

New path for teaching law: Non-formal education

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Introduction

Law is a discipline that changes constantly with societies and follows closely its development. Therefore it should reflect social changes that are nowadays very hard to track. Law is evolving with societies and teaching law should be evolving too. Such evolution can be realized through different ways and many possibilities can be suggested. But basically the shift from pure theory to a more practical approach would be a potential technique to move towards a more modern method of teaching law.

A closer look to the relationship between theory and practice shows that pure theory could not possibly be the only method of teaching. However when teaching law one cannot escape entirely from theoretical teaching methods. Otherwise how can law professors transmit the information to their students? Indeed how can their students acquire the legal knowledge without a theoretical study of the main legal concepts and doctrines? In the same time theory is not enough because it may provide the information but does not create a good jurist. Law graduates are not all jurists. A law graduate might have the information but without the appropriate tools he cannot become a real jurist. The latter is a person who masters the knowledge while having the necessary personal skills. This becomes like a definite attitude towards law and legal issues, because law is one of the few fields that have impact on the personality and attitude of the student, and afterwards on the legal practitioner that he might become.

Difference should be made between a person who knows the law and a jurist. The latter is the one who can think, analyze, and who dares to agree or disagree with the legal theories that he learned or he is still learning. A successful legal practitioner is a person who can think clearly and objectively while being in the

skin of the other party whether it was the victim or the prosecutor. A successful legal practitioner is a person who was able to integrate the values, standards, ethics and beliefs associated to law and legal practice. He is a person who acquired a certain “law identity”. In reality if studying law does not affect the personality of the law student, he cannot become a jurist. The aim of teaching law should be to help a student to become this kind of person. This certainly cannot be achieved through traditional learning, or formal learning.

The selected approach for teaching law should combine theory and practice. It should work on the knowledge of the student together with his personality. Stepping away from the exclusive recourse to formal teaching methods is the first requirement to succeed in this approach. Several techniques can be used in order to transmit the information to the students through different means that are mostly innovative, modern and evolving. Some means are already followed in several law schools mainly as alternatives to traditional techniques that could be called “formal education”. On the other hand, non-formal education is a method that takes into account the input of students where they get to participate to the education process. It is an interactive, integrative and collaborative method that gives high value to what students have to say and how they truly think about legal doctrines and concepts. The suggested approach provides sufficient space to the students’ ideas and thinking. Being a faculty member at a law school that highly promotes critical thinking, I could not but give preference to non-formal education which is a new, modern and innovative path for teaching law.

Non-formal education does not exclude completely theoretical learning but is mainly based on alternative methods that will

be developed below. Such methods are not all new but most of them are individually followed by some faculty members. Indeed the objective of this paper is to gather many techniques related to non-formal education in one document where such education is explained through examples and specific information. The concept of non-formal education is already promoted and studied in many fields but it is important to look deeper into its implementation in the legal field. Since this can hardly be done when it comes to all legal disciplines, the scope of the present paper is limited to a specific branch of law where it has already been partially tested, public international law.

To outline further the framework of this study, an example of non-formal education is worth mentioning: Compass, which is a manual on human rights education with young people launched by the Council of Europe in 2002.⁽¹⁾ This document suggests a list of techniques of non-formal education in the field of human rights. The ultimate objective is to make as many young people as possible aware of the basic human rights. In the same time these people will be able to use the same techniques to train other people on human rights education. Basically such techniques are based on the training of trainers' method. This will eventually lead to a wide network of trainers on human rights and more generally of people who are familiar with the main human rights concepts and who can contribute to the monitoring and advocacy of the related theories. The main idea is to shift from

(1) See Training trainers for human rights education with young people, European Youth Center, 30 March- April 2009, Budapest, Hungary, edited by Petra Erkkilä and Sabine Klocker on the basis of texts submitted by the organizers, trainers and participants of the course, DJS/EYCB/TOTHRE./2010/47, Budapest, 28 June 2010, p.7: "Compass is now available in 27 languages and has served as the basis for countless youth-centered activities with a human rights education dimension. Its online version (www.coe.int/compass)".

the word “teaching” to the word “education”. In our context the shift should be from law teaching to law education. The purpose of this approach would be then to be able to educate people on human rights and to spread the relevant culture.

Ever since I participated to the training of trainers on human rights education I have been thinking about extending the concept of non-formal education to broader fields, and not only to human rights. As an international law specialist, my first interest was to try to apply the techniques related to non-formal education to this branch of law. This would be the main purpose of this paper knowing that these techniques are a collection of some existing methods but which will be presented in a practical and experimental approach focusing on the implementation of the said techniques in the specific field of public international law.

The paper will suggest some methods which are linked to certain activities that could be applied as a part of the non-formal education process. These are mainly some interactive activities that could be selected by the faculty member upon the nature of his audience and the topic to be covered. Some overlaps could be seen between the activities that will be listed below. In fact it is possible to combine different techniques by integrating two or more categories of activities in the same class session. The suggested activities can be modified to fit the topic that will be covered, and a lot of space is left to the full imagination of faculty members. Further details about this matter will be given in the next paragraphs that will start with the methodology and evaluation process followed by the list of proposed activities.

I- Methodology and evaluation process

The suggested method requires preparations. These are part of the course and class planning. In this context, the faculty member should build up his syllabus upon the selected activities from the beginning. His selection of activities are often based on the topic to be covered in addition to the targeted category, which is in our case, a group of young students eager to learn or may be not in all circumstances. We all have dealt with students whose attention is hard to keep and who require further effort to stop them from being distracted. These elements should be taken into consideration while preparing the syllabus and the activities in general. A space should be left also for theoretical explanation that cannot be avoided. At the end of the day students should get the knowledge as well.

For each topic a certain activity will be defined with expected outcomes, specific outputs and method. Students are required before every session to read some materials that are related to the topic to be covered in class. The first session can begin with some activities where the faculty member gets to know students and where students get to know each other. These ice-breaking activities are not necessarily linked to public international law.

Every session starts with a general explanation for no longer than twenty minutes where faculty members get to broadly cover the topic and to explain the activity that will take place without mentioning the outcomes and outputs. He will keep these elements to himself or he might choose to reveal them generally at the end of the session. Then the activity can begin. After each activity, there will be a debriefing on the learned lessons where the faculty member highlights the key elements that students need to learn. This step is very important because this is when faculty

members are able to repeat and underline the information and the skills to be gained by students. It is very sensitive as well because it aims to make sure that a certain skill is passed to students, a skill that will be added to other skills in order to build up the desired attitude. This will influence also the personality of the student. At this stage students will be able to question the information taught or the discussed theories. It is the most important step where the legal concepts are integrated together with adequate skills. It is also the opportunity for faculty members to check out who mastered the information and the skill and who did not. Improvisation is also needed for faculty members to guarantee a wider assimilation of the main key concepts.

Sessions are progressive and interrelated. They progress in terms of difficulty and sensitivity of the topics, but also in terms of the nature of each activity to be carried out. This is why it is important from day one to organize the schedule upon these elements and these criteria. Sessions complete each other in an evolving manner and in a way that would help accumulate supplementing skills. At the end of each semester once all the topics are covered, accumulated skills should be able to make students closer to the required identity and attitude as a legal practitioner. Each session is seen as a further step in the long path of law education aiming to create a true jurist.

Evaluation tools are used on a permanent basis throughout the semester and at the end of the semester as well. They are of various types. A long margin is left for oral evaluation, like participation to discussions, students' progress, openness to new topics or new theories, ability to apply theory to practice, ability to understand and analyze legal doctrines, critical thinking and any other skills that can help to evaluate students permanently and

progressively. Such elements should be regarded differently with time. At the beginning, some skills could be selected, leaving the others for a later stage. Or the same criteria could be applied from the beginning but are given different importance or impact with time. Faculty members may choose to be stricter with time or they might prefer some criteria over others. Such step can be accompanied with appropriate forms showing the evaluation scales and criteria varying upon timely objectives and work advancement. Such forms can be of two kinds: general and specific. The first ones evaluate the class progress and level as a whole, while the second one evaluates the same but on individual basis.

Some written tasks can be added to the evaluation process. They aim to identify to what extent they have acquired these skills. Written assignments provide more transparency to the evaluation scheme. However evaluating practical activities is not at all an easy task, if not the hardest element of non-formal education. To make this process more objective and more transparent, it should involve some written elements. They could be assignments to be submitted right after the session on the lessons that were learned from each activity, and or on the theoretical overview presented by faculty members. These assignments can be done few times for each course and can be added to the oral evaluation of students. Such evaluation will figure on the progress reports which are to be kept by faculty members taking into account the above mentioned criteria. Such reports could be supervised by the dean or department's head for advice and follow-up. This will also contribute to the purpose of clarity, precision, transparency and objectiveness of the grading process. It also contributes to the unification of law education in the law school within the general vision, mission, and objectives of the university.

It is an efficient way to track the work advancement of faculty members in the law school. This is also a chance for the deanship to contribute to the teaching scheme and methods. The reports kept by faculty members contain the work progress of students, in addition to other components such as, study plan and syllabus, course content, specified objectives and outcomes, teaching method including the scope of each lecture with details on every attributed activity divided upon the topics of public international law that need to be covered.

At the end of the semester a more comprehensive evaluation should be undertaken as an equivalent to the final exam. It should combine theory and practice, such as an activity organized and carried out entirely by the student, with all necessary planning and documentation. The latter starts with the written plan and ends with post activity discussion and evaluation. It includes a theoretical overview of some legal concepts that need to be learned and studied by students. Here students' evaluation and grade will be based on the oral and written elements submitted in their final project which is taking the form of a complete activity. Such activity will be chosen conveniently from the below categories that are suggested in a non-exclusive manner.

II- Adversary and simulation activities

This is definitely the first category of activities that can cross one's mind when it comes to teaching law. This type of activity is already practiced in the area of public international law. But it is often done as a sort of competition on the local or international levels. The purpose of this activity would be to create within the classroom or school's facilities the atmosphere of a court or

of an international institution or organization. These techniques exist already and are carried out by some institutions, like the model United Nations or some international competitions where students get to participate to international forums or to discuss certain topics related to public international law, such as JES-SUP competition, to which my school always participates. Moreover Kuwait International Law School has within its premises a simulative court. This shows definitely the importance given to practical approaches in my school, and encourages me to promote further these approaches when teaching law on daily basis.

The hardest task would be to adopt this method and to adapt it to the context of teaching public international law as a study course. The best way to explain how adversary and simulation activities can be undertaken within the framework of non-formal education is to do use an example that can also shed light on the above described methodology. Let us take the example of recognition of States considering that the faculty member chooses to cover it following the adversary and simulation techniques. First the topic should figure in the syllabus in association with this technique. And then the faculty member should plan the session with its expected outcomes and all the details of the activity in addition to the elements to be covered in the following discussion and evaluation.

It should be noted that this is rather an advanced type of activities that cannot be given at the beginning of the semester. Students should have already been formed to be able to participate to this type of activities. Some previous activities could be done before in order to prepare them for such techniques.

Before the session, students are asked to read about the principle of recognition of States from their course materials. Then at

the beginning of the session, the faculty member gives a general overview of the principle of recognition and its implementation in public international law using some examples and real cases. Since it is a court simulation activity, the preceding overview can include some information on the legal procedures in international courts. This would help students in their pleadings and will help virtual judges in running the court hearing and organizing the session as a whole. Students will be taking notes during this overview in order to be able to participate to the activity that will follow.

After the general explanation of the topic, the faculty member states briefly that the activity will involve a simulation of a court room where two groups of students represent the different parties in the virtual case and a third group represents the panel of judges. All groups will be given some minutes for preparation. The parties will prepare their pleadings, and the judges will write down some elements that can help them understand the position and the arguments of each party. After the preparation, students will present their pleadings and the judges will run the session. Sometimes the faculty member can intervene to organize the course of the session. Questions can be asked for each party and they can use any convenient legal procedure. Then the judges will be given some time for deliberation, and will give their decision with motivation and following a certain reasoning based on the discussed theories and the elements suggested by each party. The court decision can be written or the students will be given the assignment to write it for the next session, and they can use all their course materials to develop the court's final decision. This would be taken into account for evaluation as a part of the permanent evaluation process.

At the end of the activity, students will discuss what they have learned from the activity. This discussion covers the theoretical information that was studied, the different thesis that were suggested and the activity itself, such as how it helped them understand better the concept of States' recognition. The input of the faculty member is very important in this stage for filtering and canalizing the information and the discussion. He will use this phase to add all the explanation of the topic that was not mentioned so far. Students will take notes during this stage and they get to discuss everything regarding the topic and the general course of activity. They can even give their opinion about the activity, which means that they can say for example if they like it or not and what can be done to improve it in the future. During all the activity, the faculty member writes down his notes about the students' participation and all the criteria that are listed in his evaluation forms, the general and the specific one. After each session, the faculty member writes about the activity in his progress report and explains how it went and mentions the main input of students. He can also add some notes for follow-up and improvement and some evaluation comments.

III- Brainstorming, questioning and discussion activities

The different activities that could be listed in this category are usually based on students' inputs and contribution. These activities do not generally require a theoretical overview at the beginning of the session. Such overview would take place at the end of the session after the questioning and discussion. A relevant activity can start with the faculty member entering the classroom and suggesting very quickly a topic; for example he can come to the class and say "treaty". Then he would ask

students to say the first thing that comes to their mind when he says this word. This activity can be done differently. Students can write down on the board their potential answers, or on their notebook, or the faculty member can write their answers on the board after selecting the most relevant ones. The first method is more commonly used, so let us explain another scenario where each group of students writes the answers on a paper. There is a turn within each group for every student to suggest a word or expression related to the topic.

Students' papers are collected and hung on the board or on the wall. Groups' suggestions will be compared in an analytical manner. Overlaps will be discussed and differences or odd answers will be highlighted by students. Then one list will be developed on the basis of the different lists that are suggested by students. This is done by narrowing down the answers and removing repetitions and irrelevant answers. The modified list of answers will be then written on the board. And each group of words will be gathered under one category. Here the faculty member tries to bring out the main concepts related to the topic. In our example the main concepts to be mentioned can be the formation of treaties, interpretation, reservations to treaties, termination, elements of treaties or any other related notions. The wording should be one of the planning requirements for this activity, because the main words need to be identified by students with the help of the faculty member. Such activity could be allocated to some topics that require specific wording, such as the law of treaties or the sources of public international law more generally. Indeed this activity can be applied to customs where the elements of customs are identified by students following a certain canalization of the discussion by the faculty member.

Once the main concepts are specified, the faculty member develops these key concepts together with his students. He will be guiding them to some words and theories while using the techniques of questioning and discussing. After the clarification of the topic, analysis starts. The analytical approach follows the explanation of the main theories. Such approach can be implemented through different means. There is the possibility to combine more than one technique. For instance adversary method can be called upon. The faculty member can select few students and each one of them should defend a certain position towards the legal theory to be analyzed or criticized. Or students can be split into different groups and each group will take a different legal opinion. All opinions should be motivated and structured upon a specific logical order. The relevant techniques are to be explained at the beginning of the activity or earlier if they have been already used in other activities.

At the end of the activity the debriefing can include some additional information that the faculty member wants to transmit to students. And he can ask them for a written or oral test. The type of graded evaluation for such activity can be a written summary of all information regarding the law of the treaties for example. It is a way to figure out the elements that the students were able to get from the whole activity about the topic that was developed. And the defended positions and arguments can also be taken into account for grading purposes. Questioning and discussion activities improve the critical thinking of students and if they are used more than once, they can build up the analytical logic of students. This skill should figure as a priority in the check list of faculty members within all required skills. Attention should be made to the progress of work in the semester. With time, and by

using the adequate sequence of activities, the progress of students' skills should lead to the true attitude of a jurist.

IV- Experimental activities

This category includes many types of activities. Some simple means would be to use some real legal cases or articles. For example, if the topic is about the Montevideo criteria for Statehood, the faculty member can ask students to collect some specific information about an entity or a State. Attention should be made to the type of information that is required. Further details should be provided by faculty members. At the beginning of the session he can explain briefly what is required to be a State in public international law. Then he can write every criterion for statehood separately on the board. And all the collected information can be hung on the board under the relevant criterion. A discussion will follow on the relevancy of the criteria and whether or not they are fulfilled in the case.

Other experimental means can consist of some visits to the courts, law cabinets, international organizations or NGO's where students get to meet stakeholders and discuss with them their experience in the field. They can be asked to write some reports in order to prepare presentations about these visits. Such field trips can also take the form of a short training where students have the chance to get a real experience about applying what they have been learning. This experience should not benefit only the student who was on training. He should benefit his colleagues from the same experience. For example if some students are sent to an international organization, and others are sent to an international, regional or local court, every group of students will share their experience with their colleagues.

They can write a report or make an oral presentation about their training and share it with the rest of students. This is a chance where all students can share experiences and discuss what they have learned from their respective trainings. The faculty member can be very innovative in the way this activity is undertaken. For example, he can ask his students to make a research about a certain court or tribunal or about an international organization such as the United Nations or more generally about international legal subjects. Then each student or each group of students is sent to spend some time in the premises of an international organization or court. In this case their training will not be global but will be like an investigation to find out about the given topic. It is more original if the faculty member suggests his topic in the form of a question. Then students will be inquiring to find an answer to the question. This technique improves the legal curiosity of students, which is a necessary tool for any legal practitioner. It could make the difference between a real jurist and any other law-graduate.

The in-class follow-up of such activities is really important. In the debriefing, after students got the opportunity to share real-life experiences while explaining some legal concepts, the role of the faculty member is decisive. He should make sure that only the correct information is passed to the students. He can use the debriefing stage to highlight the key points and to shed light on some concepts that were not sufficiently covered by students. Hand-outs can be distributed to students as well. They can be collected by some students during their visits or trainings. Additional materials can be given by the faculty member to develop certain concepts. In this activity and like in any other activity, preference is given to visual tools. They can contribute to a faster and more efficient assimilation of information.

V- Role playing and story-telling

This category of activities is more specific to groups that already know each other and where confidence exists between the group members. Role playing can fit more easily various legal concepts. Story telling is more limited and more adaptable to certain branches of public international law. It can be used for example to explain the concept of peremptory norms. Faculty members or students can invite to the classroom a person who was victim of torture to talk about his experience. Such testimonials can show students what happens when international norms are not respected, especially when they aim to provide individual rights to human beings. Story telling is more about sharing some experiences about abuses to shed light on the situations relating to violations of the law. The related discussion can tackle also the legal remedies and reparations. Another example of story-telling is when students tell their own stories but the scope of such activities is really limited to the human rights field. Otherwise it is possible to tell stories that they witnessed or the stories of States where the activity would be closer to a case study.

Role playing activities are more flexible. Students can be in the skin of a party in the case including the victim and the perpetrator. They can also be given certain characters that they should feel like them, think like them and act like them in order to imagine their own situations. This activity is not about acting, but it is about answering some questions while being in the skin of these characters. For example, if the discussion's topic is about the peremptory norm of prohibition of racial discrimination, a student can be in the skin of a migrant domestic worker while another one would be his employer. And a set of questions is asked to each student about how they would react if they were

in a certain situation. The difference of attitudes could reveal the impact of breaching some international norms on the life and the well-being of people. Another option would be to represent two States, an occupier and an occupied State. Some nuances can be added, for example one State is using force against another State, and some students will be in the skin of civilians or other involved parties. In this case the activity can take the form of a discussion between all the parties including the identification of the international norms that are breached. All these activities should be preceded by a theoretical overview on the theories and concepts that might be invoked in the activity. They should be followed by an evaluation of all the components of the activity and of its impact on the students.

VI- Real examples and case studies

This category is very common and is already widely applied to all branches of law. It fits perfectly the context of public international law. Faculty members use cases or situations relating to existing or solved international conflicts, legal disputes, and examples of States and other actors on the international scene. The facts are given to students about the cases accompanied with a briefing on the relevant legal concepts. Students have to apply the theories to the facts in writing or orally. To add more originality the faculty member can ask different students to work on the same case study. For example, in the context of the relationship between international law and domestic law, students should discuss the differences between national legal systems concerning this issue. In this case, each student or group of students will study the importance given to public international law in a specific legal system. The same question would be answered differently

upon the concerned legal system. A general discussion will follow between the students and the faculty member on the similarities or differences between national systems when it comes to the relationship between international law and domestic law.

Conclusion

The list of suggested activities is far from being exhaustive. It shows only some models of practical teaching methods that could be applied to public international law. Many of these activities are already discussed by the manual Compass that is mentioned above.⁽¹⁾ But Compass was limited to the scope of human rights and its activities were presented as a part of a training of trainers. This paper undertakes to develop these activities and to bring them to the scope of university teaching, and more precisely to the area of public international law. This shift required many modifications, such as working on a grading system to accompany the suggested activities, to select few of them that fit better the chosen area, in addition to the presentation of all the elements as a part of one complete method: the non-formal approach for teaching law, and more precisely public international law.

This paper proposes a more practical system of education on the basis of the Compass manual that focuses also on the importance of non-formal education. However the ultimate objective of the current project is to promote practical learning since we believe that this approach will lead to the creation of a jurist and not of a mere law-graduate. Preferring educating people to the concept of teaching them is the main purpose of this paper

(1) See *supra*, p.2 note number 1.

because learning theories was never the only key for succeeding in a legal career. Theories with accumulated skills can lead to the formation of a successful legal practitioner. And once the appropriate skills are acquired, students will be well equipped to benefit others from them.

Despite all the advantages of the practical approach, implementation is not as easy as setting out its general framework. Faculty members following the non-formal education method should be aware of the difficulties and obstacles they might face. It is definitely a very interactive learning method but this level of interaction is not always easy to attain. Many students tend not to participate to all in-class activities for many reasons. Faculty members should know how to gently motivate them and encourage them to contribute further to the activities. This is why the order of the implemented activities is very important. First activities could be those that are carried out individually or in small groups and not on the level of all the class together. There might be some introductory activities or written tasks. Other activities requiring a lot of interaction with all students such as oral presentations and pleadings could be left to a later stage.

Other difficulties might arise when some sensitive discussions are started and students do not have all the same tolerance level. Faculty members should always think about preventing some conflicts between students, and about conflict resolution means if the clashes could not be prevented. The faculty member should think as a teacher, moderator, trainer and manager in the same time. He should be able to provide students with the knowledge and skills simultaneously. Non-formal education requires a lot of efforts from the students and faculty members. But eventually its advantages are countless.

It shapes the personality of students and improves their personal skills. It transmits the information faster and more efficiently so that average students can get it more easily. The interactive method of learning encourages students to attend further class sessions. They are aware that their participation counts a lot to get the knowledge and to pass the course. Indeed the evaluation scheme takes into account in-class activities and students' participation. Moreover the practical approach is more adapted to the modern method of teaching and to technical improvement in general. Nowadays practicality is a way of living and a way of thinking. Law should follow the social evolution and reflect its progress. Non-formal education is the way to reach this goal. It gives a lot of importance to modern techniques such as visual and auditory tools.

Non-formal education and practical methods educate students by improving their knowledge of the current situations and cases. They will be aware of what is going on around them, internationally and locally. A law student does not often look for information and updates. This is why the suggested approach will fill this gap by stimulating their curiosity and motivating them to track all updates and recent issues. All these advantages make non-formal education the new modern path for teaching law. It would promote as well a more global law education by unifying teaching tools and techniques and involving students more effectively in the teaching process, so that teaching and learning can become two facets of the same process.