

Theoretical and practical aspects within legal education

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1. Introduction

In spite of title of my presentation let me be more concrete and let me turn your attention to significant kind of law – I mean mainly education in criminal law and procedure. Moreover my experience is mostly Czech - Continental – limited by written law culture and therefore does not cover needs of education within common law countries. It will be only introductory and fragmented remark. The aim is not too much ambitious - simply I would like to start really fruitful working part of our Conference.

Long-time rector of Charles University in the 1920s, Dean of the Faculty of Law and doyen of Czech criminal law and procedure, Professor Augustin Miříčka, in the role of chairman of the ministerial Committee for Reform of Legal Studies¹ in the first Czechoslovak Republic, suggested that the obligatory qualifications for the appointment of assistant professors intending to pursue a career in criminal procedure should include several years of active practice in the judiciary or in the bar.

The reason is simple. As a man of long-time practical experience (deputy attorney general), Miříčka saw the consequences of the state of affairs where the teaching of criminal law was dominated by theory without any links to specific aspects of criminal procedure. My own career as a teacher and practitioner only confirms his view. I was 20 years state attorney 7 years attorney-at-law, I am a judge and, virtually at all times during my professional career, a university teacher and vice-dean, with no reason to complain.

While a master's study programme **continues to be based** on largely theoretical **lectures**, I am increasingly convinced that students would benefit from a greater number of seminars, even at the expense of lectures. Unlike lecture halls, the capacity of which is never sufficient to hold all students in the relevant year, seminars are a platform where students

¹ Reforma právnického studia (*Reform of Legal Studies*), Všechno No. VII (1925-1926).

express their views and teachers can respond and selectively discuss those questions that they consider crucial and which they did not have enough room to explain during lectures. This avoids providing redundant information that often burdens students, while creating new room for matters of cardinal importance. As Professor Hajn from Masaryk University puts it: *“Brains should be shaped and not just filled.”* This approach often exposes the weak points of individual students or groups of students, and enables the teacher to eliminate such weaknesses.

I refer once again to Professor Miříčka and his proposal to enhance practical training at the expense of lectures, with the aim to ensure that students graduating from the Faculty of Law are better prepared for their career. With fewer lectures, the teachers would concentrate on the difficult parts and cases law instead of tending to memorise the whole curriculum.

These forms of training should be accompanied by further interactive methods aimed at strengthening the practical elements of criminal law teaching. Criminal law is in the Czech Republic a field intended for all students without distinction, but especially those who, after completing their studies, will engage in legal professions like attorney-at-law, State attorney, judge, police officer. These are sophisticated professions requiring that the students become acquainted with the corpus of the occupation not just by hammering knowledge into their heads, but rather by following practical approaches providing an explanation and insight into substantive law, criminal procedure and their respective components; in other words, practical training is fully justified even in the highly academic domain of legal education. There should exist a certain minimum standard of knowledge for each profession. Students should acquire the basics of a legal professional's oral and written language, courtroom behaviour, principles of professional ethics, manners of obtaining, proposing and evaluating of evidence; they should gain the ability to analyse information and learn to respond in professional situations, all this of course linked to substantive law.

Practical training can take various forms and intensities. It can start with retrieving and processing legal information.

Mutual **exchange of information between the students and the teacher in the area of criminal procedure theory and practice** is also a suitable form of training. However, for a true debate to develop between the students and the teacher, the students must engage in the

necessary independent study before every lesson. For example, the teacher prepares simple, or somewhat complex, model situations, and selected students acting as the parties' counsels in the dispute mutually confront their views and proposals with the teacher in the middle. This obviously places a greater time burden on the teacher because the requirements on the theoretical part of the curriculum do not become any milder.

Some of the “**compulsory elective**” courses take a very interesting form and contents – the Brno Faculty of Law offers courses including *Decisions in criminal matters*, *Criminal law and health care*, *Domestic violence*, *Methodology of investigating individual types of crime*, *Criminalistics*, *Criminology*, *Forensic medicine*, *Forensic psychology*, and others. This is an appropriate means of bringing practical information to the curriculum of criminal procedure, especially for those students who have a concrete vision of their professional future.

Some law faculties apply, in addition to an oral examination in criminal law, Case Law Exam which comprises typical model cases in criminal law.

To receive credits, Czech students must traditionally perform some of the additional practical exercises consisting in **visits to trials**.

It is now a standard that the studies include **systematic internships** in courts, State attorney's offices and law offices.

Legal clinics have become an established concept in which students, under the guidance of clinical teachers, provide real legal services and legal advice, thereby adding an important practical element to their studies at the faculty. Although legal clinics originate from the different legal culture in the U.S., they presently exist in many other countries including continental Europe and the Czech Republic (a pioneer of legal clinics since 1996, the Faculty of Law of Palacký University in Olomouc, there also operates the Centre for Clinical Legal Education with a ramified professional structure, established in 2006; other such programmes worth mentioning are the Asylum and Refugee Theory and Practice at the Faculty of Law of Charles University in Prague in co-operation with teachers from other faculties and under the supervision of a reputable foreign law offices). Non-profit organisations including the Human Rights League, Consumer Defence Association, Public

Interest Lawyers Association and the Rainbow Movement significantly contribute to the operation of the legal clinics, and co-operation with courts and legal offices and ministries is not unusual in the clinics' work.

A potentially interesting (and still developing) originally U.S. method of professional training, **Mock trials**, are not just a spectacle in which students “taste” trial, but more importantly a means of comparing knowledge and developing independent thinking. I am aware that some of the law faculties in the Czech Republic regularly organise simulated Moot Court trials and that the ELSA student association organises an inter-faculty round of this competition every year. The competition is open to participants from all law faculties in the Czech Republic attending master's study programmes. There is even an international variant, the Central and Eastern European Moot Court Competition, with participating teams from Czech faculties of law. It has become a tradition that the Constitutional Court hosts the competition on its premises.

In conclusion of this part of my presentation, I should not omit to mention the **importance of textbooks and manuals** for students at law faculties. There is a wide range of teaching instruments for criminal procedure courses. It is rather important that both theorists and practitioners usually have an appropriate share in the preparation of them. Recently, there have also been textbooks that prepare students by using examples resolved directly in the text of the individual chapters. Electronic communications are also used, although the quality of the databases available is different.

The above-mentioned practical forms are suitable especially for the master's study programmes but should not be rejected resolutely in other forms of study, either. At the Faculty of Law of Masaryk University, there is a course for criminal law students in the bachelor's programme, titled *Theory and practice of pre-trial proceedings*, which is based mainly on an interactive approach in seminars and beyond.

Unlike the master's and bachelor's study programmes, the doctoral studies will place much more emphasis on theory, although the chosen topic of a dissertation thesis may justify a combination of theoretical findings and practical results.

I am well aware that most departments at law faculties do not have enough teaching staff to handle all these methods at once without making them merely a matter of form; it is necessary to look for compromise solutions, but only those that will indeed bring a deeper unity of theory and practice. A bridge should be created between theory and practice, one that begins to be built already in school.

The time is really difficult – in the recent years our country has seen an unrelenting tornado of law/acts amendments, and the work with ambitious centralised, user-unfriendly and overloaded information systems is also burdensome.

A typical student starting an academic career in the Czech Republic after completing the master's study programme will stay at the law faculty as an assistant or internal doctoral student and work his way through to the teaching position. Sometimes, for various (often salary) reasons, the young teacher works together with law offices or the judiciary as an assistant or advisor, which opens the door to some understanding of practical professional activities instead of remaining confined to theory, but only to the extent that this is tolerated by the both – faculty and employer. Where there is a lack of practice, the heads of departments focus on co-operation with prominent externists, police officers, state attorneys, judges and attorneys-at-law to introduce practical aspects to teaching. However, these do not cover the whole curriculum.

2. Need for practical training

For many years the Faculty of Law of Masaryk University has conducted research focusing specifically on the need for practical training. Professional experience has become a compulsory part of the curriculum at the faculty and is a prerequisite for admitting students to the State final examinations.

A 2015 study of the Faculty of Law of Masaryk University titled “Knowledge and Skills of Graduates from Law Faculties in the Czech Republic” has shown that 58% of graduates build a career in the **bar**, 15% in the **judiciary**, 10% in **governmental/administrative authorities**, 7% in the **corporate sector**, 4% in **academic roles**, 4% in the **distraint** sector, 3% in the **state attorney's offices** and 2% in the **notarial** profession.

Between 2011 – 2013, the Faculty of Law of Masaryk University, supported by the European Social Fund and using funds from the State budget of the Czech Republic, implemented the project **Theory – Skills – Practice: Innovation of Legal Studies**. The project was a direct response to the too high proportion of theory in education, following from a dogmatic teaching system, and the low amount of practical information in the teaching of law in the master's study programmes. The project shows the existing trends on the labour market – increasing pressure on a prompt adaptation of graduates on the labour market, active understanding of the inter-sectoral context and its application early in the graduate's career. In relation to the contents and objectives of the project, academicians and students of the relevant doctoral study programme were led to develop their abilities as educators.

It was owing to this effort that **skill-based and innovated courses** were created and taught in the above mentioned years. These included, for example, courses like *Legal profession practice*, *Asylum and migration law*, *Methodology of legal reasoning*, *Practical guide to commercial law*, *Practical guide to criminal procedure*, *Legal information technology in Europe*, *Labour-law relationships in an organisation*, *Enforcement (distrain) – model proceedings*, *Methodology of legal thought*, *Practical guide to administrative control*, *Practical aspects of commercial law enforcement*, *Human rights school*, *Financial law in judicial practice*, *Managing and resolving conflicts*, *International Public Law Moot Court*, *Private international law and the Internet* and many others – I personally found the course *Proceedings before the Constitutional Court* to be particularly interesting. Both teachers from the Faculty of Law and, to a large extent, professional practitioners lead these courses.

Two publications were released within the project - first “Case Law Exam” in the area of private and commercial international law, which presents the methodology of writing and evaluating practical questions and is undoubtedly also suitable for other kinds of law, and second - “Law Teaching Skills”, prepared in co-operation with the Faculty's partner Pro bono alliance and teachers specialising in skill-based teaching, which was intended especially for the bachelor's study programme “Judicial official”.

The project's outputs included the creation of an interactive web portal bringing together students and providers of professional internships at www.praxe.law, with many specialised texts providing practical examples and qualification thesis.

The project also included specialised workshops on the legal profession, negotiation tactics, ethics, *pro bono* counselling, skills in legal studies, and was closed by a conference titled “Professionals in Law”, with participation of the most prominent people of Czech justice.

3. Conclusion

As a result of actual labour market developments, the teaching of law at the Law Faculty could shift significantly from pure theory to a strong emphasis on knowledge application.

Rather than venturing into an unknown and unexpected territory, the career of a graduate from a law faculty should be a smooth, systematic continuation of the previously attained level of theoretical and practical lawyer’s training. Therefore, teaching may not be confined to theory or practice; it must be comprehensive.

One often complains about the shortcomings of our judicial and legal system, poor operation of the state administration and greedy distrainers. However, many of the negative phenomena are rooted in the education system, which has its share in forming the picture of the future law practice.