

Legal clinics, a challenge for the teaching of law

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Abstract

The teaching of law has experienced new challenges, especially with globalisation and the changes introduced by the Bologna process. However, it has been difficult to implement them before the insistence of the traditional methodology of expository lessons, deeply rooted in the cycles of law. One of the current challenging methodologies is the legal clinics, as a dynamic and providing tool for active learning and facilitating the acquisition of practical competences. The legal clinics offer the possibility of a teaching based on life cases, allowing students to observe the effective or simulated representation of legal cases, developing skills, also appealing to the values and ethics that are imposed on a future jurist, be a lawyer or a magistrate. The purpose of our study is to raise awareness of the paradigm shift in the teaching of law, especially in Portuguese schools. The legal clinics will raise awareness of civil society, instilling reliability in the legal services.

Keywords: Globalisation, law, legal clinics, teaching, methodologies.

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1. Introduction

The teaching of law in Portugal has not followed the evolution of new teaching/learning methodologies. One of the greatest problems is undoubtedly its imperviousness to the new methods and to the technological revolution that has been experienced, especially in the last two decades.

The frequent use of expository classes is noticed although some institutions of higher education in the area of law have begun to notice some concern and some attempts to reduce traditional discursive methods by means of proactive techniques involved, calling for more participation of the students.

In this way, it is imperative to implement appealing techniques to capture students' interest, seeking to focus on the practise of law, in solving concrete problems. The legal clinics are an instrument capable of modifying the installed paradigm, contributing to the reformulation of thinking the law and to the formation of jurists of the highest level.

Universities should adopt curricula that offer programs designed to practise law, provide direct contact with real problems of everyday life, and create special skills for future law enforcers, whether they are lawyers, magistrates or other legal practitioners.

We intend to call attention to this real problem and contribute to a reflection on the necessary change of the paradigm installed in law academies, not forgetting the multidisciplinary that this methodology provides since the real cases often involve several areas of law.

To all this, the possibility of involving all the protagonists in the most important social issues, contributing to help those with weak economic resources to access the law and justice will not be strange.

2. Legal clinics: what are they?

According to Abramovich (1999), the legal clinics are, on the one hand, of a public interest, where legal work is carried out to guarantee the validity of certain rights and access to justice of certain sectors of the population and, at the same time, assume as a teaching space designed to prepare students for professional practise in advocacy.

In this reflection, it is mainly intended to address this second dimension, related to the importance of creating legal clinics in law schools, where students can make contact with real cases and put into practise the knowledge acquired in the course they attend.

Although there is a constant questioning of the education provided in our educational institutions, including those at the higher education level, the truth is that, in a rigorous way, we peacefully accept training based on standardised, non-disruptive models, revealing a strange belief in the power of inertia and that invariably leads us to the comfort of certainty in academic certification in general and in the degree, in particular, that, more than the guarantee of approval in all the curricular units that integrate the curriculum of a course, gives someone a license to practise a certain activity.

It happens, however, that the changes that took place in society, from the 1950s onwards (Martins, 1999): 'it has to be analysed by reference to the theorisation of the cultural systems given in a process constantly changing/mutated due to the pressures resulting from the interaction and dependence of other organisational subsystems, particularly the technological subsystem'.

It should also be mentioned that, in addition to socialisation and social integration, the education system must prepare young people for active life, since:

It will never be too much to say that it is not the teaching of solving economic and social problems ... but to give the maximum assistance to those at risk of being at the edge of the road, it is essential to include a solid preparation for work (OCDE, 1989, p. 50).

In this social context, marked by change, imponderability and unpredictability, with consequences for training and employment, it is important to take into account all the mechanisms that, in a certain way, can guarantee students, in this case, the course of law, a better and faster professional insertion.

In this sense, legal clinics can play a relevant role, since, based on real issues, of a more general or specialised nature, the students, individually or in groups, with the guidance of the evident advantages for the exercise of their professional activity.

In some situations, the work carried out within the scope of legal clinics can be translated into the provision of advice, the preparation of a legal document or the production of information of a technical/legal nature.

The university clinics approach the knowledge of law differently and its transmission, constituting a different proposal to do science, to teach to learn and contribute to a better ethical formation of the legal professional. Insert the student in a real context.

There are other methods that bring the student closer to the real problems, e.g., case studies and simulations. The difference lies in the personal element.

In the analysis of this problem, we also do not consider, it inappropriate to mention, the new role of the teacher, who was dismissed from the role of main actor and holder of a knowledge already desacralized. The role of intervenor, mediator between the students and the enormous amount of information that is transmitted today remains. In this new design of encouraging students to learn, legal clinics are an important opportunity that cannot be overlooked.

3. The shortage of legal clinics in Portugal

In Portugal, faculties of law show a growing concern with the preparation of their students in the face of the complex mutations of contemporary society.

In this sense, a number of mechanisms have been created that allow the student to become increasingly involved with real and emerging problems, seeking a continuous improvement of their education, richer, multifaceted and adjusted to the real context, in order to favour their future integration in the world of work.

In this way, and in addition to the academic training, the universities develop a set of activities and projects, ranging from the stimulation of seminars and workshops, with diverse themes, where invited participants of recognised merit, professional summer internships or the organisation of open days in companies or law firms.

Also noteworthy are the mentoring activities, which allow the student to follow up on his/her admission to the university, and partnerships to allow students to accompany a professional student's day.

In order to foster the future professional integration of their students, colleges, in partnerships with law firms, banks and other institutions, systematically publicise job offers and internship offers and promotes contact with potential employers. In addition, surveys of satisfaction with students and their employers are also frequently carried out.

In this context of concern about the preparation of students for active life, some universities, according to their activity reports, have referred to the legal clinics as the most important tool for deepening the practical side of law.

However, in the context of the present reflection, it was found that most law schools have not implemented a legal clinic project or similar model and in others, very few, this practise is still at an embryonic stage.

We believe that education continues to have a high bearing on the social mobility of individuals. Paradoxically, although it is recognised that access to the best education is conditioned by the social origin of the student and that the school has an enormous propensity for social replication, this proves to be the most important social elevator of democratic societies. In this context, the diplomas or certification conferred by it were indicative of the degree of stratification and reveal the status of its possessors.

However, this relationship, already demonstrated, between credentialing and stratification and social mobility and employability has changed significantly in a society that becomes more complex every day, where the very definition of professional profiles does not withstand a mere cycle of studies.

Thus, the development of skills based on the trinomial knowledge, skills and attitudes is increasingly valued.

Legal clinics involving students and teachers in a service area allow people to share their problems with the teams and that the student, under supervision, apply in practise the concepts and institutes, assuming himself as a protagonist active in the resolution of real-life situations, providing solutions or guidance to the prospective client.

The activity developed in these clinics, in addition to theoretical knowledge, requires reflection and structured planning, which favours the development of new technical and relational skills, essential to the performance of a legal profession.

It is important, however, to caution in the development of such a project the risk of transforming the model into a mere simulated practise. Without belittling the usefulness of the latter, the fact is that, if we withdraw the experience component in real context, all the objectives that are intended to be achieved are compromised.

It also seems to be decisive for the success of the measure, the careful selection of the partners involved, in order to guarantee the quality of training and the necessary distance from all the actors involved.

4. Origin of legal clinics

One of the biggest problems of colleges or law schools is the true stagnation of teaching methods (Pereira, w.d).

Legal clinics as a learning model emerged in the United States in the 1930s, presenting itself as an alternative to traditional methods of law teaching. We talk mainly about the method of lectures.

They intended, at an early stage, to minimise some of the shortcomings of the classical method, overcoming gaps in the training of lawyers, future lawyers or judges.

Legal clinics, as we know, articulate the theory with practise, fostering a deep reflection on the legal solutions of life cases.

They intend to develop a practise-based teaching in which students experience life affairs. The precursors of this methodology point out that students, when they deal with the cases of life mentioned in the manuals, do not study the true cases as they are evidenced (Pereira, w.d).

In order to understand the contextualisation of this teaching/learning methodology it is important to go back to 1870. It was at this time that a pioneering project in the teaching of law began in the United States. This is due to Langdell, a professor at Harvard (Varas, 2017).

Until then, the predominant method was the 'textbook', through which students contacted the great theories of American law (Pinto, 2017).

Langdell then introduced the case system/case study, centred on the study and analysis of judicial decisions.

Another great contribution, no less relevant, is Jerome New Frank (1933), American philosopher of law and author, known for being one of the leaders of the legal realist movement. He directed staunch critiques of legal education at the time and wrote 'Why not a clinical Lawyer-school?' (Witker, 2017).

For this author, the case system mirrored only the personality of its author (Langdell). He argued that such a method removed students from practise by leading them to a study in libraries. He argued that the young lawyers were unprepared to deal with certain cases of life, especially for all those in whom there were no decisions or if they were of little use to solve them. He also drew attention to the difficulty of interaction between the judges and these young future law professionals (Bloch, Frank, Menon & Madhava, 2011).

As an alternative, he proposed a clinical method for the study of law, inspired by medical schools. Law students, assisted by their teachers, must acquire knowledge from legal practise, developing skills that mere jurisprudential study does not provide.

However, for a number of reasons, throughout its evolution, the clinical method ended up being linked, especially, to themes of public interest (Varas, 2017).

Currently, clinical programs are criteria for the evaluation and classification of higher education institutions. The better the legal clinic program, the more qualified the institution is, thus highlighting its value in building a critical view of law focused on social transformations.

This methodology had repercussions on the United States Bar Association, which only recognises the faculties of law that contemplate clinical education.

Legal clinics encourage students to develop critical analysis of law and reflect on practise. This way, the commitment of the new professionals of the law with the social problems is implemented.

5. Reasons for its success

Legal clinics, as a method for teaching law, by allowing the student's contact with practical problems and the need to find the solution, awaken the most interesting and practical side of the law.

They allow us to see the right in action oriented towards the concrete solution. They solve real problems, of real people, in real context. Nothing more appropriate to arouse the interest of the student (Andreopoulos & Richard, 2007).

In practise, if implemented with some planning, they allow the student's access to practise and solve the concrete problem. As in medical education, which from a certain level of student knowledge allows them to be present in a real clinic, in a hospital, accompanying doctors in the practise of medicine and practicing, in real time, medical acts with the supervision of a team also in the teaching of law, this is possible (Santos, 2016).

The success of legal clinics, which must be specialised by subjects or fields of law, is based on the students' willingness to learn to do and not just learn to listen how to do. This is the difference that guarantees the success of this method (Bloch et al., 2011).

It is possible to create legal clinics on various legal topics, and the most famous for arousing the passion of students are, as a rule, human rights clinics. But, it is possible to create legal clinics on many other topics, such as: legal clinic for intellectual and industrial property; legal clinic to support the victim of domestic violence; legal clinic for the rights of children and young people; clinic of trade and economic activities; legal clinics to support immigration, support for precarious workers, support for excessive debt, and so many others on so many issues of law that arouse the interest of students.

Legal clinics aim to solve real problems, which are not limited to the teaching-learning process, and present themselves as a potential instrument for financing the teaching itself.

The legal clinics follow a defined program for the insertion of the student of law in the world of real practical cases and insertion in the labour market. This is the main reason for its success (Witker, 2017).

On the other hand, it should be noted that this is not a 'problem simulation', but a 'real problem' solution. The student may need to promote some diligences, contacts and procedures with public institutions or services.

However, at this point, we will face the opposition of professional orders, so that the management of legal clinics must be meticulously weighted in the light of what can be done without undue intrusion into the functions of their professionals.

Matters such as human rights, the rights of minors or support for immigrant populations are, as a rule, less conducive to conflict with professional orders. The human rights clinic or immigration support clinic has fostered very interesting experiences, especially in the US and UK.

In addition, it is possible, in other areas of law, to work in conjunction with law firms and law firms to establish partnerships to enable their students to participate in real-time problem solving, research, documents or other procedures for resolution of specific cases.

In some countries, students are allowed to intervene in judgments or other matters, which take place with judicial entities.

In short, the reasons that depend on the success of these legal clinics have to do mainly with the partnerships to establish with entities external to the University, in order to put in real time and work environment their students.

6. How to operate the legal clinics in Portugal

For all the above, it is worth mentioning that the operationalisation of these legal clinics presupposed, first, a reading of the most stimulating and appropriate areas for the students' study phase, in order to harmonise the practise with the knowledge already purchased.

Once the plan of the legal clinic(s) to be implemented has been established, it is necessary to establish partnerships with the reference institutions for each case. Natural partners are, of course, law firms. Also, associations, human rights, consumers, disadvantaged social groups or minorities, very specific sectors of activity (artists, researchers, industrialists of specific areas, etc.), NGOs, police services, corporations of various kinds are partners with which it is possible to establish partnerships that may result in legal clinics with a high learning potential.

It is not possible to exclude the partnership with courts in order to empower students, in real time and in a real way, to get in touch with the processes and prepare them for decision. Study and examination of evidence, speeding up of documents, elaboration of researches and, also, collaboration in the preparation of judicial decisions.

Legal clinics should also be thought of in the light of the different legal professions that future students may carry out, as well as careers with access to law graduates. In this perspective, diplomatic, consular and related services are partners of enormous interest in enhancing access to practise in these professions.

The interesting part is that it can be a multidisciplinary project, involving, for example, the participation of teachers from diverse backgrounds and even professionals from different areas.

In Portugal, the method of legal clinics, as mentioned, is already being adopted in some universities, albeit experimentally.

We have recently recorded the use of this method by the Catolica Portuguese University, Nova University of Lisbon and the Lisbon University. But, we can say that this progress is still timid in any of the cases mentioned.

The involvement of students from these law schools at summer internships sponsored by law firms, at academic events and conferences, have been the most followed methods for bringing students into legal practise.

In short, much, can and should be done in this matter, because this method is, among us, still little used. We have no doubt that there is potential to develop projects in this area, seeking the right partnerships with societies of lawyers, associations, NGOs, public services and other entities with interest in legal activity.

7. Conclusions

In this reflection, related to the importance of creating legal clinics in law schools, where students are expected to be able to make contact with real cases and put into practise the knowledge acquired in the course they attend, the following should be taken into account:

1. In addition to socialisation and social integration, the educational system must prepare young people for active life;
2. Legal clinics, based on real issues, of a more general or specialised nature, allow students, individually or in groups, with the guidance of the responsible teachers, to acquire a practical experience, with obvious advantages for the exercise of their professional activity;
3. However, we have verified that most of the legal faculties in Portugal have not implemented a project of legal clinics or similar model, and in others, very few, this practise is still at an embryonic stage;
4. Legal clinics, as a model of learning, emerged in the United States in the 1930s, presenting itself as an alternative to traditional methods in law teaching;
5. They sought to fill some of the deficiencies provided by the classical method, overcoming the gaps in the training of jurists, future lawyers or judges;
6. Currently, in the USA, clinical programs are criteria for the evaluation and classification of higher education institutions;
7. Legal clinics, as a method of teaching law, by allowing the student's contact with practical problems and the need to find solutions, awaken the most interesting and practical side of law;
8. The success of legal clinics, specialised in subjects or fields of law, will enhance the students' willingness to learn to do and not only learn how to listen and how to do;
9. The operation of these legal clinics presupposes a reading of the most stimulating and appropriate areas to the stage of studies in which the students are in order to establish the practise with the knowledge already acquired;
10. In short, this method, which is still little used, must be implemented because we believe that there are conditions to develop it, seeking the right partnerships with societies of lawyers, associations, NGOs, public services and other entities with an interest in legal activity.

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