TEACHING PUBLIC INTERNATIONAL LAW THROUGH A CLINICAL METHOD OF TEACHING?

Věra Honusková

Abstract: This article aims at presenting clinical method of teaching as one of the methods through which public international law might be taught. The author shares her experience in the clinical method of teaching, which she acquired while teaching the refugee law clinical course at Law Faculty of Charles University. The findings are also put in a broader context of the determinants for the use of teaching methods.
The clinical way of teaching is described in the article and pros and contras of this method are considered. The clinic usually gives a student an opportunity to work with a "live client" and to apply all his or her knowledge on a real case, but under close supervision at the same time. This method thus allows a teacher to give students a feedback on the theory while they are still at school; he/she may comment on their work and on their skills too. In the presented course, the teacher also shows that public international law has and will have its place in student's work. Therefore the article finds the clinical method as a possible good supplement to other methods of teaching public international law.

Resumé: Článek představuje tzv. klinickou výuku jako jednu z metod, která může být použita k výuce mezinárodního práva. Autorka zde hodnotí možnosti skrze praktickou zkušenost s touto metodou, kterou využívá ve svém kursu zaměřeném na uprchlické právo. Danou metodu zasazuje do širšího kontextu možnosti použití rozličných výukových metod. Klinická výuka využívá při teoretické výuce práci na skutečném případě k tomu, aby byly ověřeny studentem získané znalosti. Avšak vždy jde o práci s důslednou a důkladnou supervizí zkušeného právníka z praxe. Vyučující tak získává potřebné informace o tom, zda student porozuměl tématu a dává studentovi zpětnou vazbu ohledně jeho právních schopností. V uváděném případě kursu na Právnické fakultě Univerzity Karlovy také vyučující studentovi ukazuje na konkrétní právní oblasti možnosti využití mezinárodního práva a to, jaké místo může mít mezinárodní právo v jeho budoucí praxi. Proto článek shledává danou metodu jako možný a zajímavý doplněk ve výuce mezinárodního práva.

Key words: teaching methods, clinical method of teaching, teaching public international law.

On the author: Mgr. Věra Honusková is a senior lecturer at the Law Faculty of Charles University in Prague. Her main research areas are Refugee Law, Migration Law, Human Rights, and Gender Issues. She is a member of *European Society of International Law*, *Czech Society of International Law*, *Odysseus Network*. Her most recent publications are: Kosař, D., Molek, P., Honusková, V., Jurman, M., Lupačová, H.: *Zákon o azylu. Komentář* [Annotated Asylum Act]. Praha: Wolters Kluwer ČR, 2010. Honusková, V.: *Concurring Jurisdiction in the Family Reunification Concept*. In From Codification of International Law to its Fragmentation. Prague 2009.

This article aims at presenting one of the methods through which public international law might be taught on the example of one concrete course. The findings are also put in a broader context of the determinants for the use of teaching methods. I would like to share my experience in the clinical method of teaching and help public international law teachers who are interested in it decide whether it is worth trying. The experience I acquired while teaching the refugee law clinical course at Law Faculty of Charles University is incorporated here.

What is the clinical method of teaching?

What is the discussed "clinical method of teaching"? Simply – it is an integration of practice into the learning process. The specific feature of this method is the use of practical knowledge by students in a real case. The extent to which practice is used in courses differs according to the type of clinical course. The term "legal clinic" was created to show a parallel with the practice of students of other schools, who have an opportunity to practice during their studies.[1] A doctor, for example, gets training already during his/her studies to ensure that he or she is capable of real medical practice. This argument of capability of a lawyer to stand in a real practice is often used by those in favour of the use of the clinical method. The word "clinic", even though literally not meaningful in the world of law, denotes connection with practice. A clinic usually gives a student an opportunity to work with a "live client" and to apply all his or her knowledge on a real case, but under close supervision at the same time. A student thus gets feedback and sees what mistakes he or she makes. In addition, the clinic helps students to acquire professional skills in advocacy, learn how to negotiate and interview a client. In summary, a student actively participates in the learning process when taught by this method.

The clinical method was founded in the United States and even there it is widely debated whether the method is suitable for teaching law in general and whether the law schools will become "trade schools".[2] The academic law schools (law schools which concentrate on teaching later academics) and clinical law schools (law schools which concentrate on preparing lawyers for practice) are perceived as separated entities; the same differentiation may be observed in the UK too.[3] Many debates ensued following the publication of the Carnegie Foundation for the Advancement of Education Report in 2007, which pointed out the necessity to impart greater practical knowledge and skills to law schools.[4] But as Chemerinsky says, the debates are ongoing; the same themes were emphasized also in 1992,[5] and even in earlier

[1] See e.g. E. Chemerinsky, *Why Not Clinical Education?* 16 Clinical L. Rew. 35, 2009, p. 38.

[2] Ibid, p. 39. See also H. Barancová, Reforma právnického vzdelavania v Slovenskej republike. In J. Kuklík, (ed.): *Reforma právnického vzdělávání na prahu 21. století*, Auditorium, Praha, 2009, pp. 19-29.

[3] See two Universities in Newcastle (UK) and its law faculties: Newcastle University Law School and Northumbria Law School at Northumbria University, first one being academic and second one clinical.

[4] W. M. Sullivan, A. Colby, J. Welch Wegner, L. Bond, L. S. Shulman, *Educating Lawyers: Preparation for the Profession of Law*. San Francisco: Jossey-Bass, 2007.

[5] The MacCrate report was issued in 1992 (prepared for the American Bar Association).

works.[6] So the methods of teaching and the extent of use of clinics are still subject to lively debates even in the cradle of this method. One of common questions about the clinical education is whether this method is transposable in Europe and whether it does or does not undermine the position of schools as academic centres. This article does not attempt to answer these, albeit important, questions; it is up to law schools themselves to decide what the intended outcome from the learning process should be and whether the method may threaten their image.

There are many types of clinics: some are fully led by a school, some are maintained and organized by another entity, but we can also found clinics where both entities play a role. A clinic may e.g. deal with administrative law, human rights law, environmental law or refugee law. A clinic may be aimed at teaching through practical experience, and (or) at helping those in need. Therefore, when establishing a clinic, it is possible to either choose from the above mention models or create own version of a clinic.

There are different models for integrating practice into the learning process applied at law schools in the Czech Republic. Masaryk University requires students to attend internships as an obligatory part of the last year of studies;[7] Palacký University seems to be strengthening its support to clinics,[8] while Charles University leaves the internships and clinics as optional courses.[9] All models are perfectly possible and although it would be interesting to see whether the outcome (student with specific knowledge and skills) differs, no such a research exists yet. There is another important issue connected to the use of practice that has influence on lawyer's education in the Czech Republic: learning of real practical skills is mostly accumulated in the period after the graduation. An elaborated system is developed for those lawyers who start traineeships in law offices, at courts or prosecution; they undergo three years of continuous education under supervision of advocates (barristers), judges or state prosecutors. Kristková finds efficiency of this educational system arguable; she criticises the system not only for its lack of a better structure but also for the questionable quality of given feedback, that might not always be relevant, as practitioners themselves often lack any education in professional skills.[10] A disadvantage of this approach may also be seen in the fact that not all legal professions are covered by

[6] E. Chemerinsky, *Why Not Clinical Education?* Op.cit., p. 37.

[7] Sec. 10 of Study Regulation, available at http://www.law.muni.cz/zaklinf/vpredpisy/stud_rad_31082005.html (accessed January 29, 2010).

[8] See the website of the Law Faculty PU, http://www.upol.cz/fakulty/pf/centrum-pro-klinicke-pravni-vzdelavani/(accessed on January 17, 2010). See also V. Tomoszková, M. Tomoszek, Praktické formy výuky práva. In J. Kuklík, (ed.): *Reforma právnického vzdělávání na prahu 21. století*, Auditorium, Praha, 2009, pp. 38-46.

[9] See the website of the Law Faculty ChU, https://is.cuni.cz/studium/index.php (accessed on January 17, 2010). But see also J. Kuklík, Místo studentských stáží v novém studijním programu Právo a právní věda na Právnické fakultě Univerzity Karlovy. In J. Kuklík, (ed.): *Reforma právnického vzdělávání na prahu 21. století*, Auditorium, Praha, 2009, p. 142.

[10] V. Kristková, Je potřebná větší orientace právnického vzdělávání na praxi? In J. Kuklík, (ed.): *Reforma právnického vzdělávání na prahu 21. století*, Auditorium, Praha, 2009, pp. 30-37.

this follow-up education (e.g. state officials, or NGO lawyers). A clinical method of teaching can be found in the curriculum of three out of four Czech universities, the extent of use of this method differs (e.g. Law Faculty of Palacký University uses the clinical model in six courses, Law Faculty of Charles University in three; the relevant courses are always optional, not obligatory). These clinics are in most cases done in cooperation with NGOs.

Which ways of teaching are appropriate for teaching international law?

There are many methods for teaching international law: a lecture, a discussion, a case-study based teaching or just another of indefinite number of possible methods. And I believe that no method may be labelled as the right one. It should be also pointed out that public international law is a subject which students might find difficult to understand and especially not easy to believe in. At the beginning of the course I usually hear questions like: "Does the international law have effect even if there is no enforcement agency?", or: "What is the purpose of international law, if only strong stakeholders have real impact on its exercise?". There are also some concepts which might be hard to understand, such as "self executing norms", or "custom" as a source of law.

Let's take a look on the methods and their use from a more general point of view. Some methods are used when the audience is large, others when the audience is small. One method might be used to help students to just remember things, while the other one can make them understand. A different method will be chosen if the students are required to acquire deep knowledge of subject rather than to get a surface knowledge.

Use of a teaching method is always connected to the **result, which a teacher wants to achieve**; in other words it depends on the intended outcome. Therefore the very first question a teacher should answer before choosing a particular method, is "what type of knowledge and skills he or she wants students to acquire during the learning process". However, a learning process is necessarily an interaction between two sides – students and a teacher - and we may also evaluate suitability of a method from students' point of view, i.e. according to **how students learn**. This distinction depends on "*what is seen as the main determinant of learning: (1) what students are, (2) what teachers do* [or] *(3) what students do*".[11] Biggs and Tang call the first two models "blame" models (the first one blaming the student, the second one the teacher) and describe the third one as a model which integrates both learning and teaching (while blaming no one). In the first one the teacher provides (transmits) information, and if the student does not absorb the information properly, it is his or her fault (it depends on who the students are). This approach does not take into account possible differences in motivation or ability of students to learn etc., the teacher only displays information and it is up to a student what he or she will take from it ("*blame a student*" model). The second model focuses on the teacher who transmits

[11] J. Biggs, C. Tang, *Teaching for Quality Learning at Univesity*, 3rd edition, Open University Press, 2007, p. 15 and 27.

concepts and understanding, not just information. If the student does not learn the substance, it means that the teacher's work was not appropriate ("*blame a teacher*" model). The third model focuses on the outcome of the learning process and on supporting the appropriate learning activities. A teacher takes into account a level of knowledge acquired by students and supports them to learn effectively; achievement of intended outcome (the knowledge and (or) understanding and (or) skills) is the most relevant factor. As Biggs and Tang pose the question: are the students engaged in those learning activities which most likely lead to the intended outcomes?"[12]

Teachers usually use a teaching approach which they prefer when they learn themselves; in other words the teaching method may depend on **how teachers learn themselves**. The teacher should be aware of this fact and should keep it in mind when choosing a method he or she wants to apply. David Kolb, an educational theorist, differs between four types of learning personalities: (1) an activist, (2) a reflector, (3) a theorist and (4) a pragmatist.[13] Accordingly he divides methods of perception of knowledge: (1) concrete experience, doing, (2) reflective observation, observing, (3) abstract conceptualizing, thinking, and (4) active experimenting, planning. So, as it may be seen, students learn according to their personalities. An activist learns the best by concrete experience, by doing, *by having an experience*; a reflector by gathering data, analysing, standing back, observing, *by reviewing the experience*; a theorist by putting things into logical steps, *by concluding from the experience*, and a pragmatist by solving a problem, *planning the next steps*.[14]

As it may be concluded from the above, the methods which the teacher wants to apply will not only depend on the intended outcome but also on the type of personality of both, the student and the teacher. Some methods work better for one type of student's personality than the others. But what if the audience consists of different types of personalities? There are also other aspects that must be taken into account when choosing a method, mainly the **costs of different methods** and the **school's preference** of some of them. A lecture is cost effective when the audience is relatively large, and it is only logical that schools may prefer it. A clinical method, whose extent of student's engagement in learning process moves it to the opposite side of teaching methods' spectra, is very costly and may be used only for a very small number of students. Therefore it may not be suitable for schools with a larger number of enrolled students.

To sum up: there in no specific method which is appropriate for teaching international law; the choice of a method depends on many factors. I believe that the teacher should just be aware of the above mentioned determinants and choose a method which he or she finds appropriate – or he or she should at least know that

[12] Ibid, p. 15-29.

[13] He follows John Dewey's, Jean Piaget's and Kurt Lewin's findings.

[14] See D. Kolb, R. Fry, Towards an applied theory of experiential leasing. In C.L.Copper, J. Wiley (ed.): *Theories of group processes*. London, 1975, s. 33-58, and D. A. Kolb, *Experimental Learning: experience as the source of learning and development*, Englewood Cliffs, New Jersey, Prentice Hall, USA, 1984.

every method has its strengths but also weaknesses. The intended outcome is the determinant too. The teacher must also follow the direction of the school he or she teaches at; a clinic should not be used as a centre which provides help for those in need in an academic type of school. In academic environment, the clinic will most likely be used as a supplemental method to help students understand the theory (although helping clients will still have its place there).

May clinical method be used in teaching of public international law?

International law may be taught through many methods. At the same time there are parts of international law which are easier to understand in its substance, and the principles might be shown on them. These parts might be taught relatively easily also through the clinical method; suitable candidates are human rights law or refugee law. Therefore the answer is: yes, the clinical method may be applied on international law. It is not a method which is effective for teaching international law as a whole (and definitely not if there is more than just few students in a course), but it may help students to understand it. A clinic may help to demonstrate the principles on a concrete example; students witness the use of international law in a practical case. They can also see how the international law influences the national law.

Let's take a look on the example of a clinic where I teach and where I am able to find answers for the questions which were posed above.

The *Theory and Practice of Asylum and Refugeehood*, a course at Law Faculty of Charles University, was inspired by the clinical method of teaching. Nevertheless, as the faculty is above all an academic one, the theoretical aspects are given priority and practice is closely connected with a theoretical feedback. Participants of the course take one semester of theory (12 seminars of two hours), where they study international, European and national refugee law. Then they attend a practical part of the course, where they (1) work in pairs with clients, who are asylum seekers, and (2) commute to refugee centres where they first observe the work of NGO lawyers and later give advice on refugee law related questions. The practice is possible only because of cooperation with an NGO whose lawyers supervise students when they provide legal advice in the centres.[15] Also a law office participates in the course.[16] No step (neither in the case nor in the centres) might be taken without previous authorization from a lawyer from the NGO and a mentor from the Law Faculty.

Students use the knowledge obtained in the course on a concrete example of client. Students do help the clients; they acquaint with the legal aspects of the case, they interview the client and they try to find evidence in the available sources. They may even find out that the case in not substantiated, which is the moment when the authoritative nature of the client's request is brought to their attention and they come to realize that it is the client itself who gives direction to their work. They

[15] Organization for Aid to Refugees, www.opu.cz.

[16] Kinstellar, v.o.s., advokátní kancelář, see www.kinstellar.com.

may explain the law as it is, but – as they will also see in their practices in future – it is the client whose request must be respected. Students have countless number of questions, often connected to the theory. When working on a real case, they find out that the knowledge they obtained has many meanings in practice. Therefore the practical part does not only consist of the practice itself, but also of weekly seminars, where all students meet. The seminars are obligatory. Not only students discuss what they saw, what they did and what were the reasons for the steps which they presented to the supervisors from the NGO and the mentor. All types of learning personalities are involved in the learning process, so all students have a chance to learn much. The Biggs and Tang's question on the intended outcomes appears again and again during the course and the course may even be modified to reach the outcomes which are the best.

Students also discuss theoretical aspects. And that is when international law is placed on the agenda, too. Although emphasis of the course is on national law, the general questions related to reception of norms might be discussed. In 1951 a convention was adopted in order to solve the situation of then refugees, what is its interpretation today? How does the state transposes its obligations from the treaty? Are the norms of the treaty self-executing? May other treaties be important? What if the European Court of Human Rights issues a decision in a case in which the Czech Republic is a party to the dispute? How is the judgement implemented into the national law? When the students themselves come with the questions they learn much more. They even come with possible answers. They go back to their books – they suddenly realize that international law might be useful even when the case primarily concerns national law. They learn much more about European law, especially about possible direct effect of directives. In the last year the debate sparked on question of *refoulement* on the high seas – the discussion was ensued by some of the students who were following the news and were concerned about potential controversies and problems it might bring. Of course not only the international law is taken into account; national law is discussed and applied. Students must use all the knowledge obtained during their studies, but they also gain a new one. In addition, they learn skills necessary for their future jobs as lawyers.

From my point of view, this method allows a teacher to get a feedback on the ability of students to understand the knowledge obtained during their theoretical studies. The main feature is that the students acquire practice while they are still at school, not after they graduate. Therefore the teacher can still give them a feedback on the theory, on their work and on their skills, show that public international law has and will have its place in their work. Therefore I find the clinical method be very good as a supplement to other methods of teaching public international law.

So is the clinical method worth trying?

The mission of clinics may be characterized by the quotation of Confucius: *"I hear and I forget. I see and I remember. I do and I understand"*. The clinic bears on the last sentence. Students usually acquire experience while working on a "real client"

case at the clinics. They hear at first, than they see – others, when they prepare for practice -, and they try the "real work" finally. The above mentioned Kolb's cycle is followed; all types of learning personalities are involved in the learning process.

From my point of view the advantage of the clinic as a teaching method is in its connection to school, to the world of theory.[17] A majority of students will practice law on their own one day, but not all of them will get a feedback on what mistakes they do. And they will most likely not get a feedback on possible engagement of international law in their work, as practitioners do not usually deal with international law much (since the change of political regime there has been an increasing trend in application and interpretation of international law by Czech courts; during communistic era judges were not taking international law into account much). This is why the clinic may definitely be, with the reservation to time and financial costs, definitely worth trying. Students get feedback on their mistakes and also find out that the international law has effect even in practice.

[17] But there are different opinions too. The clinic may be seen as a centre for people in need of a legal help primarily. As was said above, there are many types of clinics, only the accent on possibility to try to practice is the same.