding innovative solutions.

5. **Status quo requires explanation**: If elements appear constant, this is to be seen as the result of a dynamic process that actively ensures that the state remains unchanged (auto poiesis). Perceived constancy is the result of a dynamic process that preserves the status quo.

\(^\text{17}\) This definition follows Fritz B. Simon’s understanding of systems, underlying his elaborations on systemic thinking. See Simon, *Einführung in Systemtheorie und Konstruktivismus*\(^\text{10}\) [Introduction to systems theory and constructivism] (2023) 11-14.

\(^\text{18}\) “Emergent” in this context means these properties cannot be explained by simple addition of individual properties, see ibid 12.


\(^\text{20}\) The ten points can be found analogously at: Simon, *(supra fn 17)*, 87-90.
6. **Distinguish elements, systems and environments**: To reduce the complexity of the world, define the scope of your observation while considering that systems are composed of units made up of elements and distinguished from their environments.

7. **Social systems are communication systems**: Their smallest units can be defined as communications between at least two parties: one who communicates information, one who understands it. What sustains the system is not the continuity of persons, but the continuity of communication. Democracy needs discourse.

8. **Consider the survival unit as a system with relevant environments**: The limits of what can be achieved within the family, organization, or society are determined by relevant environments. Finding solutions for interactions between systems and environments can prevent unintended and self-destructive consequences.

9. **Base your actions on repeating patterns**: Consistency can be explained by the repetition of process patterns that themselves are organisationally constant.

10. **Paradoxes and ambivalences are normal and expected**: The real world is full of contradictions and ambiguities. Binary logic between absolute “true” and absolute “false” are often false dichotomies. Ongoing observations may thus require ongoing readjustments to ambivalent factors.

It is becoming clear that systemic thinking and the associated problem-solving skills, such as cyclical and iterative thinking, are tremendously important – not solely for the purpose of facilitating discourse. Questions may arise, on how different interests can be connected, how solutions can be found and adapted to new necessities at any time (such as in situations where rapid adaptations are suddenly required, as in the war situation in Ukraine). However, we are not just referring to political decision-making. Legal challenges affect day-to-day work just as much as the long-term planning and sustainable organization of an extended discussion and decision-making process. This, in turn, raises the question of how systemic thinking can be taught in legal education.

4 **Simulation Games**

With these introductory considerations, we are approaching the core part of the paper. As has become clear in this work, systemic thinking is of enormous relevance for understanding legal issues in an increasingly complex society. But beyond that, it seems essential to make this expertise tangible. Lawyers have a tradition of moot courts, in which the students take part in simulated court or arbitration proceedings, involving drafting memorials or memoranda for
claimant and respondent. Finally, they have to present arguments in oral hearings. The scenario is designed to be realistic, where both the case and procedure are challenging and complex. In this sense, a moot court is a co-curricular activity at many law schools, often combined with a competitive approach. Nevertheless, it does not facilitate a more cooperative approach. However, for a systemic view with a wide variety of participants and differing interests in an increasingly complex society with ever-new subsystems, simulation games seem to us to be a useful tool in legal education because they go beyond the linear process structure of the moot court. They enable an iterative and cyclical view in the communicative verifiability of processes and thus a reduction of complexity, as Luhmann describes it. The conception of simulation games can be very different and vary according to specific fields of application. Basically, however, they offer an experimental learning setting in which problem situations are worked on. Although these are based on certain constellations of the real world, they – as opposed to moot courts – do not exhibit the same degree of complexity. And therein lies the key to their value for learning. A model represents a simplified environment. Social positions, interrelationships and conflicts can be represented in a way that is close to reality, but in a way that central features are emphasized and others can be neglected. Through this didactic reduction, it is possible to make complicated processes in personal and social systems – organizations and institutions – tangible and comprehensible. These skills include the competencies of problem-solving (analysing, communicating, negotiating, achieving compromises through win-win constellations) as well as the participation competencies (by taking on the role of another, one is encouraged to make decisions and to justify them in discourse – articulateness), reflection competencies (promoting observation of others and oneself – tolerance of ambiguity) and contingency competencies (the ability to deal creatively with uncertainties, complexity, acceleration and the provisional nature of social and cultural problem solving, such as the ability to deal with conflict).

22 The Willem C. Vis International Commercial Arbitration Moot represents a prominent example; https://www.vismoot.org/ [09/2023].
Simulation games are an experience-based learning method that offers opportunities to experiment and thus provides the space for developing a self-organized and practice-oriented learning culture. Simulation games are modelled around complex problem situations, in which participants must find solutions in defined stakeholder-roles. This allows participants to gain a better understanding of the consequences of decisions in complex systems and helps them to apply this understanding in their own sphere of activity. Participants are asked to develop strategies, to work out arguments and to represent them. These experiences can be used to improve cooperation between institutions and to contribute to solving conflicts of interest.24

A classic simulation game consists of three phases: (1) the briefing, in which the participants are introduced to the game and their roles; (2) the game phase, in which they actively work together, discuss as well as negotiate; and (3) the evaluation phase (the debriefing), in which the results are discussed, analysed and interpreted.25 Thus, the students take on roles and act out these roles in a simulated reality. In this way, complex contexts can be viewed, discussed, and even negotiated from different perspectives. The subsequent reflection phase, in which the actions in the game are reviewed, discussed and evaluated, is crucial to the cognitive process. This is also where the potential of simulation games for collaborative knowledge-building lies – especially when answering current legal questions.

The simulation game here stands for a "simulation of the effects of decisions made by people who take on roles and represent interests"26. However, it does not exist in a concept-free space. Rather, it is both pre- and post-processed.27 This refers to the design of the simulation, which is based on (legal) reality, and above all to the content-related phases, which prepare for the simulation in terms of content and then conclude it in such a way that the decisions made and the results achieved are not only clarified in the context of reflecting on the assumptions of the simulation model28 but are also compared and expanded with real-life situations after additional technical aspects have been introduced.29

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28 Arndt, Methodik des Wirtschaftsunterrichts (2013) 177.
5 Experience in legal education

5.1 Preparation

Simulation games are suitable for dealing with conflictual situations involving numerous actors. Each participant takes on an assigned role and tries to represent certain interests. However, taking on the role does not mean giving up one’s own personality or becoming another personality. Rather, it is to be filled with one’s own ideas. As a matter of principle, people develop by taking on and playing roles. Taking on a role in a simulation game therefore fosters personal development in a protected space. It opens up the possibility of self-dramatization and testing one’s own roles in self-perception and the perception by others.30

This is accompanied by experience with intrapersonal role-person conflicts as well as with classic social role conflicts, the clarification and sensitization of which is virtually mandatory for self-organized, creative interaction in new, open situations. However, the latter conflicts, in an environment conducive to the exchange of interests, be they individual or collective self-interest, form a mixture with harmful potential inherent in subsequent negotiations.

Therefore, in the simulation game setting we chose, the focus was also on negotiation. The goal was not only to work out the central issues and differences but also to negotiate a solution that all participants were "satisfied" with, despite supposed differences in content and personality. Behind this stands the method to identify problems, interests, and conflict lines and develop scenarios that open up new options for action.

We want the participants to ask themselves the following questions when informing themselves about the topic: What is the challenge? What are the goals to be achieved? Who are the protagonists in the cases? Which interests are to be taken into account? Yours? Your opponent's? What is your best alternative to a negotiated agreement (BATNA)31? What is your opponent's? What are the lines of conflict? Yours? Your opponent's?

Negotiating in a social system also means communicating and working out decisions in a process, regularly with more or less diverging preferences. However, in order to be able to manage this procedure, it requires not only professional expertise but also the aforementioned skills to be able to act confidently and coherently in challenging situations

30 Tafner, ‘Didaktik des Planspiels’ in Köck/Tafner (eds), Planspiel – Einsatz in der politischen Bildung (2016) 103 et seq.
31 See infra, 5.2 The Simulation Game in Class.
that arise or are presented.\textsuperscript{32} What is meant is competence-oriented learning, which, combined with the transfer of knowledge, completes the pedagogical ideal of the simulation game, i.e. education. Competencies themselves cannot simply be learned,\textsuperscript{33} but they can be experienced and developed by doing and acting,\textsuperscript{34} i.e. in training processes such as a simulation game.\textsuperscript{35}

How, specifically, did we design the course itself?

\textbf{5.1.1 Topic}

For the theme, we have chosen a socio-politically controversial topic, the so-called “cancel culture”. Cancel culture is a political buzzword that refers to systematic efforts to partially exclude people or organizations from society. It encompasses systematic efforts to partially, socially exclude individuals or organizations that are accused of offensive, discriminatory, racist, anti-Semitic, conspiracy-ideological, bellicose, misogynistic, homophobic, or transphobic statements, actions, or patterns of behavior. A term related to Cancel Culture is deplatforming, which means depriving those affected of public platforms. The topic seemed suitable for the simulation game because it involves many conflicts and can be embedded in the context of a necessary democratic-political debate culture. The students received literature on the topic in advance.\textsuperscript{36}

\textsuperscript{32} Kreuser, ‘Kompetenz und Beratung’ in Kreuser et al (eds), \textit{Beratungskompetenzen für Mediation, Coaching und Supervision} (2022) 17.

\textsuperscript{33} From the explanatory approach of performative pedagogy in diction, cf. Tafner, (supra fn 30) 102 \textit{crit} (“learnable”), although agreeing with the result (“...the strength of the simulation game, because it is precisely in it that self-dramatization and thus competencies can be practiced.”); Zabeck, \textit{Berufserziehung im Zeichen der Globalisierung und des Shareholder Value} (2004) 114 et seq, in this context speaks of the "training" of "skills" necessary for successful action. The learners can achieve this if a life-worldly area is opened to them in which they can productively blend in under guidance. At the same time, however, the "learning process" must leave enough time for "distancing and reflection". In terms of methodology, he uses simulations, including simulation games.

\textsuperscript{34} On the demand for the consideration of key competencies in legal education, especially action and reflection competencies recently, cf. Gläßer, (\textit{supra} fn 21) 861.


We have looked at the topic from the perspective of "cultural appropriation". This refers to the appropriation of cultural characteristics in an unequal power relationship without underlying legitimacy. The question was whether white musicians who wear dreadlocks should be excluded from their artistic performance. In designing and executing the roles, we were guided by three actual European case studies that were journalistically documented. They concerned the musician Ronja Mahltzahn, the band Lauwarm and the Austrian musician Mario Parizek. All three musicians have had their scheduled live performances cancelled because of their dreadlocks.

We have embedded the topic within a journalistic context. In essence, it was about the question of how an editorial team of a daily newspaper deals with the polarization issues associated with cancel culture and what balanced reporting on this can look like, or even corresponding opinion journalism.

5.1.2 Legal Background

From a legal perspective, the most important function of the press is its contribution to democracy. The media should enable the population to form an independent political opinion. The concept of the functional division of state power (legislative, judicial and executive) is realised in democratic constitutions in such a way that institutional anchoring and mutual control are established. A functioning press is seen as the Fourth Estate and thus has the task of (1) strengthening democracy, (2) enabling and guaranteeing independent political decision-making by the population, and (3) monitoring the exercise of state power and exposing abuses. The Victorian writer Thomas Carlyle called the press the ‘Fourth Estate of the Realm’ and also the Times editor Henry Reeve in 1855 called the press the fourth estate. “By this, he meant that it acted as a sort of watchdog of the constitution and, as such, formed a vital part of democratic government”. The Fourth Estate is supposed to serve the balance of power, but legally, it is not protected to the same extent by the legal framework in
democratic states. However, relevant regulations can be found in the fundamental rights. The title of freedom of communication generally includes those guarantees that serve to protect individual communication processes and the free flow of information between people. These provisions include several freedoms: individual freedom of expression (Art 10 ECHR) as the freedom to form one’s own opinion (freedom of opinion), freedom to express one’s opinion and to pass on news and information (freedom of expression) and the freedom to receive news and ideas (freedom of information), as well as the specific freedom of the press, broadcasting and film (freedom of the media). On the basis of Art 10 ECHR, special protection is attributed to news, opinions or ideas that become accessible to a particularly large number of people. A special characteristic of the press is its periodical appearance as a printed publication for a specific group of readers. If this definition is not met, the protection of freedom of the press does not apply, but the protection of freedom of opinion still does. The European Court of Human Rights (ECtHR) “has always asserted the essential role played by the press as a ‘watchdog’ in a democratic society, and it has connected the task of the press in imparting information and ideas on all matters of public interest to the public’s right to receive them”. The Court has held that the function of bloggers and popular users of social media can also be equated with that of "public watchdogs" as far as the protection afforded by Article 10 is concerned. Observing and informing the public, participating in public life as an independent actor of critical commentary, and providing channels of discourse and debate to represent diversity of opinion are essential aspects of a functioning press. In many countries, the degree of state-guaranteed and de facto freedom of the press is also an indicator of democracy.

44 Grabenwarter/Pabel, EMRK § 23 Rz 9.
manipulation in the digital information society, the legal design of the media landscape is thus central.

According to the European Commission, there are "worrying trends" in the media landscape in the European Union and therefore the Commission presented the European Freedom Act in September 2022. The aim of this set of standards is to better protect independent media in Europe from state influence and to strengthen media diversity. The aim of the law is also to ensure more transparency. The draft is based on the Audiovisual Media Services Directive (AVMSD).

Member States shall respect the editorial freedom of media service providers, which means that Member States and their national regulatory authorities are prohibited from directly or indirectly influencing editorial policies and decisions. The idea is to improve the protection of journalistic sources, which also prohibits the use of surveillance software against media service provider, journalists, and their families. Nevertheless, there is an exception in the case of an overriding requirement in the general interest, in accordance with Art 52 (1) of the Charter. The protection of editorial independence includes transparency obligations with regard to ownership.

The Commission also proposes the establishment of a new independent "European Board for Media Services" composed of the media regulators of the EU Member States. This body would be concerned with the following tasks: (1) promoting the effective and consistent application of the EU regulatory framework for the media; (2) issuing opinions on national measures and decisions affecting media markets and media market concentrations; (3) coordinating national regulatory measures with regard to media from third countries that pose a risk to public safety so that they do not circumvent rules applicable in the EU; (4) organizing a structured dialogue between very large online platforms and the media sector to promote access to different media offerings and to monitor whether platforms comply with self-regulatory initiatives such as the EU Code of Conduct on Combating Disinformation.

As a result, concrete procedural requirements for the obligation of online platforms are necessary, especially since the concept of editorial responsibility is central to the definition of media service providers and the structured dialogue envisaged in the Media Freedom Act should actually bear fruit.

5.1.3 **Modeling the game**

In Modeling the simulation game, the described topic, the legal background and the setting were relevant, in our case that of a daily newspaper with different departments and interests of the participants.

The individual roles had previously been worked out. Special attention was paid to the fact that they were in conflict with each other, or that cooperation could be useful. It was important to make visible that this setting is a social system.

5.2 **The Simulation Game in Class**

In the preliminary meeting, the students were familiarized with the idea of the simulation game and prepared for the simulation game by being introduced to the basic topic (Cancel Culture) and the scenario (editorial office of a regional daily newspaper). In the next step, the students receive materials for independent preparation of the content of the simulation game about two weeks before the main meeting.

The simulation game in its strict sense starts with the "drawing" of the game role and the associated handing out of the role description, including confidionals. The participants are given time to read into their respective roles and get used to them. Subsequently, the program of the day and especially the scenario are presented once again, in order to introduce the participants to the world of social systems and systemic thinking. As already indicated, this step takes place along a short introduction into system theory and constructivism.

Once again, the students are given time for quiet reflection and to integrate the new information into their roles. After this, the first interactive part of the game begins, assuming that the representatives of the various departments, from politics to culture, lifestyle to sports, meet with the two editors-in-chief for an editorial conference to determine the newspaper’s policy regarding the handling of the central topic of Cancel Culture and, if necessary, to work out appropriate journalistic initiatives. The participants are not given a mandate to negotiate or reach an agreement; rather, they must strictly adhere to their role specifications. Confidionals, enriched with conflicting needs and interests, play their part in
making it difficult to pull together. The hour-long negotiation ends with the editors-in-chief instructing the editors to enter into internal negotiations once again and finally to present a joint solution to the editors-in-chief.

In order for this step towards cooperative instruction fulfilment to be taken consciously, a teaching input on the fundamentals of negotiation is given at this point. We are guided by the considerations of negotiation theory, as presented not only in the Program on Negotiation at the Harvard Law School. Essential to us is the observation that these communicative situations regularly involve negotiation. Voeth and Herbst have drawn from a variety of definitions of negotiation to identify five characteristics that describe such "exchange situations." These include multi-personality, goal congruence, preference conflict, agreement space, and finally the statement that agreement is the result of an interaction process.\(^{53}\) If one assumes that negotiation is the process of reaching an agreement on one or more objects of exchange between parties with at least partially different preferences, in the course of which the parties try to influence the generally possible solution, then in the context of application-oriented and practice-oriented simulation games, there can only be one conclusion: interweave considerations of social systems with those of negotiation.

However, the competence-oriented approach makes it clear that it is not only methodical negotiation skills that are to be developed, but social-communicative skills as well as activity and action competence that are to be made tangible. The observation of the game reveals that the participants need to communicate, that they are open to understanding and cooperation, that they act in a problem- and conflict-solving way, and that they are ultimately capable of making decisions.

Besides these key skills, this task requires teaching the different approaches to negotiation styles (competitive, cooperative, and interest-based).\(^{54}\) In addition, knowledge of the best alternative to a negotiated agreement (BATNA) is required for a better assessment of the exchange situation. This knowledge of one's own BATNA helps to accept whether a negotiated outcome would be worse than not making the deal. Furthermore, knowing the counterpart's BATNA will help estimate the zone of possible agreement (ZOPA). This is nothing else than the area between two partie’s walkaway points (reservation points).

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54 On negotiation skills and the conduct of negotiations in simulation games, cf. Tafner, *(supra fn 30)* 115 et seq.
In the concrete game setting, this not only initiates a connection to the concept of systemic thinking but also establishes a link to negotiation theory. Thus, the participants are engaged with another “level of thinking” and deal with the difficult questions of interest clarification and decision-making, which they in turn experience practically in the way of implementation and realization in terms of negotiation. To help participants get started with the negotiation, they receive a form for the case preparation containing questions about the issues to be negotiated, the interests, the BATNA, and finally the ZOPA. The negotiation itself should last one hour and end with a substantive result, which is to be presented to the chief editors in a further session, where it will be finally negotiated.

This concludes the game phase, and a written and oral reflection unit (debriefing process) is started immediately after the game ends. As in the preparation for the negotiation, the game participants also receive a case follow-up for the postprocessing, whereby the essential elements of the negotiation are queried as well as the stability of the social system in which the negotiators acted or communicated with each other as actors. Finally, the game unit ends with an oral group debriefing session, in which not only “the” negotiation itself is discussed, but also the results achieved are reflected upon in connection with the initial topic. The game leaders are responsible for the course of the reflection process. They have the task of starting the discussion, bundling it and leading it towards the central questions.55

The content conclusion is then formed by linking the game process with the “structured dialogue” as a practical interaction task of the Board to regularly organise such a dialogue between providers of very large online platforms, representatives of media service providers, and representatives of civil society (Art 18 EMFA).56 This kind of advisory activity requires that decisions be made in the context of cooperative exchange processes in a multi-person setting.

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56 See supra, 5.1.2 Legal Background.
5.3 Reflection phase

The participants gave extensive feedback. They particularly highlighted their emotional experiences and reflections on the game context. It was striking to see how deep the role experience goes. It was exciting to see not only the conflicts but also the strategies behind them. This will also help in subsequent iterations to define appropriate roles and lines of conflict. We are pleased that our concept was accepted in this form.

The concern that the characteristics of the simulation game, the individual time constraints, or the complexity on the one hand lead to over- and on the other hand to under-challenging of the participants, both of which could have a negative effect on motivation, was in any case not confirmed despite the heterogeneous group composition. Rather, excitement, tension, and competitive feelings could be observed.

The learning experiences were evaluated as outstanding with regard to the topics of cancel culture, system theory and the negotiation process. A central benefit was also the linking of the debriefing results with the results that emerged in the course of the establishment of the European Board for Media Services (‘the Board’) and the structured dialogue, thus providing a link between the constructed model of reality and a real institutional situation.

But also, the game managers benefit from each implementation of the simulation game. We received new impulses and hints for a possible modification of the simulation game design (role description, sequence, time management, use of materials) and also learned directly from possible new approaches to solutions and insights of the participants (more conceivable

57 On problems and limits of the simulation game method, cf. Horn, (supra fn 27) 32.
58 Schweiger, (supra fn 25) 165.
solutions in the game situation, awareness of emotions). Above all, however, the basic assumptions were confirmed by the participants.

6 Résumé

The simulation game idea and the performative pedagogy associated with it are eminently suitable not only for business or democratic political contexts but also for legal training. The activation of individual behavior, the personal handling of a situation that cannot be completely predictable, and the requirement to make one’s own decisions based on one’s own expectations enable competence, experience, and learning. Following our conceptualization, simulation games offer additional value over moot courts, such as the opportunity not only to try out one’s own role but also to empathise with the other party and their interests. Furthermore, the competitive approach is substituted by a more cooperative orientation in simulation games, as they are about mutual understanding and creating consensus, while moot court scenarios present a winner/loser outcome.

Secondly, the change in the communication landscape requires methods to reduce complexity in everyday legal practice. In this regard, simulation games in legal education proved to be suitable tools, depicting environments including various communication participants as comprehensive systems. This allows for new approaches in problem-solving, which facilitate finding cooperative solutions in particular. Complexity is reduced by eliminating alternatives through a cyclical and iterative process. As was demonstrated both methodologically, as well as in practice, these solutions stand a better chance of being accepted by all parties involved, which in turn appears sensible in terms of efficiency and effectiveness.

Finally, this here promoted simulation game setting is about more than "just" the purely technical, it is about a substantial piece of education.

The goal of such a pedagogical intervention is therefore – if one follows Tafner, for example – a cultivation, an own questioning of constructions, it is about self-activity, about the ability of self-determination and solidarity, which can be understood, with Klafki, in the

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59 Tafner, (supra fn 30) 102.
60 Tafner, (supra fn 30) 96.
61 Klafki, Neue Studien zur Bildungstheorie und Didaktik. Zeitgemäße Allgemeinbildung und kritisch-konstruktive Didaktik (2007) 97 et seq, describes self-determination in connection with the "general education concept" as the ability to determine one’s own personal life relationships and interpretations of meaning of an interpersonal and professional nature. The ability to co-determine describes the state that everyone has the right, opportunity and responsibility to shape the common social and political conditions. And finally, such a concept of education
simultaneity of individuality and communality. But also, and this should be stated unequivocally in a modification of Zabeck’s\(^6\) statement, it is not the teaching of purely practical skills that is stimulated, but rather the power lies in the guidance to reflect on how it comes about, in the gain of competence for lawyers related to the self-disposition of a challenging situation.

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\(^6\) Zabeck, (supra fn 33) 116 et seq.